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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09th December, 2020

Decided on : 23rd December, 2020

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W.P.(CRL) 999/2020 & CrI.M.A.No.8526/2020

CD PHARMA INDIA PRIVATE LIMITED Petitioner

Through : Mr.Rajiv Nayyar, Senior Advocate
with Mr.Rohit Kochar, Mr.Krishna
Vijay Singh, Mr.Pradyuman
Sewar, Mr.Kartik Nayar,
Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through : Mr.Rahul Mehra, Standing
Counsel (Criminal) and
Mr.Chaitanya Gosain, Advocate
for State/R1-3.
Mr.Nikhil Jain, SPP and Mr.Vinay
Mathew, Advocate for R4/CBI.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed with the following prayers:

“(a) Issue a writ and/or order and/or direction for transfer of the investigation into FIR No. 365 of 2017, registered by P.S. Safdarjung Enclave, from the Economic Offences Wing of the Delhi Police, Section VI to the Central Bureau of Investigation since the investigations have been compromised in collusion with the accused and Mr.Stefano Bagianti, as detailed in the writ petition, and the matter requires international investigation spanning several countries such as Switzerland, Italy, South Korea, Singapore, China, etc.;

(b) Examine the case record and set aside the biased investigation conducted and/or report prepared by the investigating officer in collusion with the accused;

(c) Direct CBI to register an FIR under the provisions of Section 217, 218, 219 and Section 120B of the Indian Penal Code, 1860 against Respondent Nos. 2, Mr. Stefano Bagianti, accused Claudio De Simone and accused Kanwaldeep Singh Chadha for conspiring with each other to enable Mr. Stefano Bagianti to gain unlawful access to the entire case

file during the investigations and illegally influencing such investigations;

(d) Direct the Police Commissioner to initiate a departmental enquiry against the investigating officer and other errant officers;

(e) xxxxxx. ”

2. It is submitted by the learned senior counsel for the petitioner, the petition is filed on account of subversion of entire process of law by the Investigating Officer and other officers to shield the accused persons in FIR No.365/2017 registered at PS, Safadurjung Enclave, Delhi, due to the undue influence exercised by Mr.Stefano Bagianti (an Italian lawyer), accused Claudio De Simone and accused Kanwaldeep Singh Chadha.

3. It is submitted in a legal proceeding in Switzerland against accused Claudio De Simone for money laundering, (he being a prime accused in FIR No.365/2017) he filed a memo of defense dated 14.05.2020 along with a letter dated 10.03.2020 of his Italian lawyer, Mr.Stefano wherein Mr.Stefano asserted he had visited India between July, 24 to 26, 2019 and met four police officials in various capacities, incharge of this investigation and during a plenary meeting on July 25, 2019 was provided direct access to the entire case file.

4. Mr. Bagianti categorically stated in the presence of these officers, he directly examined the case file which included the names of witnesses, witness statements and other incriminating evidence against the accused persons, including accused Claudio De Simone and accused Kanwaldeep Singh Chadha and that it is shocking as to how Mr.Bagianti was able to meet the four officers involved in the investigation in various capacities (all together) and how he was allowed to examine the case file containing voluminous evidence.

5. Further it is submitted by the learned senior counsel in a letter dated 10.03.2020 Mr.Stefano further asserted he was assured by respondent no.2 and other officials involved in investigation that a closure report shall be filed in FIR No.365/2017 and on 09.09.2019 over a telephone call the Investigating Officer i.e. respondent no.2 had assured him the matter be considered settled.

6. It is argued the access of case diaries/ case file given to Mr.Stefano by respondent no.2 and other police officials, involved in the investigation, was wholly illegal and is strictly prohibited under Section 172 Cr.P.C. and they had compromised the investigation.

7. It is argued a deep rooted *nexus* is apparent between the accused and the State machinery and therefore this Court should order for transfer of investigation from Delhi Police to CBI and/or the Crime Branch. It is further argued the main accused Claudio De Simone was never summoned despite there being an FIR against him and yet a closure report is filed without his summoning, which is never heard of.

8. It is argued the complaint against the accused was of misusing of forged documents outside India, siphoning of monies of the petitioner through his company in Switzerland and various grave offences committed by him against the petitioner herein in criminal conspiracy with accused Kanwaldeep Singh Chadha and other accused person. It is argued accused Claudio had parked proceeds of crime in his bank accounts outside India including Switzerland, Italy etc. and that both the accused have used their companies in Italy and Switzerland, controlled by accused Claudio De Simone, to siphon off USD 18 to USD 39 per unit from the API being imported by the Petitioner. The EOW was required to

investigate where are such proceeds of crime and identify the money trail.

9. It was argued the petitioner had submitted incriminating evidence against accused Claudio De Simone and accused Kanwaldeep Singh Chadha viz. emails written for creation of forged agreements, surreptitious routing of business of the Petitioner through their own companies and these emails could have establish breach of their fiduciary duties; both these accused had forged and created back dated and self-serving documents with an intention to cause wrongful loss to the petitioner and wrongful gains to themselves.

10. It is argued the letter dated 10.03.2020 speaks of a meeting, Mr. Stefano had with four police officials on 25.07.2019 who assured filing of closure of the investigation against them. It was argued three days thereafter the closure report was prepared and later filed on 19.06.2020.

11. It is submitted on 15.11.2017 BAIL APPL. No. 1488/2017 and No. 1489/2017 in FIR No. 365/2017, filed by Kanwaldeep Singh Chadha and accused Aditya Ranjan Sahu were dismissed on the ground *serious offences were alleged against them*. It is argued main accused Simone was never summoned by the EoW Cell and a closure report in collusion with him was filed which is the subject matter of challenge before this Court.

12. Hence it is argued the petitioner is entitled to a *fair* investigation and considering the fact in July, 2019 i.e. eight months prior to the preparation of the closure report, the police officials having assured the lawyer of accused Claudio, they are going to file a closure and he being

given access to the case diary, was nothing but illegal. During the course of the arguments, reference was made to a letter dated 10.03.2020 as above and the copy of proceedings dated 14.05.2020 of a money laundering case in Switzerland where such letter was filed.

13. To substantiate his arguments the learned counsel also referred to *alleged* implied admissions made by the State in its status report dated 20.07.2020 wherein at page 23 of the said status report in para 2 the following facts are mentioned:

*“As far as visit of Stefano Bagianti is concerned, **he had visited the EOW office in the month of July 2019 and had met Sh. Amardeep Sehgal, Assistant Commissioner of Police, Section- VI, BOW in his office. SI Parveen Badsara, IO of the case was also present in ACP office, being the IO of case. Stefano Bagianti had inquired about the status of investigation of the case. It was also informed by him that USA court has ruled in favour of Claudio De Simone. It was informed to him that the investigation of the case is still under progress and investigation of the case is being conducted purely on merits. It was advised to him to make Claudio De Simone join investigation of case. The legitimate copy of the USA Court judgment was also sought from him. He had informed that he will ask Claudio De Simone and will send the copies of USA Court judgments. The meeting had hardly lasted for 10 minutes and it is vehemently denied that any document related to investigation of present case was shared with him. The case file of FIR No. 365/17 PS-Safdarjung Enclave comprises of more than 11,000 Pages and it is not logically possible for any individual to go through the entire file in such a short time and understand each & every document. Thereafter, Apostrophe copies of USA Court judgments were received on 3.09.2019. On 5.09.2019, SI Parveen Badsara had received a call from Stefano Bagianti inquiring whether the copies of orders have been received or not. It was communicated to him that copies of judgments have been received. Thereafter, there is no communication between Stefano Bagianti and SI Parveen Badsara.**”*

14. It is argued where a closure report is filed without even calling or examining an accused, or where the police officials/IOs show the case diaries to the accused's agents, it create a doubt *qua* fair investigation.

15. The learned Standing Counsel (Criminal) on the other hand argued the case of petitioners is based upon the fact that lawyer Mr.Stefano

Baigainti of accused Claudio had got access to the case diary and had prior knowledge of closure of this case, though on merits there is no challenge before this Court. A detailed status report has been filed.

16. It is argued the case of petitioner is based upon some *flimsy grounds* viz. on a document filed in some foreign jurisdiction and even it is not clear when and why such document was created and for what purpose. It is submitted no doubt everyone has a right of fair investigation and there ought to be a balanced approach by the investigating agency but in the facts of this case it is important to know the date on which the so-called lawyer Mr.Stefano Baigainti of accused had met these police officials.

17. Admittedly, on 05.09.2017 FIR in this case bearing No.365/2017 under Section 420/467/468/471/120B/34 IPC was registered at PS-Safdarjung Enclave against Kanwaldeep Singh Chadha, Claudio De Simone, the ex-directors of CD Pharma India Pvt Ltd, and its other former officials. Initially the matter was investigated by SI Naresh Kumar of PS Safdarjung Enclave and two sections i.e. 409/201 IPC were also added during investigation.

18. On 15.09.2017, SI Naresh Kumar had raided the office of M/s.Next Gen Pharma India Limited, situated at NOIDA, UP and seized voluminous documents, laptops and blank stamp papers. On the said date, even notices under Section 160 Cr.P.C. were issued to accused Kanwaldeep Singh Chadha, Aditya Ranjan Sahu and Partha Das Gupta asking them to join investigation on 16.09.2017. However, instead of joining investigation they preferred anticipatory bail application, which was listed on 12.09.2017 before the learned Additional Sessions Judge,

South District, Saket Courts, New Delhi. Police resisted bail applications of Kanwaldeep Singh Chadha, and Aditya Ranjan Sahu, who were allegedly the main accused person. During the pendency of bail applications, by an order of the Police Commissioner, bearing No.31543-50/AC-III/C&T/PHQ dated 04.10.2017 the investigation was transferred to Economic Offence Wing (EOW) and it was assigned to SI Parveen. Vide order dated 15.11.2017, those bail applications were dismissed.

19. On 04.12.2017, notices under Section 160/91 Cr.P.C. were served upon the complainant to join the investigation on 08.12.2017. The complainant joined on 27.02.2018 and provided voluminous documents during the course of investigation. Since the accused persons did not join the investigation, a look out circular (LOC) were opened on 23.05.2018. On 02.06.2018, accused Kanwaldeep Singh Chadha was intercepted at IGI Airport while he was returning from Thailand and was examined on various dates as mentioned in the status report.

20. On **28.06.2019**, the investigation was almost complete and a note was prepared qua closure of the investigation as nothing incriminating was found against any of the accused persons. During detailed investigation(s) it was opined the dispute was purely a civil dispute between the parties. Thousands of documents were seized from both the parties and were examined and it was only thereafter on 28.06.2019, such a note was prepared and put up by the ACP which went upto Joint Commissioner. Thus, till 28.06.2019, EOW had already concluded its investigation opining there was nothing criminal. Admittedly, the lawyer Mr.Stefano Baigainti had visited India on 25.07.2019. It can be seen from

the note dated 28.06.2019 the case is to be closed. Now if such note was prepared immediately on or after visit of Mr. Stefano, then the things were different, but here said lawyer had met the police officers after the *note* dated 28.06.2019 was already prepared for filing a closure report. Nothing happened thereafter *except* preparation of such closure report and filing it in Court. Thus it would be wrong to assume the police officials sided with the accused person.

21. The judgments relied upon by both the counsels are *Sidharth and Others vs. State of Bihar* 2005 Vol. XII SCC 545; *Dharam Pal vs. State of Haryana and Ors.* 2016 (4) SCC 160; *K.V.Rajendran vs Superintendent of Police, CBCID South Zone, Chennai and Others* (2013) 12 SCC 480; *State of West Bengal and others vs Committee for Protection of Democratic Rights, West Bengal and others* (2010) 3 SCC 571; *Central Bureau of Investigation vs Rajesh Gandhi & Anr* decided on 07.10.1996; *Union of India vs Prakash P Hinduja and Another* (2003) 6 SCC 195; *Sakiri Vasu vs State of UP and Others* AIR 2008 SC 907; *Arnab Ranjan Goswami vs. Union of India & Ors* W.P.(Crl) No.130/2020 decided on 19.05.2020; *Bhagwant Singh vs Commissioner of Police and Another* (1985) 2 SCC 537; *Chandra Babu vs State and Others* 2015(8) SSC 774; *Vinay Tyagi vs Irshad Ali @ Deepak & Others* (2013) 5 SCC 762; *Ramachandran Vs. R. Udhayakumar and Ors* AIR 2008 SC 3102; *Vinubhai Haribhai Malaviya v. State of Gujarat* 2019 SCC OnLine SC 1346; and the law propounded is:-

- a) *if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police.*
- b) *there has to be a fair investigation and a fair trial.*

c) *the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation",*

d) *where the investigation has already been completed and chargesheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual.*

e) *the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers.*

f) *such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations*

g) *xxx If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police had not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result. the C.B.I. has been directed to further investigate the offences registered under the said F.I.R. with the consent of the State Government and in accordance with law.*

h) *the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."*

i) *the power to transfer an investigation must be used "sparingly" and only "in exceptional circumstances".*

j) *the displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI.*

l) *while no inflexible guidelines are laid down, the notion that such a transfer is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances".*

m) *in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.*

n) a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation."

o) no investigating agency is empowered to conduct a "fresh", "de novo" or "reinvestigation" in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned Magistrate."

p) instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by the CB (CID) as directed by the High Court."

q) the Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code."

22. If one looks at the prayer in this writ petition, it is primarily for transfer of investigation from *EOW* to *CBI* as it is alleged the investigation has been *compromised* and was conducted *in collusion* with accused person: The petitioner also pray for initiating of a departmental enquiry against the investigating officer and other *errant* police officers.

23. A bare perusal of the status report would reveal everyone was given a fair chance; notices were issued to accused person; the complainant was also asked to join the investigation and about 12000 documents were procured from both the parties and were examined, even raids were conducted at the offices of accused person; the police resisted anticipatory bail applications, the LOCs were also got opened etc. All this show the police officers were acting *against* the interest of accused person and thus sharing of information after preparing of a note 28.06.2019 qua closure, would by no mean indicate the investigation was *allegedly* compromised. Admittedly case diaries are not to be shared

during investigation, per Section 172(3) Cr.P.C. for it may cause prejudice to others, but once investigation is complete and decision for closure is taken then such allegation needs to be looked into from a different perspective. In such a case the power of reinvestigation needs to be exercised in *rarest of rare case* where the judicial conscious of the Court is shaken in the manner of investigation being done.

24. As per allegations the complainant company is a subsidiary of an Italian company. It was incorporated in May, 2004 and since very inception Claudio de Simone and Kanwaldeep Singh Chadha were running business of the company. Mr. Kanwaldeep Singh Chadha, was the managing director of the said company. It is *alleged* within seven months of its incorporation the accused persons set out a parallel company which can be viewed on a bare perusal of its Memorandum and Article of Association having almost identical provisions to that of the petitioner's company and also it is also alleged the accused had taken away employees of the main company and allegedly have siphoned off its funds. It is also alleged on 02.12.2015 the complainant's parent company decided to nominate additional directors. These two accused protested their appointments and the complainant had to knock the doors of the Court. On 27.04.2016 and 30.05.2016 the complainant obtained orders to assess books of accounts of petitioner company from accused no.1 and 2 and on perusal of such books of accounts/records of the complainant, the fraud and criminal breach of trust, allegedly committed by accused no.1 and 2 was found, hence on 17.06.2017 the present complaint was filed and FIR was registered on 05.09.2017. On 24.10.2017 the investigation

was transferred to EOW Cell and then alleged miseries for complainant begin.

25. The learned counsel for the petitioner relied upon a letter/ communication of an Italian lawyer, filed in a Court at Switzerland to allege case diaries were made available to Mr.Stefano, counsel for the accused persons when he visited India. It was alleged the said Italian lawyer had a *hotline* with the police officials of the EOW Cell and such police officials used to pass on information to him. The antecedents of such Italian lawyer were also highlighted to say he was arrested in a corruption case in Italy. Reference is also made to the status report of the EOW Cell to show two officers of EOW Cell had met with the Italian lawyer and it is a fit case for ordering *transfer* of investigation and / or *reinvestigation*.

26. *Secondly* it was their case argued though the investigation was allegedly complete in June 2019 but the status report dated 25.07.2019 do say EOW had advised the Italian lawyer in July 2019 to ask accused Simone to join investigation. Hence the status report rather show the investigation was still on in July 2019 and thus the note dated June, 2019 is a fabricated one. *Thirdly* it was argued accused Claudio was never summoned, even once, by the EOW Cell prior to taking decision for filing of a closure report, despite the investigating officer at PS Safadurjung Enclave had added two Sections to the FIR believing seriousness in the offence and the office of M/s.Next Gen having been raided; voluminous documents being seized etc. Even the documents relating to complainant's firm were also seized on 06.10.2017.

27. References were made to notings in order dated 15.07.2017 of the learned Additional Session's Judge while dismissing the application of the accused person to show seriousness of the offence and such notings were never made a part of the record. Thus looking at the conduct of the EOW officials, it is argued the investigation be transferred to some other agency.

28. A bare perusal of the status report would reveal the closure report is filed due to *lack of evidence*. It is not in doubt if petitioner brings more evidence then *further investigation* can be ordered by the learned Trial Court. The status report rather shows each and every piece of evidence has been examined by the EOW Cell and only thereafter it came to a conclusion that no offence is made out. Admittedly, the petitioner has a right to file a *protest* petition to the closure report filed.

29. As is held, the power to order reinvestigation or transfer of investigation needs to be exercised *judiciously* and not at the mere asking. It can be ordered only if the *conscious* of the Court is shaken to the standard of investigation. The allegations made reveal the petitioner is aggrieved of the fact main accused Claudio was never examined. However, we need to understand one of the main accused Mr. Chadha, viz. the M.D. of *Next Gen* was duly examined; and the evidence being documented, thousands of documents were examined and as of today EOW found no evidence on record supporting offences alleged against accused and thus decided to file closure. Now the learned Magistrate still needs to go through the merits of the case and *admittedly* has a power to order for further investigation. To order *reinvestigation* we need to see the stage we are in. This investigation started, *probably*, in 2017 and it

continued till June 2019. During this period the petitioners never raised any objection and never came forward to raise any suspicion over the credibility of the investigating team. It was only when the petitioner found the investigating team has recommended closure, it filed this petition. The supreme court in *K.V. Rajendran(supra)* has held *where the investigation is complete & charge-sheet filed, ordinarily superior courts should not reopen the investigation and it be left open to the court to proceed with the matter in accordance with law. The power of a magistrate cannot be short circuited; the power of de-novo investigation need to be exercised in rare and exceptional cases in order to do justice, where the investigation lacks credibility.*

30. Admittedly the petitioner did not argue on merits but did based his case upon four prime contentions *a)* accused Claudio was never summoned; *b)* case files having been shown to a lawyer; *c)* substantial assets and the business of the petitioner company being transferred by the accused persons in their new company named as *M/s Next Gen* without seeking permission from the petitioner company or without any Board resolution or a special resolution; and vide agreement dated 27.02.2010, Trade Mark license was transferred without a special resolution to their own company *Next Gen*; and *d)* as also Rs.43.00 lacs being withdrawn in cash etc.

31. Though such pleas shall definitely be under the scan of Ld. MM but still to ensure *fair* investigation it would be appropriate if senior officer of EOW of the level of Special Commissioner, *not earlier associated with investigation*, look into the above contention *a)* to *d)*

afresh, based on material on record, including *veracity of note* dated 28.06.2019 (*supra*) and then file an additional report before the learned Trial Court stating *interalia*, if such aspects needs to be looked into afresh or not.

32. Hence without ordering re-investigation, but to ensure fairness, the above direction be complied with. The Special Commissioner (EOW) to examine the effect of *a)* to *d)* above on the investigation conducted so far and to take a call if any of *a)* to *d)* above need to be revisited and, then to file an additional report before the learned Trial Court, *preferably*, within four months from the date of communication of this order.

33. Needless to say, the closure report, pending before the learned Magistrate be kept in *abeyance* without drawing any inference till this fresh report is filed. It is only thereafter the learned MM shall consider both the reports to proceed further *as per law*.

34. The petition stands disposed of in terms of above. Pending application, if any, stands disposed of.

35. Copy of this order be electronically communicated to the learned Magistrate/Special Commissioner of EOW for information and compliance.

YOGESH KHANNA, J.

DECEMBER 23, 2020

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