(2019) 12 CHH CK 0049

In the Chhattisgarh High Court

Case No : Writ Petition (Cr) No. 75 Of 2017

B.L. Agrawal APPELLANT

Vs

Central Bureau Of Investigation Through And Ors RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 226(1), 226(2)
Indian Penal Code, 1860 — Section 109, 120(B)
Prevention Of Corruption Act, 1988 — Section 2(c), 8, 13(1)(e), 13(2)
Delhi Special Police Establishment (DSPE) Act, 1946 — Section 5, 6
Code Of Criminal Procedure, 1973 — Section 177

Citation : (2019) 12 CHH CK 0049

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : Dr. N.K. Shukla, Saurabh Dangi, Arijit Tiwari, B. Gopa Kumar, Krishna Gopal Yadav, Adil Minhaj

Final Decision : Dismissed

Judgement

Heard.

1. This petition has been brought under Article 226 of Constitution of India praying for quashment of FIR lodged by respondent No.1 for commission of offence punishable under Section 120-B of Indian Penal Code(for short 'IPC') read with Section 8 of the Prevention of Corruption Act, 1988.

2. Brief facts of the case are these, that two cases were registered by CBI against the petitioner in the year 2010. In one case registered by CBI/ACB, Bhilai, charge-sheet has been filed whereas in another case registered by respondent No.3 in Delhi was under investigation. It is alleged that the petitioner approached one Mr. Bhagwan Singh resident of Gautam Buddha Nagar, U.P. seeking to get relief from the cases registered against him. Said Mr. Bhagwan Singh introduced the petitioner to one Syed Burhanuddin @ O.P. Sharma @ O.P. Singh resident of Hyderabad, Telangana, who claimed himself to be a person

from the office of the Prime Minister. Assurance was given by said Mr. Syed Burhanuddin to the petitioner that the matter will be settled in his favor for which he will have to pay illegal gratification Rs.1.5 Crore. It is alleged that petitioner agreed and also paid Rs.1.5 crore in installments to Mr. Syed Burhanuddin for the purpose of getting relief in the cases registered against him. Some payment were made in the account of Mr. Sanjay Tapariya by way of Hawala payment, whereas for the rest of the payment, it is alleged that petitioner proposed that he will make remaining payment in the form of 2kg gold to which Mr. Burhanuddin agreed. On the basis of the informations received, FIR was lodged by CBI, ACU-V/, AC-II, CBI HQ, New Delhi.

3. The main ground urged on behalf of petitioner is this, that the investigation being conducted by CBI, New Delhi is illegal, misconceived and bad in law and the same needs to be quashed. It is submitted by learned Senior counsel appearing for the petitioner, that CBI, New Delhi has no authority to investigate this case because no special consent has been obtained by the respondent/CBI for investigation in the case, as per provision of the Delhi Special Police Establishment Act (for short 'the Act'). Referring to the Notification of Chhattisgarh State dated 19.7.2012 published in State Gazette, it is submitted that by this notification, State Government had made it clear that extension of jurisdiction under the Act shall continue to be given only on the merits of each case that is on case to case basis, therefore, it was the responsibility of CBI to obtain special consent from the State which the CBI has not obtained. Reference has been made to the case of Virbhadra Singh & another vs Central Bureau of Investigation & Ors., reported in 2017 SCC OnLine 7747, Delhi High Court, in which it was clearly held that to make investigation in the area of the concerned State, the consent of the said State shall be essentially required.

4. The FIR lodged in this case is vague and without specifications as in place of informant there is written "source". The specific requirement of Section 8 of Prevention of Corruption Act is this that the illegal gratification has to be accepted by some person as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, is totally absent in FIR lodged, as there is nothing to show as to Mr. Burhanuddin had what kind of connection with any public servant and how he was going to influence such public servant. Therefore, the requirement to show the commission of offence under Section 8 of Prevention of Corruption Act is not at all made out. It is also submitted that FIR itself shows that all incidents and transactions have taken place in Raipur, therefore, CBI, Delhi has no jurisdiction either to lodge FIR or investigate the case.

Reliance has been placed on the judgment in the matter of M. Balakrishna Reddy vs Director, Central Bureau of Investigation, New Delhi reported in (2008) 4 SCC 409. It is submitted that to investigate in such a case the special consent of a State Government is necessary. Also referring to the judgment of Supreme Court in Ms. Mayawati vs Union of India & Ors., reported in (2012) 8 SCC 106 it is submitted that in this particular case, the respondent/CBI has exceeded its jurisdiction in lodging FIR against the petitioner. Therefore, it is prayed that FIR lodged against the petitioner be quashed. Reliance has also been placed on the judgment of Supreme Court in Bhavesh Jayanti Lakhani vs State of Maharashtra & Ors., reported in (2009) 9 SCC 551 & Prakash Singh Badal vs State of Punjab reported in (2007) 1 SCC 1 and it is submitted that Section 8 of P.C. Act is applicable only to private persons. Reliance has also been placed on the judgment of Puran vs State of Haryana, reported in (1997) SCC Online P&H 1197, hence, it is prayed relief be granted.

5. Learned counsel appearing for CBI submits that FIR has been registered in New Delhi, therefore, CBI has inherent jurisdiction to investigate the case. Referring to the judgment passed in WPCR No.791/2018, Anand Agrawal vs Union of India, which was filed before the High Court of Delhi and decided on 8.10.2018, in which the petitioner is one of the accused in this case, it is submitted that the Court has very clearly made observations that offence of criminal conspiracy was committed in New Delhi and therefore, FIR has been registered by CBI in New Delhi. Merely because some of the acts of criminal conspiracy were performed by one of the accused in Raipur for that the CBI has no necessity to seek prior permission of the State Government. Thus, in this case there was no requirement for obtaining any consent from the State Govt. of Chhattisgarh and the consent under Section 6 of Delhi Special Police Establishment Act is not necessary.

6. It is further submitted that the charge-sheet in this case have already been filed before the Court in New Delhi and the Court in New Delhi has taken cognizance of the same. In view of the judgment of Supreme in Anand Agrawal vs Union of India(supra) by Delhi High Court, there had been no reason to file a petition before this Court. Therefore, this petition is not maintainable.

7. In reply, it is submitted by Senior Counsel appearing for the petitioner that there is no evidence to show that the petitioner had participated in some conspiracy. Reliance has been placed on the judgment of Asoke Kumar Chaudhury & Ors. Vs Kunal Saha & another, reported in AIR 2017 SC 618. Reliance has also been placed on the judgment of Division Bench of this Court in Chotelal Nishad vs State of Chhattisgarh in 2017 Cr.L.J. 4561, on this point as to what evidence is necessary to make out offences of conspiracy. Referring to the judgment of Supreme Court in Prakash Singh Badal (supra) it is submitted the prosecution has strict liability to show that the negotiation was made for the purposes of influencing public servant and such public servant has not been identified in this case. According to the requirement under Section 177 of CrPC, nothing has happened in New Delhi, whereas the evidence regarding payments made to Sanjay Tapariya and others are the transactions which have happened in Chhattisgarh. There is no evidence to show that handing over money to Bhagwan Singh took place in New Delhi, therefore, the Court in Delhi has no jurisdiction. It is further submitted that just because co- accused has preferred Writ Petition

before the High Court of New Delhi, this petitioner is not bound by the order of the Delhi High Court. This petition is not affected by that order because he is not a party to that petition. It is also submitted that one SLP was filed by co-accused Anand Agrawal before Supreme Court, which was although dismissed, but the question of law was left open. Therefore the question of law has been raised before this Court. Reliance has been placed on the judgment of Supreme Court in Navinchandra N. Majitha vs State of Maharashtra and others, reported in (2000) 7 SCC 640. It is submitted that "Territories within which cause of action, wholly or in part, arises", the High Court of that State shall have jurisdiction in such case for issuance of writs, therefore, it is prayed that petition be allowed.

8. Heard both the parties and perused the documents on record.

9. The main issue in this case is whether respondent No.1 had jurisdiction in the case registered in New Delhi as FIR No.217/A0004, to investigate in the State of Chhattisgarh, without grant of permission under Section 6 of the Delhi Special Police Establishment Act.

10. Question raised is purely legal according to the facts of case.

11. Interestingly, one Anand Agrawal, co-accused in the instant case, preferred Writ Petition (Criminal) No.791/2018 & Criminal Miscellaneous Appeal No.4962/2018 challenging the jurisdiction of CBI to investigate the case registered as RC No.217/ 2107/ A0004/ CBI/ ACU-V in New Delhi. Both these petitions have been decided and dismissed by a Division Bench of High Court of New Delhi on 8.10.2018. Same question of jurisdiction to investigate the instant case by CBI has been raised in this petition also.

12. Reliance has been placed on the judgment of Supreme Court in Navinchandra N. Majithia v State of Maharashtra & others, reported in (2000) 7 SCC 640.

In this case Supreme Court has held in Paragraphs as under:-

"17. From the provision in clause(2) of Article 226 it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that Court.

18. In legal parlance the expression"cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.

19. In Stroud's Judicial Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. In "Words and Phrases"(4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give

a party a right to judicial interference on his behalf.

21. A Bench of three learned Judges of this Court in the case of Oil and Natural Gas Commission v. Utpal Kumar Basu considered at length the question of territorial jurisdiction under Article 226(2) of the Constitution of India. Some of the relevant observation made in the judgment are extracted hereunder:(SCC pp. 716-17, paras5-6)

"5.Clause(1) of Article 226 begins with a non obstante clause-notwithstanding anything in Article 32-and provides that every High Court shall have power 'throughout the territories in relation to which it exercises jurisdiction', to issue to any person or authority, including in appropriate cases, any Government, 'within those territories' directions, orders or writs, for the enforceable of any of the rights conferred by Part III or for any other purpose. Under clause(2) of Article 226 the High Court may exercise its power conferred by clause(1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it become clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the issue is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. This is at best its case in the writ petition.

13. In the matter of Anand Agrawal's case (supra), a Division Bench of High Court of Delhi has held as under:-

"22.5 Thus, it can be seen that according to the learned Single Judge, unless the charge-sheet was filed, it would not be possible to determine ?what are the materials/evidences collected by the investigating agency that are sought to be relied upon by the prosecution. In case the prosecution relies on any investigation conducted within the area of the State of Himachal Pradesh, only then the petitioner may advance an argument premised on Section 6 of the DSPE Act?. Further, it was held that if such an argument were to be raised after the charge-sheet is filed, it would be for the trial Court to appreciate, in light of the general consent order issued by the Government of India on 24th August 1990 under Section 5 DSPE Act and other provisions of the Cr PC, whether such material could still be relied upon without separate consent from the State Government.

23. In the present case, the charge-sheet has already been filed and there is no doubt that the CBI is indeed relying on what transpired during the investigation

conducted in Raipur as far as the present Petitioner is concerned. However, the Court is not able to view the judgment in Virbhadra Singh (supra) as having considered the possibility of investigations requiring actions to be taken by the CBI in several States although the registration of the case was in one State. While consent of the State Government might be necessary for registration of a case in that particular State, to say that the CBI must seek the prior consent of every State where the investigation is thereafter conducted would make the scheme of Sections 5 and 6 DSPE Act unworkable.

24. A State Government need not consent only because some other State Government has accorded its consent. Therefore, on the logic of the judgment in Virbhadra Singh (supra), if the consent of eight different States had to be taken and the consent is obtained only of five States, that would mean that the investigation conducted in the remaining three States cannot be considered by the CBI and has to be jettisoned from the charge-sheet. The trial Court, on this reasoning would not be able to look into that part of the evidence.

28. The CBI's case is that offence of criminal conspiracy for which the case has been registered was committed not in Chhattisgarh but in New Delhi. That explains why the CBI has registered the case in New Delhi. The Court finds merit in the contention of the CBI that merely because the further acts pursuant to that criminal conspiracy were performed by the co-accused in a place outside Delhi, in this case Raipur, there would be no necessity for the CBI to seek the prior sanction of Respondent No.3 under Section 6 DSPE Act to take further steps to investigate that case in Raipur or other places in Chhattisgarh."

14. As per Article 226 of the Constitution of India and the view expressed by Supreme Court in Navinchandra's case (supra), it may be so that partly the cause of action has arisen in the State of Chhattisgarh as some part of investigation has been conducted by the CBI in Chhattisgarh State. Although this petition has been filed previously on 21.2.2017, whereas WP(Criminal) No. 79/1989 was filed at New Delhi High Court in the year 2018, but the High Court at Delhi has already heard and decided criminal writ petition of co-accused person and that decision too is by a Division Bench. According to the same principle as expressed in Majithia's Case regarding the jurisdiction under Article 226 Constitution of India, the High Court at New Delhi also has jurisdiction to entertain a petition and decide the same on the same logic that the FIR has been registered at New Delhi. It is alleged in the charge-sheet that the conspiracy was hatched up in New Delhi, therefore, the High Court of New Delhi has been the first to exercise jurisdiction and pass an order in the same case with respect to co- accused Anand Agrawal. Under these circumstances, there being a decision of a High Court exercising competent jurisdiction, hence, this Court being a Court of Single Judge cannot take up the said issue in the same case to consider and decide the same. The rule of judicial propriety is applicable in such cases, therefore, under the judicial discipline, it is not proper for this Court to take up for decision an issue which has already been decided by a Division Bench of a

High Court of competent jurisdiction.

15. Submission of the petitioner that co-accused Anand Agrawal has preferred a Special Leave Appeal(Criminal) No.10555/2018, which has been dismissed, however, the question of law was left open by the Supreme Court. No doubt the said question is still open but any such question of law in the present scenario can be decided by the same Court which has earlier exercised jurisdiction under Article 226 of the Constitution of India or by a Superior Court.

16. Another argument raised by the counsel for petitioner is that subsequent to decision in W.P.(Cr.) filed by Anand Agrawal, the circumstance has changed because charge-sheet has been filed, therefore, this Court can entertain the matter and take a decision . Reliance has been placed by the petitioner on the judgment of Supreme Court in Virbhadra Singh (supra) on the point that the previous sanction of the State under Section 6 of the Act is essential and without that the investigation, if any, becomes invalid. In the said judgment the Supreme Court has observed as under:-

" 192. The submission of the petitioners that the income-tax proceedings are still pending and, therefore, the registration of the RC/ FIR is premature also has no merit. The income-tax proceedings are only concerning the tax liability of the concerned assessee. The income-tax authorities are not examining as to whether the income derived by petitioner no.1 during the check period is a result of criminal misconduct under the PC Act. It is not even argued by the petitioners that a perusal of the RC does not disclose the commission of an offence under Section 13(2) read with Section 13(1)(e) of the PC Act and Section 109 IPC. This submission of the petitioners is, therefore, rejected."

17. A distinction is clearly made out between the judgment in Virbhadra Singh(supra) and the instant case. The judgment of Delhi High Court in Anand Agrawal's case(supra) has not been stayed or interfered with by the Supreme Court, therefore it holds ground and can be referred to as a precedent."

18. The Delhi High Court in Anand Agrawal's case (supra) has very clearly held that CBI has registered the case in New Delhi, only because some of the acts of criminal conspiracy were performed by the accused persons outside Delhi i.e. in Raipur, in that case there would be no necessity for CBI to seek prior sanction of State under Section 6 of the Act for the purpose of investigation. Hence, this issue has already been decided and as per the call of judicial discipline and also the principle of res-judicata, there is no need to reconsider it again. Hence, the issue raised by the petitioner on the point of jurisdiction of CBI investigating the case in Chhattisgarh without prior sanction under Section 6 of the Act is answered accordingly.

19. Another ground raised on the petitioner side in the arguments is this that the petitioner cannot be prosecuted for offence under Section 8 of Prevention of Corruption Act, is now examined. Section 8 of PC Act reads as under:-

"8.Taking gratification, in order, by corrupt or illegal means, to influence public servant-Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than 1[three years] but which may extend to 2[seven years] and shall also be liable to fine."

In Babji V State of Andhra Pradesh, reported in (2018) 17 SCC 732 the Supreme Court has held in Para-6 as under:-

"6. In order to constitute an offence under Section 8 of the Act, three things are essential. In the first place there must have been the solicitation or receipt of the gratification. Secondly, such gratification must have been asked for or paid as a motive or reward for inducing a public servant to do an act or do a favour or render some service as stated under Section 8 of the Act. In the present case, the evidence adduced by the prosecution is vague for whom the appellant had demanded the money and whether the person for whom the appellant demanded and received the money is a public servant. Though the receiver of the money, like in the present case may not be a public servant, the prosecution has to establish by convincing evidence that the amount must have been received for inducing a public servant for doing something by that public servant in his official capacity. So far as confirmation of the seat in the Indian Airlines, there may be persons in the middle who may be a public servant or a travel agency or others. In the absence of convincing evidence to show that the appellant had received the money from PW-4,to induce a public servant to get the confirmation of the ticket, the conviction of the appellant under Section 8 of the PC Act cannot be sustained. In the result the appeal is allowed and the appellant is acquitted"

20. As observed in this case by the Supreme Court and as per provisions of Section 8 of the PC Act, it is very clear that a person, who accepts or obtains or agrees to accept or attempts to obtain any illegal gratification, is himself not a public servant. It is only his endeavor or intention to induce by corrupt or illegal means any public servant, is relevant. There is no specific detail in the charge-sheet as to who was the public servant who was to be induced by corrupt or illegal means. Be that as it may, the requirement of proof under Section 8 of PC Act is complete when it is proved that an accused has accepted or obtained or agreed to accept, or attempted to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do

or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service etc. This whole section does not put-forth a requirement that the public servant must also be identified for the purpose of Section 8 of PC Act, it is applicable only to a private person, who is not a public servant. For the reason that other co-accused person namely- Burhanuddin @ O.P. Singh @ O.P. Sharma is the person who has received the illegal gratification as alleged from this petitioner, therefore, the applicability of Section 8 in this case is for the said co- accused person. These petitioners have been charge-sheeted for commission of offence of criminal conspiracy as defined under Section 120B of Indian Penal Code. Therefore, this argument on behalf of the petitioner does not give support in any manner.

21. On behalf of the petitioner, it is also argued that no case of conspiracy is made out against the petitioner according to the material present in the charge-sheet. Reliance has been placed on the judgment of Supreme Court Ashoke Kumar (supra) and Chotelal (supra). The investigation has been completed and charge-sheet has been filed, therefore, now the petitioner has an opportunity to make submission during trial at the stage of framing charge and pray for his discharge. Hence, this procedural opportunity is available to him.

22. Another issue raised by the petitioner regarding his arrest in violation of the direction issued by the Supreme Court in Arnesh Kumar Vs. State of Bihar, reported in (2014) 8 SCC 273 is not pressed.

23. After considering on all the points raised by the petitioner and replied by the respondent side, which have been taken into consideration at length in the discussions made herein above, I do not find any substance in this petition which is dismissed accordingly.

