17.02.2025
Court No. 35

Item No.3
Rakib

W.P.A. 28723 of 2024

State Bank of India & Anr.
VS
The State of West Bengal & Ors.

Mr. Subrata Sinha,
Mr. Debashis Saha,
Ms. Sucheta Pal.
... for the Petitioners.

Mr. Rajdeep Majumder, Ld. DSGI,
Mr. Amajit De, Ld. Special PP, CBI.
... for the CBI.
Mr. Akash Dutta.
... for the State.

Inadvertently in the order dated 06.02.2025 the number of the case has been wrongly recorded as "W.P.A. 28273 of 2024" the correct number should be "WPA 28723 of 2024"

This may be treated as part and parcel of the order dated 06.02.2025. Department is directed to incorporate the necessary corrections in the original order.

The petitioners being State Bank of India and its Regional Manager has approached this Court being aggrieved by the act and action of the respondent no.5. The response which has been received by the petitioners from the respondent no.5 is to the extent that since the sanction is pending with the Additional Chief Secretary, Home and Hill Affairs, Government of West Bengal the CBI, ACB, Kolkata is not in a position to proceed with regard to the complaint dated 06.04.2022. The same has been signed by the DIG, and Head of Branch, CBI, ACB, Kolkata.

Mr. Majumder learned DSGI refers to the judgment of State Bank of India & Ors. –Vs. – Rajesh Agarwal and Ors., (2023) 6 SCC 1. The said judgment do not refer to any circumstance where the permission to State Government or its Officers are required for the CBI to register FIR in proper cases. So far as the parameters of Rajesh Agarwal (supra) is concerned that is inter se between the bank and the CBI and the State Government has no role to play in the same.

This Court earlier in Vinay Mishra –Vs. – Central Bureau of Investigation & Ors., 2021 SCC OnLine Cal 2160 has already laid down the law, paragraph 58 of the said judgment is relevant which reads as follows:

> ***"58.*** *On an overall assessment of the facts of the present case and the law referred to above, it can be safely stated that the offenders under the Prevention of Corruption Act are to be dealt with equally. As such, the public servants whose office location may be in different States, but are associated with the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government cannot be*

distinguished and/or discriminated because of the location of their offices being at different States and are to be hauled up for corruption in like and similar manner uniformly throughout the country. The view of the coordinate Bench of this Court in Ramesh Chandra Singh (supra) that the Central Government/CBI's power to investigate and prosecute its own officials cannot be impeded or interfered by the State assumes importance and is with the spirit of the Indian Constitution."

The Hon'ble Supreme Court very recently in State, Central Bureau of Investigation –Vs. – A. Satish Kumar & Ors., 2025 SCC OnLine SC 15 has also dealt with similar circumstances and has been pleased to observe in paragraphs 25 to 29 which are as follows:

"25. *Irrespective of the place of posting, the aforesaid factual position would go onto show that they were Central Government employees/Central Government Undertaking employees and allegedly committed serious offence under PC Act, which is a Central Act. Therefore, the question is in such circumstances merely because such an employee works within the territory of a particular State, to register an FIR by the CBI in connection with commission of an offence under a Central Act whether consent from the State Government concerned is required or not? The said question is no longer a legal conundrum in view of the decisions of this Court in KanwalTanuj v. State of Bihar[5] and in Fertico Marketing and Investment Pvt. Ltd.'s case (supra).*

__26.__ In KanwalTanju's case (supra), after extracting Section 5 and 6 of DSPE Act, in para 19 thereof, this Court held thus:—

"19. Sections 5 and 6 of the 1946 Act read thus:—

***5. Extension of powers and jurisdiction of special police establishment to other areas.**-*

(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf,

exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.*— Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State.*

Such a consent may not be necessary regarding the investigation by the special police force (DSPE) in respect of specified offences committed within Union Territory and other offences associated therewith. That may be so, even if one of the accused involved in the given case may be residing or employed in some other State (outside the Union Territory) including in connection with the affairs of the State/local body/corporation, company or bank of the State or controlled by the State/institution receiving or having received financial aid from the State Government, as the case may be. Taking any other view would require the special police force to comply with the formality of taking consent for investigation even in relation to specified offence committed within Union Territory, from the concerned State merely because of the fortuitous situation that part of the associated offence is committed in other State and the accused involved in the offence is residing in or *employed in connection with the affairs of that State. Such interpretation would result in an absurd situation especially when the 1946 Act extends to the whole of India and the special police force has been constituted with a special purpose for investigation of specified offences committed within the Union Territory, in terms of notification issued under Section 3 of the 1946 Act.*

26. Indeed, the said notification contains a proviso, which predicates that if any public servant employed in connection with the affairs of the Government of Bihar is concerned in offences being investigated by the special police force pursuant to the notification, prior consent of the State Government qua him shall be obtained. This proviso must operate limited to cases or offences which have been committed within the territory of the State of Bihar. If the specified offence is committed outside the State of Bihar, as in this case in Delhi, the State police will have no jurisdiction to investigate such offence and for which reason seeking consent of the State to investigate the same would not arise. In our opinion, the stated proviso will have no application to the offence in question and thus the Delhi special police force/DSPE (CBI) must be held to be competent to register the FIR at Delhi and also to investigate the same without the consent of the State.

27. …

28. Suffice it to observe that the proviso contained in the stated notification dated 19.2.1996 cannot be the basis to disempower *the special police force/DSPE (CBI) from registering the offence committed at Delhi to defraud the Government of India undertaking (BRBCL) and siphoning of its funds and having its registered office at Delhi. Allegedly, the stated offence has been committed at Delhi. If so, the Delhi Courts will have jurisdiction to take cognizance thereof. The State police (State of Bihar) cannot investigate the specified offences committed and accomplished at Delhi, being outside the territory of the State of Bihar. It must follow that the consent of the State of Bihar to investigate such offence is not required in law and for which reason, the special police force would be competent to carry on the investigation thereof even if one of the accused allegedly involved in the commission of stated offence happens to be resident of the State of Bihar or employed in connection with the affairs of the Government of Bihar and allegedly committed associated offences in that capacity. In other words, consent of the State under Section 6 cannot come in the way or constrict the jurisdiction of the special police force constituted under Section 2 to investigate specified offences under Section 3 of the 1946 Act committed within the Union Territories. Indeed, when the Court of competent jurisdiction proceeds to take cognizance of offence and particularly against the appellant, it may consider the question of necessity of a prior sanction of the State of Bihar qua its official(s) as may be required by law. That question can be considered on its own merits in accordance with law."*

27. *In the decision in Fertico Marketing and Investment Pvt. Ltd.'s case (supra), this Court in paragraph 26 held thus:—*

"26. Recently, a bench of this Court consisting one of us (Khanwilkar J.) had an occasion to consider the aforesaid provisions of DSPE Act, in KanwalTanuj v. State of Bihar, (2020) 20 SCC 531. In the said case, the question arose, as to whether when an offence was committed in the Union Territory and one of the accused was residing/employed in some other State outside the said Union Territory, the Members of DSPE had power to investigate the same, unless there was a specific consent given by the concerned State under Section 6 of the DSPE Act. The contention on behalf of the appellant before the High Court was that since the appellant was employed in connection with the affairs of the Government of Bihar, an investigation was not permissible, unless there was a specific consent of State of Bihar under Section 6 of the DSPE Act. This Court rejected the said contention holding that if the offence is committed in Delhi, merely because the investigation of the said offence incidentally transcends to the Territory of State of Bihar, it cannot be held that the investigation against an officer employed in the territory of Bihar cannot be permitted, unless there was specific consent under Section 6 of the DSPE Act. While considering the argument on behalf of the State, that such a consent was necessary for CBI to proceed with the investigation, this Court held that the respondent-State having granted general consent in terms of Section 6 of the DSPE Act vide notification dated 19.02.1996, it

was not open to the State to argue to the contrary."

28. *In the contextual situation it is also relevant to refer to Resolution No. 4-31-61-T dated 01.04.1963 of Ministry of Home Affairs establishing the Central Bureau of Investigation. Going by the said resolution dated 01.04.1963, it provides the function of the CBI in cases where public servants under the control of the Central Government are involved either themselves or with the State Government servants and/or other person.*

29. *Thus, upon diallage we find it difficult to accede to the contentions of the first respondent in the captioned appeals made in a bid to support and sustain the impugned judgment. In such circumstances, considering the questions from such different angles we are of the firm view that the impugned judgment whereunder subject FIRs and further proceedings in pursuance thereof, were quashed cannot be sustained."*

In view of the aforesaid CBI is not required to take any permission in respect of any Central Government Offices/Public Sector undertaking and/or other Public Sector Companies. So far as the present case is concerned if there are other issues, concerned Officer of the CBI will deal with the bank, but so far as the reasons so assigned by the DIG, CBI in its communication dated 07.08.2024 to the

Regional Manager, State Bank of India is concerned the same is not acceptable to this Court.

Since in the case of State of Bank of India public servant is involved, there is no impediment in the CBI progressing with the cases, if they are prima facie satisfied on a preliminary enquiry after communicating with the bank. As such CBI is directed to proceed in accordance with law in view of the observations made by the Hon'ble Supreme Court as well as this Court.

With the aforesaid observations WPA 28723 of 2024 is disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)