

(2015) 04 SIK CK 0009
In the Sikkim High Court
Case No : Criminal M.C. No. 12 of 2014

Ramayan Singh Meena

APPELLANT

Vs

Central Bureau of Investigation, Special Crime Branch

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 04 SIK CK 0009

Hon'ble Judges : Sonam Phintso Wangdi, J

Bench : Single Bench

Advocate : Sudesh Joshi and Sisir Mothey, for the Appellant; Ashraf Ali, Advocates for the Respondent

Judgement

Sonam Phintso Wangdi, J.—This is to consider an application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), filed by the Petitioner seeking to quash (i) FIR No. RC.1/532006-Kol. dated 25-10-2006, Annexure-4 (collectively) filed against the Petitioner and others by the Central Bureau of Investigation (for short the "CBI"); (ii) CBI, Special Crime Branch, Kolkata Case No. RC-1/S/06-Kol dated 26-10-2006 under Sections 120B, 420, 468 and 471 of the Indian Penal Code (for short "IPC") and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short the "P.C. Act"); (iii) order dated 09-10-2009 allowing withdrawal of the closure report passed by the Learned Special Judge, Prevention of Corruption Act, East and North Sikkim at Gangtok in CrI. Misc. Case No. 38 of 2009, Annexure-11 (collectively); and (iv) Sessions Trial (CBI) Case No. 1 of 2012 in the matter of State of Sikkim vs. Dr. Pratap Makhija and Others pending before the Learned Special Judge, Prevention of Corruption Act, East and North Sikkim at Gangtok, Annexure-12 (collectively).

2(i). It is stated that the Petitioner had sat for an interview for the post of General Duty Assistant in Regional Research Institute (Ayurveda), Tadong,

Sikkim, under Central Council for Research in Ayurveda and Siddha, an autonomous Organisation under the Ministry of Health and Family Welfare, Government of India, and was selected thereby and, consequently joined his duty as General Duty Assistant at Regional Research Institute (Ayurveda), Tadong, Gangtok, Sikkim.

(ii) In WP(C) No. 22 of 2006 filed by one Hishey Sherpa challenging the appointment of the Petitioner and others, a Division Bench of this Court by order dated 09-06-2006 in CMA No. 72 of 2006 arising out of the said Writ Petition, directed enquiry by the CBI as regards the recruitment process, particularly against the Officer-in-Charge, Regional Research Institute (Ayurveda), Tadong, Gangtok, Sikkim and one Dr. P. Makhija, Chairman of the Selection Committee, Respondents No. 4 and 6 respectively in the said Writ Petition.

(iii) Since the case of the Petitioner rests on the two orders of the Hon'ble Supreme Court dated 31-01-2007 and 25-01-2008 in Special Leave Petition (Civil) No. 2301 of 2007, it would be convenient to reproduce them below in seriatim:-

Order dated 31-01-2007

"SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal Civil) 2301/2007

(From the judgement and order dated 09/06/2006 in CMA No. 72/2006 and order dated 15/12/2006 in WP No. 22/2006 of The HIGH COURT OF SIKKIM)

RAMAYAN SINGH MEENA Petitioner (s)

VERSUS

HISHEY SHERPA and ORS. Respondent (s)

.....
Date: 31/01/2007 This Petition was called on for hearing today.

.....
ORDER

Delay condoned.

Issue Notice.

It shall be indicated in the notice that the matter may be remitted to the High Court for a fresh disposal after grant of opportunity to the opposite parties in the writ petition before the High Court to file their response.

The CBI inquiry, as directed, shall not be continued.

....."

Order dated 25-01-2008

"IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 684 OF 2008 (Arising out of S.L.P.(C.) No. 2301 of 2007)

Ramayan Singh Meena...Appellant

Versus

Hishey Sherpa and Ors....Respondents

ORDER

Heard learned counsel for the parties.

Leave granted.

In terms of the order dated 31.01.2007 passed by this Court, we set aside the impugned order of the High Court and remit the matter to the High Court for a fresh disposal in accordance with law. So far as the CBI enquiry is concerned, learned counsel for respondent stated that the enquiry was directed in respect of respondent Nos. 4 and 6 before the High Court. It is his stand that the CBI enquiry was, in fact, not directed against the private respondent No. 5--Ramayan Singh Meena, who is the present appellant before us. The appellant shall be permitted to submit his stand in the matter before the High Court which, needless to say, shall be considered along with the stand taken by the other parties in the proceedings before the High Court.

As the matter relates to appointment, it would be appropriate if the High Court disposes of the writ petition as expeditiously as practicable, preferably by the end of July, 2008. However, we make it clear that we have not expressed any opinion about some criminal proceedings which are stated to have been initiated.

The appeal is, accordingly, disposed of.

.....

New Delhi, January 25, 2008."

(iv) The foundation of the case of the Petitioner in seeking to quash the proceedings aforesaid is that the order of this Court dated 09-06-2006 was set aside in appeal before the Hon"ble Supreme Court in Civil Appeal No. 684 of 2008 arising out of S.L.P.(C) No. 2301 of 2007 preferred by the very Petitioner in this case challenging the said order of this Court. It is submitted that by an interlocutory order dated 31-01-2007 passed by the Hon"ble Supreme Court in CC No. 118/2007 arising out of S.L.P.(C) No. 2301 of 2007, it had, inter alia, been stated that the CBI enquiry directed to be instituted by this Court shall not be continued, which as per the Petitioner, stood confirmed in the final order of the Hon"ble Supreme Court dated 25-01-2008 in Civil Appeal No. 684 of 2008

arising out of S.L.P.(C) No. 2301 of 2007 whereby the impugned order of the High Court was set aside and the matter remitted to it for a fresh disposal in accordance with law.

(v) It is the case of the Petitioner that since the final order of the Hon''ble Supreme Court dated 25-01-2008 in Civil Appeal No. 684 of 2008 was passed in terms of the order dated 31-01-2007 in CC No. 118/2007 which had directed discontinuation of the CBI enquiry, by implication the CBI enquiry also stood confirmed by virtue of the merger of the said interim order therewith.

(vi) The argument does not appear to be correct. On a bare perusal of the order dated 25-01-2008, it would appear that although the order of the High Court had been set aside remitting it for a fresh disposal, but from the penultimate paragraph of the order it is quite clear that the Hon''ble Supreme Court had not expressed any opinion on the criminal proceedings said to have been initiated. It may be relevant to note that the order pertains to two aspects, i.e., (i) the illegality in the recruitment process and, (ii) the CBI enquiry directed by this Court in CMA No. 72 of 2006 arising out of WP(C) No. 22 of 2006 by its order dated 09-06-2006. The penultimate paragraph of the order dated 25-01-2008 passed by the Hon''ble Supreme Court which clarifies this is reproduced again below:-

"As the matter relates to appointment, it would be appropriate if the High Court disposes of the writ petition as expeditiously as practicable, preferably by the end of July, 2008. However, we make it clear that we have not expressed any opinion about some criminal proceedings which are stated to have been initiated."

[underlining mine]

(vii) As would appear from the above, the aspect pertaining to the appointment, i.e., the recruitment process, was directed to be disposed of as expeditiously as possible but, the other aspect, as regards the criminal proceedings, no opinion had been expressed thereby undoubtedly implying that it was left open for the CBI to consider as to whether or not it should continue with the investigation.

(viii) Reliance placed on Bileshwar Khan Udyog Khedut Shahakari Mandali Limited etc. AIR 1999 1198 (SC) on behalf of the Petitioner appears to be misplaced as it was rendered on the facts obtaining in that case which are quite different from the present case.

(ix) A feeble argument was placed by Mr. Sudesh Joshi, Learned Counsel for the Petitioner, on the jurisdiction of this Court in WP(C) No. 22 of 2006 in directing CBI to enquire. Relying upon State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., AIR 2012 SC 364 : (2012) CriLJ 1001 : (2012) 1 Crimes 44 : (2011) 14 JT 213 : (2012) 1 RCR(Criminal) 126 : (2011) 3 SCALE 394 : (2012) AIRSCW 207 : (2011) 8 Supreme 577 , it was submitted that before directing to investigate, the Court must reach a conclusion on the basis of the pleadings and material on record that a prima facie case is made out against the accused and

that it was not permissible for the Court to direct CBI to investigate as to whether a person has committed an offence as alleged or not. The argument does not appear to be sound as the finding in paragraph 71 of the decision in that case was also based upon the facts and circumstances in that case. In any case, this Court is not sitting on Appeal over the order of this Court dated 09-06-2006 in WP(C) No. 22 of 2006 by which such direction was issued. Moreover, WP(C) No. 22 of 2006 had travelled to the Hon"ble Supreme Court and had returned back to this Court on remission which thereafter had finally disposed it off by order dated 12-03-2008. It is now too late in the day to question the legality of an order which has now assumes finality. The contention thus stands rejected.

3(i). In view of the above, the plea as regards the impermissibility of withdrawal of the closure report filed by the CBI earlier, would have no consequence. In any case, the Learned Special Judge, P.C. Act, East and North Sikkim, by its order dated 09-10-2009 had permitted the closure report to be withdrawn as not pressed. The CBI having thus proceeded, no grievance can be made of it.

(ii) Even WP(C) No. 22 of 2006 had been disposed of on remission, by this Court vide order dated 12-03-2008 on the finding that it had been rendered infructuous as the selection of the accused persons, which was the subject-matter of the Writ Petition, had stood cancelled. Nothing has been found to have been expressed on the criminal proceedings and, it appears rightly so as the Hon"ble Supreme Court also had not expressed any opinion on that aspect.

4. For the aforesaid reasons, I find no scope for this Court permissible in law to exercise its powers under Section 482 Cr.P.C. and grant the reliefs as sought for by the Petitioner.

5. In the result, the Crl.M.C. is dismissed.

6. However, before parting, it is felt appropriate to direct the Learned Special Judge, Prevention of Corruption Act, East and North Sikkim at Gangtok, to dispose of the Sessions Trial (CBI) Case No. 1 of 2012 expeditiously as practicable, preferably by the end of August, 2015. The Learned Special Judge shall ensure that the case is taken up on a day-to-day basis.

7. No order as to costs.

8. Let a copy of this order along with the original records of the case be transmitted to the Court of the Learned Special Judge, Prevention of Corruption Act, 1988, East and North Sikkim at Gangtok, forthwith for its due compliance.