(2011) 08 DEL CK 0321

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1095 of 2004

Gurucharan Singh APPELLANT

Vs

The Director of CBI and Anrs. RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(3), 200, 202

Citation : (2011) 7 AD 510 : (2011) 185 DLT 576

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ramesh Gupta and Bharat Sharma, for the Appellant; Harish Gulati and A. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a petition, filed by the Petitioner, seeking a direction to the CBI to register an FIR and initiate action on the basis of the complaints purported to have been made by the Petitioner, copies of which are annexed as Annexures P1 to P4 to the petition. It has been further prayed that the Petitioner be given security so that the Petitioner''s life is saved. During the course of the submissions, Mr. Ramesh Gupta, learned senior counsel, appearing on behalf of the Petitioner, prayed that a writ of mandamus be issued to the CBI to register an FIR on the basis of the complaint and initiate an investigation into the matter and bring the guilty to the book.

2. Briefly, stated the facts of the case are that the Petitioner/complainant is alleged to have made a written complaint on 13.01.2004 to the Director, Central Bureau of Investigation, wherein allegations have been made against one Gurcharan Singh of M/S.D.Paul Consumer Benefit Ltd., alleging that he was dealing in Hawala transaction of money, which was being used for the purpose of anti-national activities. In the complaint, several allegations were made against the accused, Gurcharan Singh. It is alleged, in the complaint, that he met the

accused in the year 1997, who was engaged in moneychanger business in the name and style of M/S.D.Paul Consumer Benefits Ltd. and M/S.D.Paul Departmental Stores Ltd. In the year 1998, the accused informed the Petitioner that he wanted to start the business of exporting foreign currency to Dubai. The Petitioner and the accused had gone to Dubai and later the Petitioner sent foreign currency for Hawala purpose to Dubai and Singapore. It is alleged that the Petitioner had given a loan of Rs. 20 Lacs to the accused in the year 1999 but the same had not been repaid to him. It is also alleged that in April, 2000 the accused had asked the Petitioner to work for him in the money changing business. The Petitioner started working for the accused from May, 2000. Sale and purchase memos were exchanged between the firms of the accused and the Petitioner and the cheques were issued to complete the transactions through the bank. It is also alleged that, at the instance of the accused, the Petitioner had delivered foreign currency so generated to Sh. Thakur and Sh. Sunil, well-known Hawala operators of Delhi, collected cash from them, and in turn delivered it to the accused. Such activities continued till October 2000 and within five months there was exchange of foreign currency to the tune of Rs. 60 crores approx. and equivalent foreign exchange was sold in hawala market. The accused had asked the Petitioner neither to inform purchase and sale of currency to RBI nor to reflect it in the Books of Account. It has also been alleged that the accused has been exporting huge foreign currency to Hong Kong, London, Singapore, etc. It is further alleged that the accused gave life threats to the Petitioner and his family.

3. The matter had come up for hearing for the first time on 03.09.2004, when notice was issued to the Respondents and they were directed to file the status report. The CBI has filed three status report on 09.12.2004, 21.08.2006 & 27.01.2010.

4. It has been reflected in the status report that the Petitioner had made a complaint against the accused, Gurcharan Singh of M/S.D.Paul Consumer Benefits Pvt. Ltd., a moneychanger, authorized by Reserve Bank of India, alleging that the accused had done transactions between 1997 to October, 2000 in violation of Foreign Exchange Regulation Act, 1973. The sum and substance of these allegations were that the accused was dealing with illegal sale of foreign currency and Hawala transaction, which was being used for anti-national activities. The matter was investigated by the CBI and it was found that M/S.D. Paul Consumer Benefits Pvt. Ltd. is a full-fledged moneychanger authorized by Reserve Bank of India and transacted sale and purchase of foreign exchange with the firms of the Petitioner and other authorized moneychangers. It seems that during the business dealings between the Petitioner''s firm and the firm of the accused, the Petitioner had a feeling that the accused had deprived the Petitioner of the benefit of approximately 20000 US $ and, accordingly, prayed for an action against him. The investigating authority did not find that any provisions of FERA was violated and, accordingly, the matter was closed by them and prayed for the dismissal of the writ petition. Still not feeling satisfied, the Petitioner has filed the present petition.

5. I have heard Mr. Ramesh Gupta, learned senior counsel for the Petitioner as well as learned Counsel for the Respondent/CBI and gone through the records as well as judgments, which have been cited by the respective sides.

6. Before, I deal with the said judgments, which have been relied upon by the learned senior counsel for the Petitioner, I must candidly say that one thing is very clear that there is No. dispute that the Apex Court in number of judgments, the details of which will be given hereinafter, has categorically stated that so far as the Magistrates are concerned, they do not have the power to direct the investigation to be conducted by the CBI in a given case, however, the Supreme Court under Articles 32 and 136 & High Court under Article 226 can, in certain cases, direct the CBI to conduct investigation into any offence but it has been observed that the Courts must be circumspect in issuing a direction to get the matter investigated by the CBI and shall issue the direction, in this regard, only if the facts of a particular case are of such a national importance or are so gross and having wide ramification that it needs to be investigated by the CBI for doing complete justice. Therefore, in nutshell, it is not disputed that the High Court has the power to refer the matter to the CBI for the purpose of investigating into the matter in a given fact and situation but the question, which would arise for consideration is whether the facts of the present case are such, which warrant the reference of the matter to the CBI for the purpose of investigation. Before dealing with the same, let us see the judgments, in this regard, by the Apex Court.

7. In State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, the Apex Court in para 70 has observed as under:

Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although No. inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

8. In All India Institute of Medical Sciences Employees'' Union (Regd.) through its President Vs. Union of India (UOI) and Others, the Apex Court has observed that it is not open to a Petitioner to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI. The reason for a such a view having been taken by the Apex Court is not far to seek, which is further elucidated in case titled S Sakiri Vasu Vs. State of U.P. and Others, wherein the Apex Court has reiterated the principles of law enunciated in Central Bureau of Investigation Vs. State of Rajasthan and Another, which was reiterated in State of West Bengal''s case (supra), that although the High Court and Supreme Court in exercise of its Constitutional powers has power to order investigation to be conducted by CBI in rare and exceptional cases but such a power to order investigation by the CBI is not conferred on the Magistrate and further this power must be exercised very sparingly and in rare and exceptional cases. The Court, also referred, with approval, to the judgment in case titled Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, wherein Court held that an aggrieved person can only claim that an offence alleged to have been committed may be investigated properly but he has No. right that his offence be investigated by a particular agency. It is, in this context, that the Apex Court in Sakiri Basu''s case (supra) has observed that the High Court ordinarily ought not to issue a direction to the police much less to the CBI for registration of an FIR and investigate into the matter as there is an alternative remedy provided under the Code of Criminal Procedure to seek redressal of the grievance. This alternative remedy is that if at all there is a cognizable offence, committed by an accused the aggrieved party can lodge a report u/s 154 Code of Criminal Procedure with the SHO, who is duty bound to register an FIR and in case he fails to do so the aggrieved party has the option to approach the DCP/SP u/s 154(3) Code of Criminal Procedure and incase the FIR is still not registered the aggrieved party does not become remediless and in as such as he has an option to put the criminal justice machinery into motion by lodging a complaint u/s 200, wherein an inquiry may be held by the Magistrate and then he may proceed under Sections 202 to 204 by either rejecting the complaint on account of lack of prima facie case being made out or issue process against the accused u/s 204 Code of Criminal Procedure Even while holding the inquiry u/s 202 Code of Criminal Procedure, or prior thereto u/s 156(3) Code of Criminal Procedure, the Magistrate has an option to refer the matter to the police for the purpose of investigation at pre-cognizance and post-cognizance stage, in terms of the aforesaid provisions.

9. Therefore, in the light of the aforesaid pronouncements and the broad parameters of law, I feel that the prayer of the Petitioner that a direction be issued to the CBI to register an FIR and investigate into the matter is totally unsustainable in law on account of the fact that essentially the grievance of the Petitioner is personal in nature, because he was having money transactions with the accused. The complaint seems to be actuated only out of the said considerations so that the accused is subjected to inquiry by the CBI so that it

hampers his business activities, while as prima facie the CBI has found nothing amiss. Therefore, it is not a rare or an exceptional circumstance, which will make the present Court to issue a direction to the CBI to register an FIR and then investigate on the spacious and alleged ground raised by the Petitioner that the accused, Gurcharan Singh of M/S.D.Paul Consumer Benefits Pvt. Ltd. is indulging in Hawala transaction and anti-national activities. Moreover by directing the CBI to investigate into the matter, this Court will be doing the same, what has not been approved by the Apex Court in AIIMS Employees Union'' case (supra), namely, permitting a party to select its own investigating agency is concerned.

10. I accordingly, dismiss the present petition as being without any merit. However, if the Petitioner still feels aggrieved on account of the alleged illegal action which he terms as an offence, it shall be open to the Petitioner to file an appropriate complaint before the learned Magistrate and make out a prima facie case so as to proceed against them.

11. With these observations, the writ petition is dismissed.

