

D/L. 5.
April 15, 2024.
MNS.

WPA No. 1411 of 2024

Kamalesh Kumar Tripathi
Vs.
Union of India and others

Mr. Prosenjit Mukherjee,
Mr. Jahangir Hossain

... for the petitioner.

1. The present challenge has been preferred by the writ petitioner against the refusal of the CPIO to issue certain documents, sought under the Right to Information Act, 2005, to the petitioner pertaining to purported approval obtained by the respondent authorities for initiating action against the petitioner under the Prevention of Corruption Act, 1988 (1988 Act).
2. Learned counsel appearing for the petitioner argues that initially the petitioner was given an inspection and on request, photocopies of the relevant documents regarding approval were handed over to the petitioner. However, when the matter went to the criminal court and the petitioner, during trial, sought to produce the said photocopies as evidence, those were not accepted by the criminal court on the ground that they were neither originals nor certified copies.

3. Thus compelled, the petitioner against sought certified copies of the documents, which were refused by the CPIO, upon which first and second appeals have been preferred.
4. Learned counsel for the petitioner argues that the rejection at present is on the ground of repetition whereas the petitioner now seeks the certified copies and not photocopies of the relevant documents relating to purported approval for the proceedings against him under the Prevention of Corruption Act. It is argued that both the first and the second appellate authority are sitting tight over the matter.
5. Despite service of notice, which is evident from the affidavit-of-service filed today and kept on record, none appears for the respondent authorities at the time of call.
6. The premise of the petitioner's seeking the self-same documents again from the authorities may be justified since the petitioner wants to put up a valid defence before the criminal court as regards no proper approval having been obtained by the authorities for initiating proceeding under the concerned statute. However, the petitioner has his remedy before the criminal court itself where the criminal trial is now pending.

7. Since the petitioner has been furnished only with photocopies and the petitioner's request for certified copies have been refused by the respondent authorities under the Right to Information Act, 2005, the petitioner is at liberty to approach the criminal court with an application for a direction upon the respondent authorities/prosecution to furnish the original documents pertaining to approval to proceed against the petitioner under the 1988 Act.
8. Needless to say, under the appropriate provisions of the Evidence Act, 1872, the petitioner will also be entitled to urge the criminal court to resort to the evidentiary tool of drawing adverse inference in the event such documents are not produced by the respondent authorities.
9. However, the same does not justify the petitioner's second approach before the authorities for getting information on the same count.
10. Accordingly, WPA No. 1411 of 2024 is disposed of by treating the pending first appeal and the second appeal of the petitioner to stand disposed of, with liberty to the petitioner to approach the concerned criminal court with an application for direction on the prosecution to produce the originals of the

approval documents regarding the action taken against the petitioner under the 1988 Act.

11. In the event such documents are not produced, it will be open to the petitioner to claim the benefit of adverse inference against the prosecution.

12. There will be no order as to costs.

13. The parties and all concerned shall act on the server copy of this order, coupled with a written communication of this order, without insisting upon prior production of certified copy thereof for compliance.

14. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)