

(2002) 04 DEL CK 0061

In the Delhi High Court

Case No : Criminal Writ Petition No. 938 of 2001

Shri Ashok Kumar Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Citation : (2002) 4 AD 884 : (2002) CriLJ 4222

Hon'ble Judges : Vinod Sagar Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : R.K. Anand, Surender Miglani and Aman Vachhar, for the Appellant;
Gopal Subramaniam and Daya Krishan, for CBI, for the Respondent

Judgement

Khan, J.—Petitioner is facing two cases RCS18 and RCS19 which are under investigation by CBI. All he wants in this petition is that investigation of these cases be taken away from respondents 3 to 5 and handed over to some high ranking CBI officer.

2. Petitioner was on deputation holding the post of Deputy Director in the Enforcement Directorate at the relevant time. He claims that he was handling the investigation of a number of sensitive cases of influential individuals including politicians, etc. and that his Director that time one Mr. Bez Boruah was making all out efforts to scuttle the investigation in those cases. He made representations against him to Revenue Secretary and meanwhile a raid was conducted under his supervision on the residence of one Subhash Barjatya resulting in seizure of some incriminating documents and disclosing the transaction of US\$ 1.50 lacs and involving one Abhishek Verma also. Accused Barjatya made a complaint against him to Director Bez Boruah alleging that an FAX was planted at his place during search. Thereafter his Director Bez Boruah tried to influence him to do away with some of the FERA cases but on his refusal to do so, he forwarded a complaint of Barjatya made by him in January 1998 for CBI enquiry in which CVC ordered it without obtaining comments from his Revenue Department. He was transferred out from the Enforcement Directorate

and put on compulsory wait and was later arrested and repatriated.

3. Petitioner's primary grievance is that respondents 3 to 5 were conducting the investigation against him unfairly and improperly and were transgressing all limits to abuse the investigative powers. They were allegedly indulging in forging documents against him to implicate him in false cases and were exercising the investigative power in a malafide manner in support whereof he has given a number of instances. All this, according to him, had shaken his confidence given rise to a reasonable apprehension that he would not get a fair deal from these officers of CBI.

4. R3 to 5 have all filed their counter affidavits denying the allegations. According to them, petitioner was filing one petition after the order by way of pressure tactics to pressurise the investigating agency and to impede the investigation. They have explained the organisational set up of CBI to show that a complaint was registered after due approval of the competent authorities and that a secret verification or an open enquiry was ordered at the level of Director, more particularly in the case of IAS and class-I officers and that there was a supervisory hierarchy making independent critical assessment of the investigating process at every stage. It is asserted by them that the investigation in two RCSs was being conducted fairly and according to law and that the petition was only an abuse of process of court.

5. By court order dated 4.4.2002, competent authority of CBI was directed to file an affidavit to show the investigation status in two RCSs. In response, two affidavits have been filed on behalf of R-2 disclosing that Director, CBI had passed appropriate orders in RCS 18/99 and had forwarded the matter to Revenue Secretary and other concerned authorities for requisite orders/action. In the other case, RCS-19, however, the Joint Director was presently seized of the matter and it was yet to be submitted to Director, CBI for necessary investigation.

6. In view of this position, both sides agree to the disposal of this petition by the following order:-

"Revenue Secretary and/or other concerned authorities who are seized of RCS 18/99 are directed to examine and consider the record of investigation fairly and objectively taking in regard all relevant factors and circumstances and then pass appropriate orders under law within two months from receipt of this order.

Director, CBI is also directed to examine the investigation record of RCS 19/99 and to consider all relevant aspects and factors in the light of petitioner's complaints and then to pass appropriate orders under law in the matter within two months from receipt of this order."