

(2013) 10 DEL CK 0162

In the Delhi High Court

Case No : Criminal MC. No. 4197 of 2011 and Criminal MAs No's. 19390-91 of 2011

Asif Balwa and Others

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 142
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2013) 10 AD 603

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Vijay Aggarwal in Criminal MC No. 4197/11, WPCrl. 206, 129, 159, 207 and 208/12, Criminal MC No. 4199/11, Mr. Harsh Bora in Criminal MC No. 67/12, Mr. Sandeep Kapur, Mr. Shivek Trehan, Mr. Veer Inder Sandhu, Mr. Vivek Suri and Mr. Ankit Mishra, in Criminal MC No. 1060/12, Mr. Abhir Datt in WPCrl. No. 467/12, Mr. Harpuneet Singh Rai in WPCrl. No. 656/12, Mr. Manu Sharma in WPCrl. No. 913/12 and Mr. Mahesh Agarwal in WP Criminal Nos. 1587-89/12, for the Appellant; Sonia Mathur, Advocate for R/CBI, Ms. Maneesha Dhir and Ms. Neha Singh, Advocates for R-2 and R-3 in Crl. MC No. 4197/11, Ms. Manjusha Wadha and Ms. Punya Rekha Angara, Advocates for R/UOI in Crl. MC No. 4199/11, Mr. Jatan Singh, CGSC and Mr. S. Qureshi, Advocate for R/UOI in WP(Crl.) Nos. 1587, 1588 and 1589/2012, Mr. Saket Singh, Kumar Rajan Mishra and Ms. Sangeeta Singh, Advocates for TRAI in Crl. MC No. 4197/11, WP(Crl.) 206/12, WP(Crl.) 159/12, WP(Crl.) 913/12 and WP(Crl) 1587/12, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—By this common order, the court proposes to dispose of the present petitions filed by the petitioners praying inter alia for quashing of the order on charge dated 22.10.2011 and framing of charge dated 22.10.2011, passed by the learned Special Judge, CBI in case FIR No. RC DAI 2009 A 0045 registered by the CBI. Additionally, the petitioners have also sought quashing of the supplementary charge sheet dated 25.4.2011 submitted by the CBI in the

aforesaid cases. W.P.(Crl.) Nos. 1587, 1588 & 1589/2012 have been filed by the petitioners praying inter alia for quashing of the chargesheet dated 12.12.2011 and order on charge dated 25.5.2012 filed by the CBI in RC No. DA 2009 A 0045 and the charges framed against them on 25.5.2012, u/s 120B R/W 420 IPC in C.C. No. 1B of 2011. Learned counsel for the respondent/CBI submits that in view of the recent decision of the Supreme Court in the case of Shahid Balwa Vs. Union of India (UOI) and Others, , the present petitions need not be kept pending by this court any longer. In support of her submission, she also refers to the earlier orders dated 11.4.2011 and 9.11.2012 passed by the Supreme Court in Civil Appeal No. 10600/2010, entitled "Center for PIL & Others Vs. Union of India & Others".

2. As for the status of the case pending before the learned Special Judge, CBI, the court is informed that the prosecution evidence has almost concluded in all the petitions, except in cases, subject matter of W.P.(Crl.) Nos. 1587, 1588 & 1589/2012 where the testimony of some of the IOs are to be recorded and the cases are proceeding before the trial court on a day to day basis for recording the testimony of the remaining witnesses.

3. Mr. H.S. Rai and Mr. Manu Sharma, learned counsels for the petitioners in WP(C) Nos. 656/2012 & 913/2012 respectively submit that the CBI had filed some applications in the Supreme Court seeking stay of the proceedings in the present petitions and strictly speaking, the aforesaid applications have not been disposed of by the Supreme Court while passing the order dated 3.9.2013 and therefore, this court ought to await a final decision of the Supreme Court on the aforesaid applications.

4. Mr. Vijay Aggarwal, learned counsel appearing for some of the petitioners adds that as the applications filed by the CBI before the Supreme Court praying inter alia for summoning the records of the present petitions for perusal are pending, this court ought to await a conclusive decision on the said applications.

5. In response, learned counsel for the respondent/CBI states that in view of the order dated 3.9.2013 passed by the Supreme Court in a batch of matters in the case of Shahid Balwa(supra), nothing further survives in the applications filed by the CBI and in any event, the CBI is no longer pressing for summoning of the records of the present petitions before the Supreme Court.

6. The court has heard the arguments advanced by learned counsels for the parties and has carefully considered their respective submissions. The three orders passed by the Supreme Court (two in Civil Appeal No. 10600/2010 and one in the case of Shahid Balwa(supra), have been referred to and relied upon by both sides to make their submission as noted above. While passing the order dated 11.4.2011, in the penultimate para, the Supreme Court had observed as below:

We also make it clear that any objection about appointment of 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.

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.

(emphasis added)

7. Thereafter, an order dated 9.11.2012 was passed by the Supreme Court on some applications filed by the CBI praying inter alia for summoning the records of the present petitions and for staying the proceedings in these cases. After considering the averments made in the said applications and taking note of its earlier order dated 11.4.2011, the Supreme Court had issued notices thereon and directed that in the meantime, the proceedings pending before this Court in the present batch of petitions shall remain stayed. Finally, vide judgment dated 3.9.2013 in the case of Shahid Balwa (supra), the Supreme Court had decided the question raised by some of the petitioners herein and some others as to whether the aforesaid orders dated 11.4.2011 and 9.11.2012 are liable to be recalled. After considering the submissions advanced by both sides, the following observations were made by the Supreme Court in respect of the present petitions:-

Para 13. We found, in spite of the order passed by this Court on 11.04.2011 that no Court should entertain any prayer for staying or impeding the progress of the trial, large number of writ petitions were seen filed before the Delhi High Court praying for stay of the trial proceedings on one or the other ground. The CBI noticing that entertaining of those cases would violate the order passed by this Court on 11.04.2011, filed an application before this Court for summoning the records of Writ Petition (Criminal) No. 1587 of 2012, Writ Petition (Criminal) No. 1588 of 2012, Writ Petition (Criminal) No. 913 of 2012, Writ Petition (Criminal) No. 111 of 2012, Writ Petition (Criminal) No. 207 of 2012, Writ Petition (Criminal) No. 1478 of 2012, Writ Petition (Criminal) No. 1751 of 2012, Writ Petition (Criminal) No. 1752 of 2012, Writ Petition (Criminal) No. 1754 of 2012, Writ Petition (Criminal) No. 206 of 2012, Writ Petition (Criminal) No. 159 of 2012, Writ Petition (Criminal) No. 208 of 2012, Criminal M.C. No. 4197 of 2011, Criminal M.C. No. 67 of 2012, Writ Petition (Criminal) No. 129 of 2012, Writ Petition (Criminal) No. 656 of 2012, Criminal M.C. No. 4199 of 2011, Writ Petition (Criminal) No. 467 of 2012 and Criminal M.C. No. 1060 of 2012 pending before the Delhi High Court and also prayed for stay of all the proceedings of these cases.

14. This Court felt entertaining those cases by the Delhi High Court, at this stage, would violate the order passed by this Court on 11.4.2011, passed an order on 09.11.2012 staying those proceedings pending before the Delhi High Court.

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28. We also, therefore, find no basis in the contention of the Petitioners that the orders dated 11.4.2011 and 9.11.2012 have the effect of monitoring the trial proceedings. No Court, other than the Court seized with the trial, has the power to monitor the proceedings pending before it. Order dated 11.4.2011 only facilitates the progress of the trial by ordering that the trial must proceed on a day-to-day basis. Large backlog of cases in the Courts is often an incentive to the litigants to misuse of Court's system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. Criminal justice system's procedure guarantees and elaborateness sometimes give, create openings for abusive, dilatory tactics and confer unfair advantage on better heeled litigants to cause delay to their advantage. Longer the trial, witnesses will be unavailable, memories will fade and evidence will be stale. Taking into consideration all those aspects, this Court felt that it is in the larger public interest that the trial of 2G Scam be not hampered. Further, when larger public interest is involved, it is the bounden duty of all, including the accused persons, who are presumed to be innocent, until proven guilty, to co-operate with the progress of the trial. Early disposal of the trial is also to their advantage, so that their innocence could be proved, rather than remain enmeshed in criminal trial for years and unable to get on with their lives and business.

29. We fail to see how the principle laid down by this Court in A.R. Antulay's case (supra) would apply to the facts of these cases. We have found no error in the orders passed by this Court on 11.04.2011 or on 09.04.2012. Therefore, the question of rectifying any error does not arise. On the other hand, as we have already indicated, the purpose and object of passing those orders was for a larger public interest and for speedy trial, that too on day-to-day basis which has been reflected not only in the various provisions of the PC Act, 1988 but also falls within the realm of judicial accountability.

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31. We, therefore, find no good reason either to frame guidelines to be followed by a constitutional court in relation to monitoring of criminal investigation or any legal infirmity in the orders passed by this Court on 11.04.2011 or 09.04.2012. Writ Petitions lack merits and they are accordingly dismissed, so also IA Nos. 59, 61, 63 and 68 in Civil Appeal No. 10660 of 2010.

8. In view of the express observations made by the Supreme Court in its order dated 11.4.2011 that any prayer for staying or impeding the progress of the trial before the Special Judge, CBI, ought to be made only before it and no other court shall entertain the same and the said trial must proceed on a day-to-day basis, and further, having regard to the categorical observation made in the judgment dated 3.9.2013 holding inter alia that there was no basis for seeking modification and/or recalling of the earlier orders dated 11.4.2011 and 9.11.2012, this court declines to keep the present petitions pending to await any further orders from the Supreme Court as has been suggested by the counsels for the petitioners merely on the technical ground that the applications of the

respondent/CBI have not been disposed of. Instead, it is deemed appropriate to dispose of the present petitions. If the petitioners propose to assail the order on charge or the charge sheet as has been done in the present petitions, it is for them to approach the Supreme Court for appropriate relief.

9. As regards the submission made by the learned counsels for the petitioners that the respondent/CBI has itself sought summoning of the records of the present petitions before the Supreme Court, learned counsel for the CBI has clarified that in view of the judgment of the Supreme Court in Shahid Balwa's case, the stand of the CBI has been vindicated and the earlier orders dated 11.4.2011 and 9.11.2012 passed by the Supreme Court in Civil Appeal No. 10660/2010 have been maintained. When as per the CBI itself, nothing further survives for consideration of the Supreme Court in the applications filed by them, there is no justification for this Court to keep the present petitions pending to await disposal of the said applications. Coming to the last submission made by the counsels for the petitioners that as pleadings having been completed in the present petitions, it would save valuable time if these petitions are forwarded by this court to the Supreme Court for consideration, such a request is turned down. It is not for this court to take upon itself the task of directing the Registry to forward the files of the present petitions to the Supreme Court without any directions received on these lines from the said court. If the petitioners seek transfer of the files of these cases to the Supreme Court, they are always at liberty to make such a request before the said Court. The petitions are disposed of.