

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-22567-2018 (O&M)

Reserved on : 10.02.2020

Pronounced on : 14.02.2020

Chandra Shekhar

...Petitioner

Versus

CBI/ACB, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Hemant Bassi, Advocate
for the petitioner.

Mr. Sumeet Goel, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of order dated 19.03.2018 (Annexure P-7), passed by the Special Judicial Magistrate, CBI, Haryana at Panchkula as well as order dated 07.05.2018 (Annexure P-9), passed by the Additional Sessions Judge-cum-Special Judge (CBI), Haryana at Panchkula in case FIR No. RC/CHG2008 (A) 0022, under Sections 120-B, 420 and 477 of the IPC at Police Station CBI, ACB, Chandigarh, vide which the application, filed by the petitioner under Sections 322 and 323 of Cr.P.C. has been dismissed.

In nutshell, the facts of the case are that petitioner Chandra Shekhar, the then General Manager, BSNL, was caught red handed on 03.06.2004 while demanding and accepting a bribe of Rs. 25,000/-, which was followed by a search conducted in the official residence of the petitioner, where a sum of Rs. 45,03,450/- was recovered apart from other

documents.

After the chargesheet was presented by the CBI on 22.05.2019, the petitioner filed a petition bearing CRM-M-37039-2014 before this Court seeking quashing of the present FIR, which was dismissed, vide order dated 24.10.2017. The operative part of the order reads as under:

“On giving a careful thought to the submissions of learned counsel for the parties, I find no substance in the submissions of learned counsel for the petitioner. The first FIR registered against the petitioner relates to demand and acceptance of bribe money. The second FIR relates to possession of assets disproportionate to his known source of income. Both these FIRs were registered in 2004. The cause pertaining to the instant FIR accrued on 31.01.2007 when the application was filed by Santosh Kumar on behalf of LVL Infrastructure Limited staking claim on the cash recovered from the house of petitioner. During inquiry as ordered by a Coordinate Bench of this Court, it was found that attempt has been made to help the petitioner by fabricating the account books and audit report. Consequently, the FIR was registered and matter was investigated. The offences in this case pertain to the period much after the period of first FIR and constitute separate and distinct offences and CBI has committed no error of law by registering separate FIR and filing separate charge-sheet. The observation of Hon'ble Apex Court in case of ***Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and another (supra)***, are not applicable to the facts of the present case. In that case, CBI was inquiring into killing of a person and the Apex Court has observed that alleged killing of that person could be part of conspiracy under which earlier murder had taken place. In the above case, Hon'ble Apex Court has not quashed the second FIR but passed order as follows:-

“53. In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of

assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to "take over" the investigation **and did not grant the relief as prayed, namely, registration of fresh FIR**, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

54. In view of the above discussion and conclusion, the second FIR dated 29.04.2011 being RC No. 3(S)/2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated 08.04.2011 by this Court in Writ Petition (Criminal) No. 115 of 2009 and accordingly the same is quashed. As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR. It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial Court to decide the same in accordance with law. Consequently, Writ Petition (Criminal) No. 149 of 2012 is allowed."

It is not in dispute that power of further investigation after the submission of report under Section 173 (2) Cr.P.C., vests with the Investigating Agency. As such, the observation in case of ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others (supra)***, have no relevance in this case.

As a sequel of my above discussion, this petition has no merits. Dismissed."

The petitioner, thereafter, preferred SLP No. 184/2018 before Hon'ble Supreme Court, in which the following order was passed:

“The special leave petition is dismissed.

However, it is submitted by Mr. R. Basant, learned senior counsel that all cases can be tried together. For this purpose the petitioner can always approach the appropriate forum. It would also be open to the petitioner to raise all defence which are available in law...”

Thereafter, the petitioner moved an application under Sections 222 and 223 of Cr.P.C. before the Special Judicial Magistrate, CBI/trial Court praying that the case/trial arising out of the present FIR be sent to Special Judge, CBI, Panchkula for its trial along with another case of petitioner bearing No. RCCHG/2004/A0015 so that both the cases be tried together as in the claim and counterclaim, there may not be two conflicting orders.

The CBI filed reply to aforesaid application and contested the same. It is stated in the reply that the application has been moved just to delay the proceedings as chargesheet was presented in May, 2009 and by way of filing different petitions at different stages before the different Courts, the petitioner is trying to stall the proceedings. It is further stated in reply that case No. RCCHG/2004/A0013 (the present case) was registered against the petitioner for demanding and accepting an amount of Rs. 25,000/- as bribe from complainant Shivraj Khatana, whereas case No. RCCHG/2004/A0015 was registered under Sections 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 on 30.06.2004 on account of possessing disproportionate assets and, therefore, both the cases are triable by a Court of Magistrate as well as Court of Sessions, separately.

The Special Judicial Magistrate, CBI, Haryana, vide impugned order dated 19.03.2018, dismissed the said application. The operative part of the order reads as under:

“12. Also, during the course of arguments the learned defence counsel has submitted that the trial in this case will cause prejudice to him as his plea/defence from the very beginning is that the money amounting to Rs.45 lakhs recovered from the residence of the accused belong to D.K Aggarwal, Promotor of M/s LVL Infrastructure Limited, which is the subject matter of RCCHG2004(A)/0015 and the CBI even in the present case has made the same witnesses who have been made a witness in case RCCHG2004(A)0015 and no separate witnesses have been made as a witness in this case. So, he will find it difficult during the trial proceedings to examine the witnesses in this case as well as in the cases which are pending before the court of Ld. Special Judge CBI as his defence will be disclosed and it will cause prejudice to him.

13. Per Contra, learned Public Prosecutor for the CBI has submitted that no prejudice is going to be caused to the accused if the trial in the present case continues before this court as in order to substantiate the allegations levelled against the accused persons in this case, CBI had to make some of the witnesses, who were also made as witnesses in RCCHG2004(A)0015 as the CBI has to prove the allegations in this case levelled against the accused persons by leading evidence as some of search and seizure witnesses, who had conducted the search in the house of the accused along with other witnesses who were also part of investigation of that case and on the recovery of amount of Rs.45 lakhs from the house of the accused FIR RCCHG2004(A)0015 (disproportionate assets) case was got registered against the accused and the cause accrued to the instant FIR on 31.01.2007 when the application was filed by Santosh Kumar on behalf of M/s LVL Infrastructure Limited staking the claim on the cash i.e. Rs.45 lakhs recovered from the house of

accused. So, considering the facts and circumstances of the case and the submission made by the learned Public Prosecutor for the CBI, no prejudice is going to be caused to the accused if the trial of the present case continues considering the facts and circumstances of this case without invoking the powers of Section 323 Cr.P.C, as even no case is made out for invoking the powers under under Section 323 Cr.P.C.

14. So, even considering the facts of the present case, no case is made out which can bring the case of the applicant/accused for invoking the powers under Section 323 Cr.P.C and hence finding no merits in the application, the same is hereby rejected with no order as to costs. Accordingly, the application stand disposed of.”

The petitioner, thereafter, preferred a revision before the Court of Sessions challenging the aforesaid order, however, the Additional Sessions Judge-cum-Special Judge (CBI), Haryana at Panchkula dismissed the revision by passing the impugned order dated 07.05.2018. The operative part of the order reads as under:

“.....On giving a careful thought to the submissions of learned counsel for the parties, I find no substance in the submissions of learned counsel for the petitioner. The first FIR registered against the petitioner relates to demand and acceptance of bribe money. The second FIR relates to possession of assets disproportionate to his known source of income. Both these FIRs were registered in 2004. The cause pertaining to the instant FIR accrued on 31.01.2007 when the application was filed by Santosh Kumar on behalf of LVL infrastructure Limited staking claim on the cash recovered from the house of petitioner. During inquiry as ordered by a Coordinate Bench of this Court, it was found that attempt has been made to help the petitioner by fabricating the amount books and audit report.

Consequently, the FIR was registered and matter was investigated. The offences in this case pertain to the period much after the period of first FIR and constitute separate and distinct offences and CBI has committed no error of law by registering separate FIR and filing separate charge-sheet.”

8. Thus in the light of afore-noted facts and circumstances, this court finds itself in agreement with submissions made by learned PP to the effect that instant application is nothing but an effort to delay the trial, as no legally justifiable reason has been made out to invoke the provision of Section 323 Cr.P.C. The plea of defence regarding the amount of Rs.45,03,450/- as belonging to one D.K.Aggarwal, Promoter of M/s LVL Infrastructure Limited has already been rejected by the Hon’ble High Court and therefore again plea of prejudice on the part of accused petitioner in this regard is totally misconceived and frivolous.

9. Even otherwise, the very maintainability of the revision petition is debatable. As per Section 397 (2) Cr.P.C, the powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding, meaning thereby that no revision lies against an interlocutory order. As per settled law, the term ‘interlocutory’ merely denotes order of purely interim or temporary nature which do not decide or touch the important rights and liabilities of the parties. Even though it is not possible to make a catalogue of orders which may fall within the expression of interlocutory orders and the only test is to determine whether criminal proceeding as a whole would be culminated with passing of impugned order. Needless to mention that the power of revisional court is limited one and is not to be lightly exercised. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. It is not an appellate forum, wherein scrutiny of evidence is possible;

neither the revisional jurisdiction is open for being exercised simply by reason of the factum of another view being otherwise possible. It is restrictive in its application though in the event of there being a failure of justice there can said to be no limitation as regards the applicability of the revisional power.

10. In view of the fore-going discussion, present revision petition fails and same is accordingly dismissed. Nothing expressed hereinabove shall be construed as an opinion on merits of the case. Revision file be consigned to the record room and trial court's record along-with copy of this judgment be sent back to the concerned court immediately.”

Learned counsel for the petitioner has argued that after registration of the FIR bearing case No. RCCHG/2004/A0013, the second FIR bearing case No. RCCHG/2004/A0015 was registered, which is in a sequence to registration of the first FIR and, therefore, both the cases be clubbed together so that the petitioner may lead a joint defence.

Learned counsel for the petitioner has further argued that Hon'ble Supreme Court, while disposing of the SLP, has granted permission to petitioner to apply for clubbing both the trial and, therefore, the Courts below have erroneously dismissed the said application, whereas the case pending before the Special Judicial Magistrate, CBI should be transmitted to the Court of Additional Sessions Judge-cum-Special Judge (CBI) so that both the case can be tried and disposed of together to avoid any difference of opinion in both the cases based upon the defence to be led by the petitioner.

Learned counsel for the petitioner has relied upon ***Sudhir vs. State of M. P., 2001 (1) R.C.R. (Criminal) 743*** to submit that Hon'ble Supreme Court has held that in case of version and cross-version cases,

arising out of the same incident, they are to be tried and disposed of by the same Court by pronouncing the judgment on the same date. Learned counsel for the petitioner has also relied upon ***Pal @ Palla vs. State of Uttar Pradesh, 2010 (4) R.C.R. (Criminal) 511***, wherein a similar view has been taken by Hon'ble Supreme Court and it is held that the police case and the private complaint, filed by the complainant, arising out of the same incident, be tried together by recording the evidence in both the cases separately so that both the cases can be disposed of simultaneously on the same date.

Learned counsel for the respondent-CBI has opposed the prayer of the petitioner by reiterating its grounds taken before the Courts below.

After hearing learned counsel for the parties, I find no merit in the present petition.

Admittedly, the first FIR was registered against the petitioner on account of demanding a bribe of Rs. 25,000/- and when a trap was laid down, he was caught red handed while accepting the said bribe. Subsequent to registration of the first FIR, when the official residence of the petitioner was searched, a huge amount in cash and certain documents regarding disproportionate assets were found in possession of the petitioner, qua which the second FIR was registered under the provisions of the Prevention of Corruption Act. Therefore, both the FIRs are based on different set of allegations and cannot be clubbed or tried together.

There is no dispute about the well settled principles of law has laid down by Hon'ble Supreme Court in ***Sudhir's*** case and ***Pal @ Palla's*** case (supra), however, both these cases were of version and cross-version, arising out of the same incident, hence, they were directed to be

tried together by recording evidence separately in both the cases and to decide on the same date. However, in the present case, as noticed above, both the FIRs pertain to two different incidents and are based on different set of allegations.

Therefore, finding no illegality or infirmity in the findings recorded by the both the Courts below, this Court does not find any reason to differ with the same.

Accordingly, the present petition is dismissed.

14.02.2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>