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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.30 OF 2022

DR. DHANANJAI KUMAR PANDEY ...PETITIONER

Versus

CENTRAL BUREAU OF
INVESTIGATION/ANTI-CORRUPTION
BUREAU, THR. INVESTIGATION
OFFICER ...RESPONDENT

Mr. Vibhav R. Amonkar, *Advocate for the Petitioner.*

Ms. Asha Desai, *Special Public Prosecutor for the Respondent.*

**CORAM: DIPANKAR DATTA, CJ. &
M. S. SONAK, J.**

DATED: 4th AUGUST 2022

ORAL ORDER (Per the Chief Justice):

1. By instituting this writ petition dated 28.03.2022, the petitioner has prayed for the following relief:

“a) Grant a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to forthwith stop the illegal investigation qua the Petitioner in respect of the FIR No. RC 6(A)/2014/CBI/ACB/GOA dated 05.08.2014; filed by CBI (Respondent).

b) Grant a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records from the Respondent in respect of the Petitioner and upon perusing the same, quash and set aside the inclusion of the Petitioner's name in the "Agreed List" with all consequential benefits there from with no coercive implications whatsoever of this illegal action of Respondents on his past or future career progression;

(c) Grant a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to return all service related original files of the Petitioner to his Parent organisation;"

2. The facts leading to institution of this writ petition are these.

3. FIR No. RC 6(A)/2014/CBI/ACB/GOA was registered against several accused persons, including the petitioner, under sections 420 and 120-B of the Indian Penal Code, 1860 read with section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. When the investigation was in progress, the petitioner had the occasion to approach this Court with a writ petition, being Criminal Writ Petition No.112/2014, wherein he prayed for quashing and/or setting aside of the said FIR registered by the

CBI. Upon a contested hearing, a co-ordinate Bench of this Court by a judgment and order dated 29.10.2015 allowed the said writ petition by holding, *inter alia*, as follows:

“ ***

Allowing the subject FIR to continue on the basis of the averments made therein would lead to injustice to the petitioner in the circumstances as we find that prima facie the complaint does not make out any offence under the provisions of Prevention of Corruption Act, 1988 as against the petitioner herein. Hence, we allow the writ petition and quash and set aside the FIR bearing Crime No. RC/6(A)/2014/CBI/ACB/GOA dated 05.08.2014 registered by the CBI/ACB Goa, against the petitioner only. Rule is made absolute in above terms. The petition stands disposed of accordingly.

*** ”

4. The said judgment and order having been carried in appeal before the Supreme Court of India by the CBI, the Special Leave Petition was disposed of by an order dated 25.08.2017 of the Court. The following clarification was made:

“In view of the aforesaid observations, we clarify that it would be open to the petitioner to make further investigation if it finds expedient to do so. The result would be though the proceedings arising out of the said FIR are quashed qua the respondent, the FIR would still be treated as alive for the further investigation, if any.”

5. Although, the effect of the aforesaid clarification provided by the Supreme Court was that investigation stood concluded *qua* the petitioner, the CBI seems to have misinterpreted the observations made by the Court in the second paragraph of the order which reads as follows:

“On the basis of material that was collected by the petitioner during the investigation the High Court has come to the conclusion that no case under Section 420 of the Indian Penal Code, 1860 has been made. These findings do not require any interference. However, we find that in Paragraph 17 of the impugned judgment the High Court has also mentioned that if the Investigating Agency, on the basis of material produced before the Agency and on the basis of allegations made in the complaint, is satisfied as regards existence of grounds or circumstances necessitating further inquiry or inquiry in respect of any such offences, it would be permissible for the Investigating Agency to investigate into the matter and the instant decision shall not be treated as bar for taking steps in accordance with law.”

6. According to the CBI, if further materials could be gathered in course of investigation or circumstances necessitated further investigation into the offences for which the FIR was

registered, it was empowered to proceed against all the accused persons including the petitioner.

7. We are, however, of the clear view that the CBI was not correct in its interpretation of the clarificatory order of the Supreme Court. The FIR stood quashed *qua* the petitioner and such direction attained finality; but there being other accused persons, who had not approached the Court seeking quashing or setting aside of the FIR against them, the CBI could still be entitled to proceed according to law against such accused persons and if in course of further investigation materials were collected against them for subjecting them to a trial, the liberty in that behalf was preserved.

8. Be that as it may, based on such misinterpretation of the order of the Supreme Court, the petitioner's name was placed in an "Agreed List" by the CBI. Such "Agreed List" is required to be maintained by the CBI in terms of directives contained in Ministry of Home Affairs OM No.130/1/66-AVD dated 05.05.1966. The fallout of such "Agreed List" is that any officer who figures in such list is not to be placed on sensitive positions. This position surfaces from a confidential circular no.3(v)/99(6) dated 18.08.1999 issued by the Central Vigilance Commission. Since the petitioner's name was placed in the "Agreed List"

despite the FIR registered against him being quashed, it has been brought to our notice by Mr. Vibhav Amonkar, learned advocate that the petitioner, who was a Scientist 'F', was not considered for higher/better postings. It is, in view of such prejudice caused to the petitioner's service, that the petitioner has now approached the Court seeking relief as noticed above.

9. In course of hearing, we have been informed by Ms. Desai, learned Special Public Prosecutor for the CBI, that further investigation did not result in collection of materials for the CBI to submit even submit charge-sheet under section 173(2) of the Code of Criminal Procedure; and, on the contrary, the CBI proposes to file a closure report before the relevant criminal court. It is also her submission that subject to acceptance of the closure report by the court, the CBI would delete the petitioner's name from the "Agreed List".

10. We find no reason for the CBI to wait till the relevant court accepts the closure report proposed to be submitted, having regard to the orders passed by this Court as well as the Supreme Court referred to above. Placing the name of an officer in the "Agreed List" would arise only if an officer's honesty or integrity is doubted or is suspect or complaints have been received in that behalf. Also, such "Agreed List" would remain in force for a year

from the date of the preparation and at the expiry of such period, the list is required to be reviewed and the names of those officers against whom sufficient evidence is not available, such names are required to be deleted from the list. This being the position that flows from the Office Memorandum dated 05.05.1966, we have failed to comprehend as to how the petitioner's name could be included in the "Agreed List" by the CBI in the first place and, thereafter, continued despite the FIR being quashed *qua* him.

11. We, therefore, declare inclusion of the petitioner's name in the "Agreed List" as illegal. Once we hold so, there is no question of keeping the petitioner's name in the "Agreed List" any longer. We, accordingly, direct the CBI to delete the name of the petitioner from the "Agreed List", immediately but not later than seven days from the date of uploading of this order on the website of this Court. The petitioner shall be entitled to all service benefits in accordance with law, as if his name had never been included in the "Agreed List".

12. The writ petition, thus, is allowed. There shall be no order for costs.

13. If any original document pertaining to the petitioner's service has been in the custody of the CBI, the same shall be

made available to the petitioner's employer within the period indicated above.

M. S. SONAK, J.

CHIEF JUSTICE

NITI K
HALDANKAR

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