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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3326/2019**

ANNA WANKHEDE

Through

..... Petitioner

Mr. M.N. Dudeja, Advocate with
Mr. Anuj Chauhan, Ms. Ananya De,
Mr. Aditya Mishra and Mr. Karan
Sharma, Advocates.

versus

STATE & ANR.

Through

..... Respondents

Mr. Rahul Mehra, Standing Counsel
(Crl.) for GNCTD with Mr. Chaitanya
Gosain, Advocate.
Mr. Kushagra Kumar for Mr. Ripu
Daman Bhardwaj, SPP-CBI
Mr. Amit Bansal, Ms. Manisha Singh
and Mr. Ankit Jain, Advocates for R-
3/DHC

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Date of Decision: 09th January, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:- (Oral)

CRL. M.A. 41337/2019 (exemption)

Allowed, subject to just exceptions.

Accordingly, present application stands disposed of.

W.P.(CRL) 3326/2019 & CRL. M.A. 41338/2019

1. Present writ petition has been filed seeking quashing of the entire proceeding arising from FIR No. RC-22(A)/2006/SCU.V/CBI/SCR.II/NEW DELHI (CHANDERLOK CGHS) pending before Sh. Virender Bhat, learned Special Judge, Rouse Avenue Court, Delhi PS CBI and the Notification No. F. 6(33)/2009-JUDL./1125-1131 dated 15th September, 2010 issued by the Hon'ble Lieutenant Governor of NCT of Delhi conferring powers of Special Court under Section 3 of the Prevention of Corruption Act, 1988 (for short 'Act, 1988') to each and every officer of the Delhi Higher Judicial Services primarily on the grounds that the impugned notification had not been issued in accordance with Section 3 of the Act, 1988 and the learned Special Judge, Rouse Avenue Court was acting without jurisdiction.
2. It is pertinent to mention that the learned Predecessor Division Bench of this Court in W.P.(C) 10066/2004 had directed the CBI to conduct a thorough investigation in all matters of 135 Cooperative Societies on 02nd August, 2005.
3. In pursuance to the said order, the impugned FIR dated 25th October, 2006 was registered under Section 120B read with Sections 419, 420, 468 and 471 IPC and Section 13(1)(d)/13(2) of the Act, 1988.
4. Charge-sheet in the aforesaid FIR was filed by the CBI before the Special Judge on 21st July, 2008.
5. The impugned Notification dated 15th September, 2010 was issued by the Hon'ble Lieutenant Governor of NCT of Delhi conferring powers of Special Court to each and every officer of the Delhi Higher Judicial Services under Section 3 of the Act, 1988.

6. Presently, the case is at the stage of prosecution evidence.
7. Initially without issuing notice, this Court had asked the parties to file their written submissions to understand the broad contours of the controversy. However, three fresh matters have been filed by similarly placed accused today. From a perusal of the said files, it transpires that some of the connected matters are at the stage of final arguments and are part-heard. Consequently, this Court is not inclined to invoke its extraordinary writ jurisdiction under Articles 226, 227 and Section 482 Cr.P.C. at this belated stage.
8. The Orders passed in the connected matters are as under:-

“I) W.P.(CRL) 53/2020 & CRL. M.A. 282/2020

1. *Present writ petition has been filed seeking quashing of the entire proceeding arising from FIR No. RC-28(A)/2007-DLI/CBI (CHINAR CGHS) pending before Sh. Virender Bhat, learned Special Judge, Rouse Avenue Court, Delhi PS CBI and the Notification No. F. 6(33)/2009-JUDL./1125-1131 dated 15th September, 2010 issued by the Hon'ble Lieutenant Governor of NCT of Delhi conferring powers of Special Court under Section 3 of the Prevention of Corruption Act, 1988 (for short 'Act, 1988') to each and every officer of the Delhi Higher Judicial Services primarily on the grounds that the impugned notification had not been issued in accordance with Section 3 of the Act, 1988 and the learned Special Judge, Rouse Avenue Court was acting without jurisdiction.*
2. *It is pertinent to mention that the learned Predecessor Division Bench of this Court in W.P.(C) 10066/2004 had directed the CBI to conduct a thorough investigation in all matters of 135 Cooperative Societies on 02nd August, 2005.*
3. *In pursuance to the said order, the impugned FIR dated 31st July, 2007 was registered under Section 120B*

read with Sections 420, 471 IPC and Section 13(1)(d)/13(2) of the Act, 1988.

4. *Charge-sheet in the aforesaid FIR was filed by the CBI before the Special Judge on 31st March, 2009.*

5. *The impugned Notification dated 15th September, 2010 was issued by the Hon'ble Lieutenant Governor of NCT of Delhi conferring powers of Special Court to each and every officer of the Delhi Higher Judicial Services under Section 3 of the Act, 1988.*

6. *The petitioner was charge-sheeted under Section 120B IPC read with Sections 13(1)(d) and 13(2) of the Act, 1988 read with Sections 420, 468 and 471 IPC apart from other offences vide order dated 23rd December, 2010.*

7. *Presently, the case is at the stage of final arguments and the matter is now fixed for remainder arguments before the trial Court on 27th January, 2020.*

8. *Since the present case is already part-heard and at the stage of final arguments, this Court is not inclined to invoke its extraordinary writ jurisdiction under Articles 226, 227 and Section 482 Cr.P.C. at this stage.*

9. *Further, in the present case, the vires of the parent statute i.e. Act, 1988 is not challenged. It is settled law that even Tribunals have the power to test the vires of subordinate legislations and rules including notifications. [See: L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261].*

10. *Consequently, the present writ petition and application are disposed of with liberty to the petitioner to raise all its pleas (including the plea of lack of jurisdiction) before the trial Court, who shall consider the same while disposing of the matter finally. It is clarified that rights and contentions of all parties are left open.*

II) W.P.(CRL) 54/2020 & CRL. M.A. 285/2020

After some arguments learned counsel for the petitioner wishes to withdraw the present writ petition alongwith the

pending application with liberty to raise all the pleas before the Trial Court.

With the aforesaid liberty, the present writ petition and pending application stand dismissed as withdrawn.

III) W.P.(CRL) 3425/2019 & CRL. M.A. 42196/2019

After some arguments learned counsel for the petitioner wishes to withdraw the present writ petition alongwith all the pending application with liberty to raise all the pleas before the Trial Court.

With the aforesaid liberty, the present writ petition and pending application stand dismissed as withdrawn.”

9. Further, in the present case, the *vires* of the parent statute i.e. Act, 1988 is not challenged. It is settled law that even Tribunals have the power to test the *vires* of subordinate legislations and rules including notifications. [See: *L. Chandra Kumar vs. Union of India*, (1997) 3 SCC 261].

10. Consequently, the present writ petition and application are disposed of with liberty to the petitioner to raise all its pleas (including the plea of lack of jurisdiction) before the trial Court, who shall consider the same while disposing of the matter finally. It is clarified that rights and contentions of all parties are left open.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JANUARY 09, 2020

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