

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA (P) 355 of 2022

Reserved on: 05.09.2022
Pronounced on: 28.09.2022

Anindya Sundar Das

...Petitioner

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Soumya Majumdar,
Mr. Rajdeep Majumder,
Mr. Srijib Chakraborty,
Mr. Moyukh Mukherjee,
Mr. Aditya Mondal, Advocates

... for the Petitioner

Mr. S.N. Mookherjee, Ld. AG
Mr. Amitesh Banerjee,
Mr. Nilotpal Chatterjee,
Ms. Ipsita Banerjee, Advocates

... for the State

Mr. Dhiraj Trivedi,
Mr. Shailendra Kumar Mishra,
Mr. Sunil Gupta, Advocates

... for the CBI

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this public interest petition, the petitioner, who is stated to be an advocate, has made a prayer for transferring the investigation in connection with the Contai Police Station Case No. 262 of 2022 dated 28th of June, 2022 registered under Section 380/120B of the IPC to the Central Bureau of Investigation.

2. An FIR dated 28th of June, 2022 has been registered in Contai Police Station for commission of offence under Section 380/120B of the

IPC against unknown persons, as the file containing certain important documents regarding sanction of building plan by the municipality has been found missing.

3. It is alleged in the FIR that on 1st of September, 2021, one advocate had filed a petition under Right to Information Act on behalf of his client requesting the details of site plan No. 46/2011-2012 and building plan No. 81/2011-2012. The requisite file was not found in the section and on further search by the staff of concerned section, the file was found to be missing. It is stated in the FIR that considering the sensitivity of the sanctioned building plan, the file was kept in the safe custody of the section and as per the belief of the complainant, misplacement of the file involves some greater conspiracy.

4. The submission of the learned counsel for the petitioner is that accused Dilip Kumar Chuan had received illegal gratification from Saradha Realty India Private Limited for sanctioning the site plan and building plan and that the Saradha scam is being investigated by the CBI in terms of the order of the Hon'ble Supreme Court, therefore, investigation in the above FIR should also be transferred to the CBI. A further allegation has been made that in the course of investigating the present case, the investigating agencies are going beyond their jurisdiction and are trying to enter into investigation relating to the Saradha scam.

5. The stand of the State is that it is a simple case of theft of sanctioned building plan which has no connection with the larger issue of Saradha scam and none of the grounds required for transferring the investigation to the CBI are existing in the present case, therefore, no transfer to the CBI is necessary.

6. We have heard the learned counsel for the parties and perused the record. Hon'ble Supreme Court in the matter of **Subrata Chattoraj vs. Union of India and Others** reported in **(2014) 8 SCC 768**, while

considering the jurisdiction and scope of transfer of any investigation to the CBI has held that:

“4. We may at this stage refer to a few cases in which this Court has either directed transfer of investigation to CBI or upheld orders passed by the High Court directing such transfer.

5. In *Inder Singh v. State of Punjab* this Court was dealing with a case in which seven persons aged between 14 to 85 were alleged to have been abducted by a senior police officer of the rank of Deputy Superintendent of Police in complicity with other policemen. Since those abducted were not heard of for a considerable period, a complaint was made against their abduction and disappearance before the Director General of Police of the State. It was alleged that the complaint was not brought to the notice of the Director General of Police (Crime). Instead his PA had marked the same to the IG (Crime) culminating in an independent inquiry through the Superintendent of Police, Special Staff, attached to his office. The report of the Superintendent of Police recommended registration of a case against the officials concerned under Section 364 IPC. Despite the said recommendation no case was registered on one pretext or the other against the police officer concerned till 23-3-1994. It was at this stage that a writ petition was filed before this Court under Article 32 of the Constitution of India for a fair, independent and effective investigation into the episode. Allowing the petition this Court directed an independent investigation to be conducted by CBI into the circumstances of the abduction of seven persons, their present whereabouts or the circumstances of their liquidation. An inquiry was also directed into the delay on the part of the State Police in taking action between 25-1-1992 when the complaint was first lodged and 23-3-1994 when the case was finally registered.

6. In *R.S. Sodhi v. State of U.P.* this Court was dealing with a petition under Article 32 of the Constitution of India seeking an independent investigation by CBI into a police encounter resulting in the killing of ten persons. The investigation into the incident was being conducted at the relevant point of time by an officer of the rank of Inspector General level. The State Government also appointed a one-member Commission headed by a sitting Judge of the Allahabad High Court to inquire into the matter. This Court found that since the local police was involved in the alleged encounter an independent investigation by CBI into what was according to the petitioner a fake encounter, was perfectly justified. This Court held that however faithfully the police may carry out the investigation, the same will lack “credibility” since the allegations against them are serious. Such a transfer was considered necessary so that all those concerned including the relatives of the deceased feel assured that an independent agency was looking into the matter, thereby lending credibility to the outcome of the investigation. This Court observed: (SCC pp. 144-45, para 2)

“2. ... We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but

we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. *However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book.* We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order.”

(emphasis supplied)

7. A reference may also be made to *State of Punjab v. CBI* where the High Court of Punjab and Haryana transferred an investigation from the State Police to CBI in relation to what was known as “Moga sex scandal” case. The High Court had while ordering transfer of the investigation found that several police officials, political leaders, advocates, municipal counsellors, besides a number of persons belonging to the general public had been named in connection with the case. The High Court had while commending the investigation conducted by DIG and his team of officials all the same directed transfer of case to CBI having regard to the nature of the case and those allegedly involved in the same. The directions issued by the High Court were affirmed by this Court and the matter allowed to be investigated by CBI.

8. More recently, this Court in *Advocates Assn. v. Union of India* had an occasion to deal with the question of transfer of an investigation from the State Police to CBI in the context of an ugly incident involving advocates, police and media persons within the Bangalore City Civil Court Complex. On a complaint filed by the Advocates' Association, Bangalore, before the Chief Minister for suitable action against the alleged police atrocities committed on the advocates, the Government of Karnataka appointed the Director General of Police, CID, Special Unit and Economic Offences as an inquiry officer to conduct an in-house inquiry into the matter. The Advocates' Association at the same time filed a complaint with jurisdictional police station, naming the policemen involved in the incident. In addition, the Registrar, City Civil Court also lodged a complaint with the police for causing damage to the property of the City Civil Court, Bangalore by those indulged in violence. Several writ petitions were then filed before the High Court, inter alia, asking for investigation by CBI. The High Court constituted a Special Investigation Team (SIT) headed by Dr R.K.

Raghvan, a retired Director CBI, as its Chairman and others. The Advocates' Association was, however, dissatisfied with that order which was assailed before this Court primarily on the ground that a fair investigation could be conducted only by an independent agency like CBI. Relying upon the decision of this Court in *State of W.B. v. Committee for Protection of Democratic Rights* this Court directed transfer of investigation to CBI holding that the nature of the incident and the delay in setting up of SIT was sufficient to warrant such a transfer.

9. It is unnecessary to multiply decisions on the subject, for this Court has exercised the power to transfer investigation from the State Police to CBI in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. What is important is that while the power to transfer is exercised sparingly and with utmost care and circumspection this Court has more often than not directed transfer of cases where the fact situations so demand.”

7. Hon’ble Supreme Court in the matter of **Subrata Chattoraj (supra)** has transferred the cases registered in the State of West Bengal under Sections 406, 409, 420 and 120-B of IPC against the companies involved in chit fund scam to the CBI. In this case, Hon’ble Supreme Court has considered the factual background of the chit fund scam which formed the basis of transfer of investigation to the CBI as under:

“**35.** The factual narrative given in the foregoing paragraphs clearly establishes the following:

35.1. That financial scam nicknamed chit fund scam that has hit the States of West Bengal, Tripura, Assam and Odisha involves collection of nearly Rs 10,000 crores (approx.) from the general public, especially the weaker sections of the society which have fallen prey to the temptations of handsome returns on such deposits extended by the companies involved in the scam.

35.2. That investigation so far conducted suggests that the collection of money from the depositors was neither legally permissible nor were such collections/deposits invested in any meaningful business activity that could generate the high returns/promised to the depositors.

35.3. That more than 25 lakh claims have so far been received by the Commissions of Enquiries set up in the States of Odisha and West Bengal which is indicative of the magnitude of scam in terms of number of citizens that have been defrauded by the Ponzi companies.

35.4. That the companies which indulge in Ponzi schemes have their tentacles in different States giving the

scam inter-State ramifications. That such huge collections could have international money laundering dimensions cannot be ruled out and needs to be effectively investigated.

35.5. That investigation so far conducted reveals involvement of several political and other influential personalities wielding considerable clout and influence.

35.6. That the role of regulators like SEBI, authorities under the Companies Act and Reserve Bank of India is also under investigation by the State Police Agency which may have to be taken to its logical conclusion by an effective and independent investigation.”

8. In the above case, in the year 2014 following direction was issued by the Hon’ble Supreme Court for transferring the cases registered in the State of West Bengal to the CBI:

“A. State of West Bengal

42.1. All cases registered in different police stations of the State against Saradha Group of Companies including Crime No. 102 registered in Bidhannagar Police Station, Kolkata (North) on 6-5-2013 for the offences punishable under Sections 406, 409, 420 and 120-B IPC.

42.2. All cases in which the investigation is yet to be completed registered against any other company up to the date of this order.

42.3. CBI shall be free to conduct further investigation in terms of Section 173(8) CrPC in relation to any case where a charge-sheet has already been presented before the jurisdictional court against the companies involved in any chit fund scam.”

9. Having examined the present case in the light of the above judgment, we find that the FIR in question is in respect of offence under Sections 380/120B of the IPC relating to theft and conspiracy concerning the missing file relating to sanction of maps of a building. The scope of investigation is confined to the allegation relating to the missing file. The police authorities are not expected to travel beyond the said scope and enter into the investigation in the subject which has already been transferred to the CBI by the Hon’ble Supreme Court in the case of **Subrata Chatteraj (Supra)**. The State investigating agencies are expected to have due regard to the order of the Hon’ble Supreme Court in the case of **Subrata Chatteraj (Supra)**. In the present case, no attempt has been made by learned counsel for the petitioner to argue or establish any of the

grounds noted by the Hon'ble Supreme Court in the judgment in the case of **Subrata Chattoraj (Supra)** for transfer of case to the CBI. That apart, it is worth noting that the power to transfer a case to the CBI needs to be exercised sparingly and with utmost care and circumspection.

10. In the aforesaid circumstances of the case, we do not find adequate ground to allow the petitioner's prayer for transferring the investigation to the CBI.

11. The petition is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
28.09.2022

PA(RB)

(A.F.R. / N.A.F.R.)