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

+ CRL.A. 867/2018, CRL.M.A. 30835/2018

SUSHIL DEWAN

.....Appellant

Through: Ms. Sonia Mathur, Sr. Adv. With Mr.
Sushil Kumar Dubey, Adv.

versus

STATE & ANR.

.....Respondents

Through: Mr. Ripudaman Bhardwaj, SPP, Mr.
Kushagra, Kumar, Mr. Abhinav
Bhardwaj, Advs. For CBI with Insp.
Nikhil Tomar.
Mr. Rakesh Kumar Khanna, Sr. Adv.
with Mr. Aman Vachhev, Mr.
Ashutosh Dubey, Ms. Ramya
Khanna, Mr. Amit Kumar, Advs. For
R-2.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

11.07.2024

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1. The present appeal under Section 341 r/w Section 482 Cr.P.C. seeking setting aside and / or quashing of order dated 29.05.2024 passed by Ld. Special Judge-PC Act CBI-06, Tis Hazari Courts, New Delhi.
2. Ld. Special Judge-PC Act vide a detailed impugned order inter alia held that the appellant by making dishonest and false averments in the reply dated 02.08.2016 has prima facie committed offence under Section 191 and 209 IPC.
3. Shorn of the detail, an application was moved by respondent No.2 for



release of certain documents after having been discharged in case RC No. SIU9/E-0006/1999 vide order dated 10.03.2016.

4. CBI under the signature of the appellant filed a reply to this application. It was alleged that in the reply the respondent suppressed the crucial fact to mislead the court with the purpose to frustrate his application for the release of documents.
5. On 29.02.2024, the court passed the following order:

“1. Challenge in the present appeal is laid by the Appellant to order dated 29.05.2018 passed by learned Special Judge, PC Act, in case titled CBI versus Ashok Kumar, whereby the court held that Appellant had prima facie committed offences under Sections 191 and 209 IPC and directed filing of formal complaint against the Investigating Officer Insp. Sushil Dewan for a proper enquiry. Challenge is also laid to order dated 02.06.2018 whereby learned CMM has taken cognizance of the offences.

2. Mr. Ripu Daman Bhardwaj, learned SPP appearing for CBI and learned Senior Counsel for the Appellant submit that there was no falsity in the reply filed by CBI to the application of Respondent No.2 for return of documents, as the correspondence was underway for challenging the order of the High Court.

3. In my view, it would be important to see the correspondence/notings on the relevant dates. Accordingly, it is directed that CBI shall produce the relevant file in a sealed cover on the next date of hearing, for perusal of the court.

4. List on 11.07.2024.”

6. Pursuant to the same, CBI has produced the relevant record bearing file No. RC. 6/1999, Unit. EOU-VIII, VOL./Part EO-III.
7. At the concerned page 000179 in the noting appellant put up a draft



reply conveying no objection of CBI for returning the relied and unrelayed documents to respondent No.2. However, this was not approved and SP/EOU9 suggested that opinion of higher legal officers may be obtained and DoPT may be requested to consider the matter of filing an SLP.

8. The matter was further put up to HOB/O/III who also proposed that MOLG through DoPT may be requested to reconsider their view taking opinion of AG/SG and it was suggested that oral submission may be made by court tomorrow in Trial Court that matter of filing / non-filing of SLP is still to take finality.
9. However, thereafter the perusal of the file indicates that again the appellant put up a draft para wise reply of application for approval before the higher authorities.
10. The perusal of the record indicates that it was not only the appellant herein but also other officers of the CBI who were instrumental in filing the reply in the court regarding the application for release of document filed by respondent No.2.
11. Ld. Trial court has passed a very detailed order. However, the role of other officers possibly could not be examined on account of non-availability of the records. As now the record is available and is being sent to the Ld.Trial Court in sealed cover for the perusal. Ld.Trial Court shall be in a better position to examine the role of other officers in a wholesome manner. Ld.Trial court may also call the corresponding correspondence file from the CBI for perusal. Thus without making any comments on the merits of the case, the matter is remanded back to the Ld. Trial court for reconsideration and passing an appropriate order



on the basis of the record produced by CBI.

12. For the purpose of completeness without going into the merits of the case the impugned order is set-aside only to enable the Ld. Trial Court to pass a fresh order taking into account the record produced by CBI.
13. Since the matter is already pending for the last six years. Ld. Trial shall conclude the hearing expeditiously. Ld. Trial Court shall return back the record the CBI after passing the fresh order.
14. In view of the above observations, the present appeal stands disposed of. However, no expression made herein shall tantamount to be an expression of the merits of the case. The Ld. Trial Court shall pass the order without being prejudiced by the order passed by this court.

DINESH KUMAR SHARMA, J

JULY 11, 2024/AR..