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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st January, 2019

+ CRL.M.C. 3816/2016 and Crl. M.A. Nos.15974-15975/2016, and Crl. M.A. 7285-7287/2018

CBI

..... Petitioner

Through: Mr. Sanjeev Bhandari, SPP with
Mr. Prateek Kumar, Advocate and Insp.
Sushil Dewan, CBI

versus

ASHOK KUMAR AGGARWAL

..... Respondent

Through: Mr. Ashutosh Dubey, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent, an officer of Indian Revenue Service (IRS) had been arrested in the course of investigation of certain cases including RC No. S19 E0006 99 EOU-VII/EO-III/CBI (FIR) of the petitioner Central Bureau of Investigation (CBI). On conclusion of investigation, report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) is stated to have been filed against him, *inter alia*, on the strength of sanction for his prosecution. Simultaneously, investigation in the other FIRs was also concluded and criminal cases came up before the court of Special Judge

(Prevention of Corruption Act) on the charge-sheet(s) filed therein. Some effective orders for putting the respondent on trial as accused in those cases were passed by the Special Judge, these included orders dated 17.12.2005 and 24.05.2014.

2. The respondent assailed the said orders and the orders dated 21.06.2002 and 26.11.2002, whereby sanction had been accorded for his prosecution, by WP (Crl.) 1401/2002 and criminal revision petition no.338/2014. Both the said petitions were allowed by a learned single Judge of this court by a common order dated 13.01.2016, bringing an end to the prosecution. It is pursuant to the said order dated 13.01.2016 of the learned single Judge of this court that the criminal case arising out of the aforementioned FIR was disposed of by the Special Judge by order dated 10.03.2016.

3. It is against the above backdrop that the respondent moved an application dated 08.07.2016 for directions to the CBI for release of the documents seized by it during investigation. The application referred to various documents classified in five categories, each reflected by separate annexures (Annexures 'A' to 'E'). The application was resisted partly. While conceding the prayer for return of the documents reflected in Annexure 'B', suitable directions in such regard having been given by the Special Judge by his order dated 17.08.2016, the objections of the CBI, to the release of other documents were repelled and rejected on the ground that there was no satisfactory reason to permit withholding of such documents, its proposal for filing Special Leave Petition (SLP) before the Supreme

Court against the order dated 13.01.2016 of this court having been rejected by the concerned Department of Legal Affairs in the Ministry of Law and Justice on the basis of opinion given on 08.06.2016, information in which regard had been gathered by the respondent under the Right to Information Act, 2005.

4. The Special Judge kept the matter pending, listing it for 08.09.2016 to secure compliance of the directions by CBI. The matter was adjourned from time to time for compliance report to be submitted. Eventually, by order dated 24.09.2016, further submissions of CBI for permission to retain and withhold certain records was rejected and it was directed to submit a compliance report on or before 08.10.2016 with caution that failure would entail appropriate proceedings to be initiated against the officials responsible.

5. It appears that around the said period, the respondent had moved another application on 08.08.2016 with the prayer for initiation of proceedings under Section 340 Cr. PC against certain officials of CBI. Though reference to the said application has come up in some of the orders which are placed before this court, it is clear from the prayer in the main petition that this court is not called upon to subject the matter arising out of such application under Section 340 Cr. PC to any scrutiny in present proceedings, the focus being primarily on the directions given on application dated 08.07.2016 of the respondent for release / return of the documents seized during investigation.

6. The present petition was filed by CBI invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC to bring a challenge to the aforementioned directions of the special Judge. It is not disputed that on approval being subsequently accorded by the competent authority in the Central Government, CBI eventually did file a challenge to the order dated 13.01.2016 of the learned single Judge of this court in WP (Crl.) 1401/2002 and Criminal Revision Petition no.338/2014, in the wake of which the proceedings in the corresponding criminal case of CBI against the respondent in the court of Special Judge had come to an end. The SLP (Crl.) 10112/2016 has been pending before the Supreme Court, wherein the correctness of the view taken by the learned single Judge of this court in order dated 13.01.2016 is stated to be under scrutiny.

7. Against the above backdrop, this court agrees with the submissions of the petitioner / CBI that the directions for return of the documents seized by it, particularly those documents as were mentioned in Annexure 'A', 'C', 'D' and 'E' to the application dated 08.07.2016 of the respondent ought not be complied with. It does not call for much imagination to accept that such documents would undoubtedly include those germane and crucial to the issues that have been raised in the matter which is pending before the Supreme Court of India. The question as to whether there would be a continued need to retain those documents in the hands of the investigating / prosecution agency would need to be addressed afresh after the SLP has been decided by the Supreme Court.

8. Thus, the petition of the CBI is allowed to the effect that the directions in the order dated 17.08.2016, reiterated by subsequent orders culminating in order dated 24.09.2016, for return of the documents mentioned in Annexures 'A', 'C', 'D' and 'E' of the application dated 08.07.2016 of the respondent shall stand vacated and set aside. The respondent, however, would have the liberty to make appropriate fresh prayer with regard to such documents in light of the decision to be taken by the Supreme Court of India in SLP(Crl) 10112/2016.

9. No further directions are required at this stage in these proceedings.

10. The petition and the applications filed therewith are disposed of in above terms.

R.K.GAUBA, J.

JANUARY 21, 2019

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