



2024:DHC:4845



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

Pronounced on: 01.07.2024

+ W.P.(CRL) 2474/2021 & CRL.M.A. 13780/2023, CRL.MA
25020/2023

RKM POWERGEN PVT LTD

..... Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr.
S. Hariharan, Mr. Ramachandran, Mr.
G. Aravind, Mr. Amaan Shreyas, Ms.
Punya Rekha Angara, Mr. Mueed
Shah and Mr. Sharian Mukherji, Advs.

versus

CBI

..... Respondent

Through: Mr. R.S. Cheema, Sr. Adv. with Ms.
Tarannum Cheema and Mr. Akash
Singh, Advs. for CBI.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India read with Section 482 CrPC seeking quashing of FIR in RCMA No. 219 2014 E 0018 District New Delhi, CBI/EO-I dated 07.08.2014. The prayer reads as under:

“(A) Issue a writ of mandamus, or any other appropriate writ, to quash the FIR in RCMA No. 219 2014 E 0018 District New Delhi, CBI/EO-I dated 07.08.2014 and / or;

(B) To call for records connected with the registration of FIR in RCMA No.219 2014 E 0018 District New Delhi, CBI/EO-I dated 07.08.2014.”



2. During the pendency of the petition an application i.e. CRL. M.A. 25050/2023 has been filed seeking following relief:

“a. Issue a Writ in the nature of Certiorari to quash and set aside the order dated 27.09.2017 passed by the Ld. Special Judge (PC Act), (CBI-07), NDD/PHC;

b. Issue a Writ in the nature of Mandamus to stay the operation and effect of the order dated 27.09.2017 passed by the Ld. Special Judge (PC Act), (CBI-07), NDD/PHC;

c. Issue a Writ in the nature of Certiorari to quash and set aside the order dated order dated 29.04.2019 passed by the Ld. Special Judge (PC Act), CBI, RADC, New Delhi in Clor No. 5/2019 (Old Closure No. 5/17 arising out of RC No. 219/2014 E 0018 titled CBI vs RKM Powergen Pvt. Ltd. & Ors.”

3. To be noted that the notice was not issued either in the main petition or in the application of the petitioner seeking to add additional prayer. However, when the petition was first listed on 13.12.2021, this Court listed the matter for deciding the question of maintainability of the writ petition since an objection was raised as to the maintainability of the present petition by Mr. R.S. Cheema, learned senior counsel appearing on behalf of the respondent / CBI. The said objection was premised on an order of the Hon’ble Supreme Court pertaining to coal block allocation matters contained in ***Manohar Lal Sharma Vs. The Principal Secretary and Ors. (2015) 13 SCC 35***, more particularly in para 10 thereof, which reads thus:

“10. All cases pending before different courts in Delhi pertaining to coal block allocation matters shall stand transferred to the Court of the Special Judge as aforesaid. We also make it clear that any prayer for stay or impeding the progress in the



investigation/trial can be made only before this Court and no other court shall entertain the same.”

4. Accordingly, arguments were heard by this Court confined to the preliminary objection as to the maintainability of the present petition.

5. For the sake of completeness, it may be mentioned that in the cases arising out of the coal block allocation, the Hon’ble Supreme Court had handed over the investigation to the CBI and *vide* order dated 25.07.2014¹ Mr. R.S. Cheema, learned senior counsel was directed to be appointed as Special Public Prosecutor by the Government of India to conduct the prosecution of the offence pertaining to coal block allocation matters on behalf of the CBI and Enforcement Directorate.

6. Mr. N. Hariharan, learned senior counsel appearing on behalf of the petitioner submits that the extraordinary writ jurisdiction of this Court is conferred by the Constitution of India and is part of its basic structure, hence it cannot be restricted even by a judicial order. To buttress his contention, Mr. Hariharan placed reliance on the decisions in (i) ***L. Chandra Vs. Union of India***, (1997) 3 SCC 261; and (ii) ***S.N. Mukherjee Vs. Union of India***, (1990) 4 SCC 594.

7. He submits that the restriction imposed by the Hon’ble Supreme Court Supreme Court in ***Manohar Lal Sharma (supra)*** must be read in the narrowest possible terms so as to not encroach or limit the plenary powers of judicial review conferred on this Court as part of the basic structure of the Constitution. Elaborating on his submission, he further submits that the two restrictions created by the Hon’ble Supreme Court to the plenary power of

¹ (2015) 13 SCC 35



the High Courts is for stay or impeding the progress in the investigation or trial alone.

8. He submits that the trial commences only on framing of charges which stage in the present case has not reached, hence there is no question of impeding trial in the present case. He contends that the present writ petition does not impede investigation either as present writ petition impugns an illegal order dated 27.09.2017 passed by learned Special Court after completion of investigation whereby the learned Special Court neither accepted nor rejected the closure report and ordered further investigation.

9. He submits that now the CBI appears to have filed positive final report and Special Court is stated to have taken cognizance, hence investigation stands completed in that regard leaving no scope for impeding the investigation.

10. He also places reliance on the decision of a three judge bench in ***Union of India Vs. Parashotam Dass 2023 SCC OnLine SC 314*** to contend that the Hon'ble Supreme Court while dealing with an embargo created by the decision of a two judge bench in ***Union of India Vs. Major General Shri Kant Sharma & Anr. (2015) 6 SCC 773*** precluding High Courts from entertaining writ against orders of Armed Forces Tribunal, held as under:

*“25. While we agree with the aforesaid principle, we are unable to appreciate the observations in the case of **Major General Shri Kant Sharma & Anr.** which sought to put an embargo on the exercise of jurisdiction under Article 226 of the Constitution, diluting a very significant provision of the Constitution which also forms the part of basic structure. The principles of basic structure have withstood the test of time and are emphasized in many judicial pronouncements as an ultimate test. This is not something that can be doubted. That being the position, the self-restraint of the High Court under Article 226 of the Constitution*



is distinct from putting an embargo on the High Court in exercising this jurisdiction under Article 226 of the Constitution while judicially reviewing a decision arising from an order of the Tribunal.”

11. Additionally, Mr. Hariharan submits that a Division Bench of the Madras High Court has already considered the preliminary objection with respect to maintainability of a *lis* arising out of the very same FIR. Expanding his argument, he placed reliance on the judgment dated 08.06.2022 passed in W.P. No. 24700/2021 titled as ***R.K.M. Powergen Private Limited Vs. The Asst. Director, ED and Anr.*** whereby the writ petition filed by the petitioner was entertained and disposed of notwithstanding the directions of the Hon’ble Supreme Court in ***Manohar Lal Sharma (supra)***. He further submits that the petitioner had also preferred a writ petition before the Hon’ble Supreme Court, where the Hon’ble Supreme Court while declining to interfere on merits did not preclude the petitioner from pursuing the matter before this Court.

12. Lastly, the learned Senior Counsel submits that the petitioner has no efficacious remedy in the alternative as the petitioner would be forced to approach the Hon’ble Supreme Court and will lose a valuable right of appeal in the process.

13. *Per contra*, Mr. R. S. Cheema, learned Senior Counsel submits that the prayer in the main petition seeking quashing of FIR as well as in the application seeking stay of the operation of the order dated 27.09.2017 passed by the learned Special Judge is not maintainable by virtue of the order of the Hon’ble Supreme Court in ***Manohar Lal Sharma (supra)***. Elaborating on this submission, he submits that the Hon’ble Supreme Court



alone has exclusive jurisdiction in matters arising out of the coal block matters which are at the stage of investigation or trial. According to Mr. Cheema only remedy available in respect of an order relating to trial and investigation in a coal block allocation matters, is by way of Article 136 of the Constitution. To buttress his contention reliance has been placed by him on the decision of the Hon'ble Supreme Court in (i) **Manohar Lal Sharma** (supra); (ii) **Girish Kumar Suneja Vs. Central Bureau of Investigation** (2017) 14 SCC 809 [hereinafter referred to as 'Girish Kumar Suneja (SC)']; and (iii) **Girish Kumar Suneja Vs. CBI** (2016) SCC OnLine Del 5751 [hereinafter referred to as 'Girish Kumar Suneja (Del)'];.

14. He submits that the reliance placed on the judgment dated 08.06.2022 delivered by the Madras High Court in W.P. No. 24700/2021 titled **R.K.M. Powergen Private Limited Vs. The Asst. Director, ED and Anr.** is totally misplaced. In support of his contention Mr. Cheema invited attention of the Court to para 16 of the said judgment to contend that the Madras High Court has clearly drawn the protective lines with regard to the investigation of alleged offences under PMLA *qua* the coal block scam cases investigated by the CBI and monitored by the Hon'ble Supreme Court. Para 16 of the judgment reads thus:

*"16 We also notice that the CBI and the Enforcement Directorate have been periodically filing detailed status reports of the various prosecutions conducted by them (See the series of orders collectively reported as "**Manohar Lal Sharma v Union of India (2017) 11 SCC 731**"). Having carefully considered the various orders/directions passed by the Supreme Court, we are of the considered opinion that judicial propriety and institutional comity require us to refrain from exercising our jurisdiction under Article 226 by venturing to interdict the investigation of alleged offences under the PML Act, 2002 *qua* the coal block*



scam cases investigated by the CBI and monitored by the Supreme Court.”

(emphasis supplied)

15. It is further argued by Mr. Cheema that the Hon’ble Supreme Court has entertained an SLP against the aforesaid judgment of Madras High Court and notice has been issued *vide* order dated 20.03.2023 and the matter is pending.

16. I have heard the learned Senior Counsel for the petitioner, as well as, the learned Senior Counsel for the respondent and have perused the record.

17. In so far as the submission of the learned Senior Counsel for the petitioner that the extraordinary writ jurisdiction of this Court is part of the basic structure of the Constitution of India, there is no dispute with regard to the said proposition as laid down by the Hon’ble Supreme Court in **L. Chandra Kumar** (supra) and in **S.N. Mukherjee** (supra). However, the submission that the mandate of the Hon’ble Supreme Court in **Manohar Lal Sharma** (supra) cannot restrict the power of this Court to exercise extraordinary jurisdiction under Article 226 of the Constitution need not detain this Court any longer as the issue stands already settled by the Hon’ble Supreme Court in **Girish Kumar Suneja (SC)** (supra).

18. In **Girish Kumar Suneja (SC)** (supra), the learned Special Judge appointed to hear the criminal cases arising out of the illegal allocation of coal blocks directed framing of charges in the case titled **CBI vs. Jindal Steel and Power Ltd.** in RC No.219/2013/E/0006 against appellant therein and others for offences punishable under Section 120B/409/420 of the Penal Code, 1860 and Section 13(1)(c) and Section 13(1)(d) of the Prevention of



Corruption Act, 1988. Against the order of the learned Special Judge, appellant therein filed Criminal Misc. Case No. 3847/2016 before this Court.

19. Preliminary issue arose regarding the maintainability of the petition in view of para 10 of **Manohar Lal Sharma** (supra). This Court *vide* its judgment in **Girish Kumar Suneja (Del)** (supra) concluded that in view of the order passed by the Hon'ble Supreme Court in **Manohar Lal Sharma** (supra), the petition deserves to be dismissed as not maintainable.

20. The challenge was taken to the Hon'ble Supreme Court by Girish Kumar Suneja and the Hon'ble Supreme Court in its decision in **Girish Kumar Suneja (SC)** (supra) noted various contentions raised by the appellant therein in para 8 of the judgement, which reads thus:

“8. The learned counsel for the appellants raised several contentions, all of them directed towards the conclusion that para 10 of the order passed by this Court had prevented them from exercising certain legal and constitutional rights. The general submission was that the order passed by this Court deserves to be recalled or revisited since the appellants have been denied access to justice in that:

(vii) The right to file a revision petition under Section 397 of the Code of Criminal Procedure, 1973 or the CrPC as well approaching the High Court under Section 482 CrPC has been taken away;

(ii) The order passed by this Court has taken away the right of the appellants to file a petition under Articles 226 and 227 of the Constitution and thereby judicial review, which is a part of the basic structure of the Constitution, has been violated which even Parliament cannot violate;

(iii) Article 14 of the Constitution has been violated by treating the Coal Block Allocation cases as a separate class having a separate procedure, thereby denying to them equal protection of the law;



(iv) The right to life and liberty guaranteed by Article 21 of the Constitution has been restricted;

(v) Article 32 and Article 142 of the Constitution oblige this Court to protect the fundamental rights of citizens and not curtail them;

(vi) The High Court has an inherent right to grant a stay of proceedings, but this Court has precluded the High Court from granting a stay of proceedings and has thereby deprived the High Court of exercising an inherent right;

(vii) The prohibition in granting a stay under Section 19(3)© of the PC Act is not absolute and in an appropriate case, a stay of proceedings could be granted in favour of an accused person particularly when there is a failure of justice. Any restrictive reading would entail a fetter on the discretion of the High Court which itself might lead to a failure of justice.”

(emphasis supplied)

21. In so far as the submission of the appellant in ***Girish Kumar Suneja (SC)*** (supra) that order passed by the Hon’ble Supreme Court in ***Manohar Lal Sharma*** (supra) has taken away the right of the appellant to file a petition under Articles 226 and 227 of the Constitution and thereby judicial review, which is part of the basic structure of the Constitution, the Hon’ble Supreme Court observed as under:-

“Article 226 and Article 227 of the Constitution

35. It was submitted on behalf of the appellants that para 10 of the order passed by this Court prohibits the appellants from approaching the High Court under Articles 226 and 227 of the Constitution. In this context, it was submitted that it is now well settled that judicial review by the High Court and by this Court is a part of the basic structure of the Constitution and this has been recognised in L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577].



36. It was submitted by relying upon *Shalini Shyam Shetty v. Rajendra Shankar Patil* [*Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution is very vast and the principles for the exercise of jurisdiction have been culled out in that decision by this Court on an analysis of several earlier decisions. The principles have been stated in para 49 of the Report and are not repeated here.

37. There is no doubt that the power of superintendence available to the High Court under Article 227 is extremely vast but at the same time as held in *Shalini Shyam Shetty* [*Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] the High Court cannot exercise that power of superintendence at the drop of a hat. In addition, in exercise of its power of superintendence the High Court cannot correct mere errors of law or fact only because another view is possible. What is more important is the following principle that has been culled out: (SCC p. 349, para 49)

“49. ... (n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 of the Constitution is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.”

38. **The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226**



and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.

39. In any event, if such a one in a million case does arise, the appellants can certainly approach this Court for relief under Article 136 of the Constitution.”

(emphasis supplied)

22. Further, the Hon’ble Supreme Court also negated the submission of the appellant herein that the right to life and liberty granted by Article 21 of the Constitution has also been restricted by para 10 of the order passed in **Manohar Lal Sharma** (supra) or that there are certain procedural safeguards provided by the statutes which have been denied or in any event restricted or constricted by a judicial order, therefore, the procedure established by law has been compromised. The relevant observations read as under:

*“48. This contention of the learned counsel for the appellants also deserves rejection. No procedural safeguard has been denied to the appellants and it is a complete misnomer to say that any statutory right has been restricted or constricted by a judicial order. **The remedies available to the appellants continue to be available to them except that the forum has been shifted from the High Court to this Court in larger public interest.***

49. It must not be forgotten that the cases arising out of the Coal Block Allocations are not ordinary cases but fall under a special or distinct category which requires special attention given the magnitude of the illegalities allegedly committed including some with criminal intent. It is in this view of the matter that this Court had no option but to hand over the investigations to CBI and to monitor the



investigations so that they reach their logical conclusion, without any interference from any quarter. The magnitude of the illegalities is such that it appears that even the integrity of the Director of CBI was prima facie compromised, and this Court had to intervene and direct investigations into the conduct of the Director of CBI. That being so, it can hardly be said with any degree of seriousness that the procedure adopted by this Court, in the facts and circumstances of the case, violate any right to the life and liberty of any of the appellants or any other persons allegedly involved in the criminality associated with the allocation of coal blocks.”

(emphasis supplied)

23. Further, dispelling the misconception that the Hon’ble Supreme Court was in any manner monitoring the progress or supervising the trial in the coal block allocation cases, it was explained that para 10 of the ***Manohar Lal Sharma*** (supra) only results in the removal of any impediment in the progress of the trial in public interest. The relevant observations of the Court reads thus:

*“57. There is obviously some misconception in this regard as far as the appellants are concerned. This Court is not in any manner monitoring the progress of the trial in the Coal Block Allocation cases nor is it supervising the trial. Conducting the trial is entirely the business of the learned Special Judge. **Para 10 of the order only results in the removal of any impediment in the progress of the trial. To ensure that the trial is concluded at the earliest not only in the interest of the accused persons but also in public interest, any application intended to stay or impede the trial will be subject to orders of this Court.** This out of the ordinary step has been taken given the serious nature of allegations made against those believed to be involved in the illegal allocation of coal blocks and in the interest of the accused as well as in larger public interest. As mentioned above, there is a need for maintaining a balance between the rights of an accused and the rights of an individual victim and society.”*

(emphasis supplied)



24. The Hon'ble Supreme Court also noted that similar directions were also given in 2G Spectrum cases and the same came up for consideration before the Hon'ble Supreme Court, subsequently in ***Shahid Balwa vs Union of India, (2014) 2 SCC 687***, wherein it was clarified that such an order was permissible under the provisions of Article 136 read with Article 142 of the Constitution. It was further clarified that the parties cannot invoke the jurisdiction under Article 226 or 227 of the Constitution or under Section 482 CrPC so as to ensure the compliance with the orders passed by the Hon'ble Supreme Court, or else, the very purpose and object of such order would be defeated. The relevant observations of the Hon'ble Supreme Court reads thus:-

“78. In Centre for Public Interest Litigation v. Union of India [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 117 : (2012) 2 SCC (Cri) 61] this Court passed the following order on 11-4-2011 in what is now, commonly known as the 2G Spectrum Scam cases: (SCC p. 126, paras 30-31)

“30. We also make it clear that any objection about the appointment of the Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the trial can be made only before this Court and no other court shall entertain the same. The trial must proceed on a day-to-day basis.

31. All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case.”

79. The aforesaid order came up for consideration before this Court in Shahid Balwa v. Union of India [Shahid Balwa v. Union of India, (2014) 2 SCC 687 : (2014) 4 SCC (Cri) 385] . While dealing with the submissions made in relation to the aforesaid order (submissions that are similar to those made before us) this Court held that considering



the width and ambit of the investigation which could even spread overseas and also considering the larger public interest, the aforesaid order was passed reserving the right of the accused to move this Court if there is a grievance against the order passed by the Special Judge during the trial and that this would ensure that progress in the trial is not hampered. Such an order was permissible under the provisions of Article 136 read with Article 142 of the Constitution. It was also made clear that the parties cannot invoke the jurisdiction under Article 226 or 227 of the Constitution or under Section 482 CrPC so as to ensure compliance with the orders passed by this Court otherwise the very purpose and object of the order would be defeated. This Court held in paras 22 and 23 of the Report as follows: (SCC p. 699)

“22. We may, at the very outset, point out that CBI as well as the Enforcement Directorate are yet to complete the investigation of the cases relating to 2G Scam and the case which is being tried by the Special Judge is only one amongst them, wherein the charge-sheet has been filed and the trial is in progress. This Court, taking into consideration the width and ambit of the investigation which even spreads overseas and the larger public interest involved, passed the orders impugned, reserving the right of all, including the accused persons, to move this Court if their prayer would amount to staying or impeding the progress of the trial. In case they have any grievance against the orders passed by the Special Judge during trial, they are free to approach this Court so that the progress of the trial would not be hampered by indulging in cumbersome and time-consuming proceedings in the other forums, thereby stultifying the peremptory direction given by this Court for day-to-day trial.

23. Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. The parties, in such a case, cannot invoke the jurisdiction under Article 226 or 227 of the Constitution of India or under Section 482 CrPC so as to interfere with those orders passed by this Court, in exercise of its constitutional powers conferred under Article 136 read with Article 142 of the Constitution of India. Or, else, the



parties will move courts inferior to this Court under Article 226 or Article 227 of the Constitution of India or Section 482 CrPC, so as to defeat the very purpose and object of the various orders passed by this Court in exercise of its powers conferred under Article 136 read with Article 142 of the Constitution of India.”

(emphasis supplied)

25. Accordingly, the Hon’ble Supreme Court, considering that a similar issue having been agitated before it in *Shahid Balwa* (supra) and negated, declined to revisit or modify the order passed in *Manohar Lal Sharma* (supra).

26. In so far as the reliance placed by the learned Senior Counsel for the petitioner on the judgment dated 08.06.2022 passed by High Court of Judicature at Madras in W.P.No. 24700/2021 is misplaced in view of the decision of the Hon’ble Supreme Court in *Girish Kumar Suneja* (SC) (supra) wherein it has been expressly stated that remedy under Articles 226 and 227 of the Constitution would not be available in respect of a case registered in coal block cases. However, the remedy would still be available to the aggrieved person but only the forum will shift from the High Court to the Hon’ble Supreme Court.

27. In view of the above discussion and regard being had to the direction of the Hon’ble Supreme Court in the order passed in *Manohar Lal Sharma* (supra) as clarified in *Girish Kumar Suneja* (SC) (supra), the present petition is not maintainable and is accordingly dismissed.

VIKAS MAHAJAN, J.

JULY 1, 2024/N.S. ASWAL/dss