

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :31/01/2020

Order passed on :28/02/2020

REVP No. 39 of 2020

1. B.L. Agrawal S/o Shri Ramkumar Agrawal, Aged About 54 Years, R/o Samarth, Opposite United Timbers, New Timber Market, Fafadih, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. Central Bureau of Investigation, Through Director, Plot No.5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi - 110 003, Also At Bhilai, Bungalow No.4, Street No.15, Sector 9, Bhilai District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. State of Chhattisgarh, Through the Principal Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Lalit Phular, Inspector of Police, CBI, ACU-V, ACIII, Plot No. 5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi - 110 003., District : New Delhi, Delhi

---- Respondents

For Petitioner – Dr. N.K. Shukla, Senior Advocate with Shri Saurabh Dangi, Advocate.

For CBI/Respondents No.1 & 3 – Shri B.Gopa Kumar, A.S.G. and Shri Himanshu Pandey, Advocate.

For State – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

28-02-2020

The petition has been heard on admission.

1. This Court has passed order dated 19-12-2019 in WPCR No.75/2017 by dismissing the petition in which the petitioner has prayed for quashment of the FIR No.SPE/CBI/ACU-V/AC-II/New Delhi, 2017 2172017A0004.
2. It is submitted by learned senior counsel for the petitioner that the impugned order is factually incorrect for the reason that there are errors apparent on the face of the record. There is clear material to show that the entire cause of action has occurred within the territorial jurisdiction of this High Court. Therefore, the CBI, Police Station at New Delhi had no jurisdiction to

lodge FIR in this case against the petitioner and proceed on that basis. The offence registered in this case is under Section 8 of the Prevention of Corruption Act, 1988 read with Section 120B of the IPC, therefore, the jurisdiction of the Court will be decided according to the provisions of the Prevention of Corruption Act, 1988 and not according to the provisions of the Code of Criminal Procedure, 1973. Section 178 of the Cr.P.C. provides that where an offence is committed partly in one local area and partly in another, it shall be inquired and tried into by the court having jurisdiction over any of such local areas. Therefore, the Special Court in the State have jurisdiction to inquire and try into the offence in this case.

Section 3 of the provisions of the Prevention of Corruption Act, 1988 empowers the State Government to appoint Special Judges for the area or areas as may be necessary for offences punishable under the Prevention of Corruption Act, 1988 and in conspiracy committed or any attempt to commit or any abetment of any of the offences as specified in the Prevention of Corruption Act, 1988.

Relying on the judgment of Hon'ble the Supreme Court in the matter of **CBI, AHD, Patna Vs. Braj Bhushan Prasad and others**, (2001) 9 SCC 432, it is submitted that in the said matter it was held by three Judges Bench, that it is the place where the main offence is committed the Court shall have jurisdiction to inquire and try into that case.

Further, relying on the judgment of Hon'ble the Supreme Court in the matter of **State of Jharkhand through SP, Central Bureau of Investigation Vs. Lalu Prasad Yadav alias Lalu Prasad**, (2017) 8 SCC 1, it is submitted that the Hon'ble the Supreme Court, relying on the judgment in CBI, AHD, Patna Vs. Braj Bhushan Prasad and others (supra) held that place of trial has to be on the basis of main place of commission of offence. It is submitted that therefore in this view of Hon'ble the Supreme Court the judgment of Delhi High

Court on this issue is redundant and per incurium. Therefore, the co-accused Anand Agrawal has erroneously initiated the petition before the Delhi High Court and the judgment in WP(CR) No.791/2017 rendered by the Delhi High Court on 08-10-2018 is per incuriam judgment and thus having no effect of res judicata.

It is submitted that the judgment of Delhi High Court in Anand Agrawal's case which was challenged in Hon'ble the Supreme Court in Special Leave Appeal (Criminal) No.10555/2018 though dismissed, but the question of law was left open, therefore, the question of jurisdiction is still open to be considered here. Relying on the judgment of Hon'ble the Supreme Court in the matter of **State of Rajasthan and others Vs. Shankar Lal Parmar**, (2011) 14 SCC 235, it is submitted that any question when left open would mean that there is no order or direction present of any superior Court to be complied with, therefore, this Court is competent to consider as well as reconsider the point of jurisdiction. This fact cannot be ignored that this petitioner was not a party in the case before the Delhi High Court. Therefore, the judgment of Delhi High Court cannot operate as res judicata with respect to this petitioner.

Reliance has also been placed on the matter of **Sheodan Singh Vs. Daryao Kunwar (Smt)**, AIR 1966 SC 1332.

It is also submitted by the learned Senior counsel for the petitioner that his Court has mentioned in paragraph 22 of the impugned judgment that the petitioner has not pressed the issue raised regarding his arrest in non-compliance of the direction of Hon'ble the Supreme Court in the matter of **Arnesh Kumar Vs. State of Bihar**, (2014) 8 SCC 273, whereas, no such statement was made on behalf of the petitioner's counsel, therefore, this issue has been left undecided by this Court, on this basis it is prayed that the review petition be admitted and heard.

3. Assistant Solicitor General representing respondents No.1 and 3

opposes the submission made on behalf of the petitioner and submits that this review petition is not maintainable. Firstly there is no error apparent on the face of record, secondly, there is no new fact or evidence presented by the petitioner side and thirdly there is no other sufficient cause on the basis of which the impugned order can be reviewed. There is clear and sufficient evidence present in the case concerned that the cause of action for lodging the FIR and investigating the case has occurred in New Delhi, therefore, the CBI at New Delhi has jurisdiction to investigate the case and similarly the Special Court in New Delhi had jurisdiction to try the case. It is further submitted that whatever has been argued in this petition was argued in the main petition as well and this Court has considered and given its decision, therefore, that question cannot be raised again. Hence, this petition is without any substance which may be dismissed.

4. In reply, it is submitted by learned Senior Counsel for the petitioner that any judgment/order passed must be in accordance with law. It is submitted that this Court has failed to appreciate the error that was apparently present on the face of record with respect to the jurisdiction, which has been argued hereinabove, therefore, the petition deserves to be admitted.

5. Heard learned counsels for the parties and perused the impugned order.

6. This Court had dealt with the jurisdiction in paragraph 9 of the impugned judgment and the same has been replied in paragraph 14, that the Division Bench of High Court of New Delhi was equally competent to decide on the issue raised in this case. The facts of the case disclosed the evidence regarding occurrence of cause of action in New Delhi which has been discussed in the order impugned.

This Court has very clearly observed in the impugned order that the judgment of Delhi High Court given in Anand Agrawal's case was within its competence and within jurisdiction and apart from that, that was a judgment

given by Division Bench and no reason is found to hold the same as per incuriam. The observation of Hon'ble the Supreme Court in the order in Special Leave Appeal (Criminal) No.10555/2018 has also been discussed which has left open the question of law to be determined by the Court having competence, the same has been determined by the Delhi High Court with which this Court has agreement.

7. In paragraph 22 of the impugned order it is expressly mentioned that the issue regarding arrest of the petitioner in non-compliance of the directions of Hon'ble the Supreme Court in *Arnesh Kumar Vs/ State of Bihar* case was not pressed. This statement of this Court in the order is very clearly based on the submission that was made by the learned counsel for petitioner at the time of presenting arguments, therefore, the counsel for the petitioner cannot be allowed to change the statement at a later stage, hence, such argument cannot be entertained and allowed.

8. Therefore, after discussion made hereinabove, I am of this view that there is no error apparent from the face of record present in the impugned order, there is no new fact raised which could not be raised by the petitioner earlier and there is no other sufficient reason present according to which, it can be felt that the order needs to be reviewed. The petitioner is having liberty to avail other remedies available to him if he is not satisfied with this order. Hence, I do not find any reason to entertain this review petition, which is dismissed at the motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge