

**(2017) 09 DEL CK 0074**

**In the Delhi High Court**

**Case No :** Criminal Writ Petition No. 1490 Of 2011

S P Saxena

APPELLANT

Vs

CBI

RESPONDENT

**Date of Decision :** 27-09-2017

**Acts Referred:**

Constitution Of India, 1950 — Article 226, 227  
Code Of Criminal Procedure, 1973 — Section 482  
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471  
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

**Citation :** (2017) 09 DEL CK 0074

**Hon'ble Judges :** Vinod Goel, J

**Bench :** Single Bench

**Advocate :** S.P. Mehta, Sanjeev Bhandari

**Final Decision :** Dismissed

## Judgement

Vinod Goel, J

1. The petitioner has invoked the writ jurisdiction of this court under Article 226/227 of the Constitution of India read with Section 482 of the Code of

Criminal Procedure, 1973 (in short "Cr.PC") seeking quashment of the order dated 06.08.2010 passed by learned Special Judge, CBI in CC No.

10/2008 vide RC No. 6(S)/2006/CBI/SCR-III while dismissing the application dated 27.11.2009 of the petitioner, inter-alia, praying that the

proceedings in the case are not sustainable.

2. It is submitted by the learned counsel for the petitioner that a Division Bench of this court in W.P. No. 10066/2004 in the order dated 21.03.2006

granted six weeks time to CBI to investigate the matter in terms of its earlier order in relation to 102 co-operative group housing societies. He

submitted that one such Co-operative Group Housing Society namely Chinar Co-operative Group Housing Society Limited (in short Chinar CGHC

Limited) assailed the said order of the Division Bench dated 21.03.2006 by SLP (C) No. 7637/2006 and vide order dated 04.08.2006, the

Honorable Supreme Court has directed that there shall not be any arrest or registration of criminal cases without the leave of the High Court.

3. He submitted that in violation of the order of the Apex Court, the respondent lodged an FIR No. RC-6(S)/2006/CBI/SCR-III/ND on 21.09.2006

under Section 120B read with Section 420/467/468/471 of IPC and 13 (1) (d) and 13(2) of the Prevention of Corruption Act, 1988 against the

petitioner and others without seeking the leave of this court. He submitted that in further violation of order of the Apex Court a charge-sheet was also

filed by the respondent on 19.08.2008. The petitioner brought this fact to the notice of learned Special Judge, CBI by filing an application on

27.11.2009, which was dismissed by the learned Special Judge, CBI on 06.08.2010. He submitted that since no permission of this court has been

obtained by the CBI/respondent to register the case against the petitioner in terms of the order of the Apex Court dated 04.08.2006, the proceedings

filed before the learned Special Judge, CBI by way of charge sheet stands vitiated. He submitted that the order dated 06.08.2010 passed by the

learned Special Judge, CBI and the charge sheet filed on 19.08.2008 emanating from the FIR No. RC-6(S)/2006/CBI/SCR-III be quashed.

4. Per contra, learned Special PP for CBI submitted that by initiating such proceedings the petitioner is trying to mislead this court. The impugned FIR

No. RC-6(S)/2006/CBI/SCR-III registered against the petitioner is not in connection with the affairs of M/s. Chinar CGHC Limited, a petitioner

before the Apex Court in SLP (C) No. 7637/2006. He submitted that order of the Apex Court dated 04.08.2006 of the Apex Court in the said SLP

has nothing to do with the petitioner or the FIR in question bearing No. RC-6(S)/2006/CBI/SCR-III.

5. I have heard the learned counsel for the petitioner and the Special Public Prosecutor for CBI and perused the record. I have given my thoughtful

consideration to the rival contentions of the parties.

6. For the disposal of this petition, it would be pertinent to refer the order of the Honorable Supreme Court dated 04.08.2006, which reads as under: -

â??ORDER

Heard both sides.

This Special Leave Petition has been against an interim order. The matter is concerning with a co-operative Group Housing Society. Counsel for the

petitioner submits that already the flats are ready but in view of the pending enquiry the society is not able to allot the houses. Counsel for the C.B.I.

submits that the enquiry is continuing and it has not become final and the counsel for the Registrar, Co-operative Societies submits that they also

suspect something about the same.

In our opinion, it is for the High Court to take a final decision in the matter. In the meanwhile, there shall not be any arrest or registration of criminal

cases without the leave of the High Court. The High Court may take an early decision as the flats are lying vacant. We request the High Court to take

an early decision at least within a period of two months, in view of the above direction.

The special leave petition is disposed of accordingly.â??

7. A bare perusal of the order of the Apex Court shows that the matter before it was pertaining to and concerning the affairs of a particular group

housing society i.e. M/s. Chinar CGHS Limited. With regard to the affairs of this particular co-operative group housing society, it was pointed out that

flats were ready but in view of the pending enquiry the society was not able to allot the houses and learned counsel for the Registrar, Co-operative

societies also suspected something about the same. After hearing the parties, the Honâ??ble Supreme Court has observed that it is for the High

Court to take a final decision in the matter i.e. the matter pertaining to M/s. Chinar CGHS limited and that is why the Honâ??ble Supreme Court has

further directed that there shall not be any arrest or registration of criminal cases without the leave of the High Court and it was observed that this

court may take an early decision as the flats were lying vacant.

8. It is also noticeable that the order of learned Special Judge, CBI dated 06.08.2010 was assailed by the petitioner before the Apex Court by way of

SLP (Crl.) No. 8670-8671/2011. However, on 12.09.2011, the Honâ??ble Supreme Court dismissed the petition as withdrawn with liberty to seek

appropriate relief from the High Court in accordance with law.

9. Therefore, when the impugned FIR and consequent charge-sheet filed before the learned Special Judge, CBI has nothing to do with M/s. Chinar

CGHS Limited, there was no occasion for the CBI to obtain the leave of this court before registering the criminal case against the petitioner. As such

there is no merit found in the petition.

10. The petition is dismissed accordingly.