

Ramesh Sanka vs Central Bureau Of Investigation & Ors on 23 September, 2024

Author: Dinesh Kumar Sharma

Bench: Dinesh Kumar Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 2718/2024, CRL.M.A. 28654/2024
RAMESH SANKA

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CENTRAL BUREAU OF INVESTIGATION & ORS.

Through: Mr. Anupam S. Sharr
Mr. Prakarsh Airan
Kalsi, Mr. Abhishe
Ripudaman Sharma,
Rao, Mr. Syamantak
for CBI
Mr. Amit Tiwari, C
Bhaskar, Mr. Ayush
Advs. for R-2
Ms. Amita Singh, M
Advs. for R-3
Mr. Ravi Praskash,
Khan, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA
OR

% 23.09.2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present petition has been filed under Article 226 of the Constitution of India r/w Section 528 BNSS on behalf of the petitioner for issuance of appropriate writ, order or direction in the nature of Mandamus thereby directing the respondent Nos. 1 to 5 to perform its statutory duties as per law of the land in reference to the documents provided in the present writ petition or any other writ, order of direction to the respondent to initiate inquiry against the alleged offender involved in tax evasion.

4. The petitioner has made several allegations against a real-estate company regarding Income Tax evasions, VAT evasions, encroachment on Government Lands, and corruption. The allegations made in the writ petition are too wide and general in nature. It is also pertinent to mention that many of such alleged irregularity/illegality have been beyond the jurisdiction of this Court. The petitioner has also chosen to not to implead the alleged wrongdoer and has alleged that the respondents have not taken action and they may be directed to initiate proceedings as per law.

5. With the petition, the petitioner has filed several documents which seem to be mere printouts and have not been authenticated nor are they certified or true copies.

6. Before proceeding further it is pertinent to mention here that when the petition was taken up on the last date of hearing certain learned counsels appeared for private respondents and submitted that they have been served with the petition impleading them as respondents. However, in the present writ petition no private party has been impleaded. In this regard, the petitioner has filed an affidavit dated This is a digitally signed order.

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7. The petitioner submitted that therefore the writ petition was re-filed on 23.08.2024. In the re-filed petition the private respondents were not impleaded.

8. Sh. Ashwani Mata, learned senior counsel for the petitioner submitted that the present petition does not fall within the category of PIL as prescribed under the "Delhi High Court Public Interest Litigation Rules, 2010".

9. Learned senior counsel further submitted that it is a case where the big companies have indulged themselves in filing false tax returns. Learned senior counsel submitted that though there are certain allegations which pertains to the jurisdiction beyond the jurisdiction of this Court. However, the Court may certainly proceed in regard to the illegal activities allegedly having been committed within the jurisdiction of this Court.

10. Learned senior counsel has fairly submitted that before filing of the writ petition before this Court no private complaint was filed before any Court/authorities. It has also been submitted that

no complaint has also been filed with the department against whom the present petition has been filed. Learned senior counsel submitted that the present complaint discloses serious fraud having been committed upon the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:10 public exchequer and, therefore, immediate intervention of this Court is required. Learned senior counsel submitted that the petitioner being the citizen of this country has a right to knock the doors of this Court as there is abuse and misuse of the public exchequer. Learned senior counsel submitted that the respondents have failed to take any action. Learned senior counsel has relied upon S.P. Gupta vs. Union of India and Anr. 1981 Supp SCC 87, A.R. Antulay vs. RS Nayak and Anr (1988) 2 SCC 602 and Lok Prahari vs. State of U.P. and Ors. (2016) 8 SCC 389. Sh. Ashwani Mata, learned senior counsel submitted that there has been no concealment. Learned senior counsel candidly admitted that there may be pre-mature filing of the present petition.

11. Sh. Anupam S. Sharma, learned Special PP for CBI on advance notice submitted that the present petition is an abuse of the process of law. Learned counsel submitted that the petitioner was a senior employee of the alleged Company and is trying to settle his score by virtue of the present petition. Learned special counsel submitted that mostly, the prayers in the petition does not fall within the territorial jurisdiction of this Court. Sh. Anupam S. Sharma, learned Special PP further submitted that the allegations are absolutely vague in nature. Learned counsel submitted that the petitioner cannot be stated to be an aggrieved person. Learned counsel submitted that no complaint has been received from the petitioner in the CBI and therefore the writ petition filed without any such complaint is pre-mature and is liable to be dismissed.

12. Sh. Ravi Prakash, learned CGSC for the ED submitted that the averments made in the petition do not disclose any predicate offence, This is a digitally signed order.

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13. Mr. Amit Tiwari, learned CGSC appearing on behalf of SFIO and Ms. Amita Singh, learned counsel for SEBI have also submitted that no complaint was filed with the department before invoking the jurisdiction of this Court. Learned counsel therefore, submitted that petition is liable to be dismissed outrightly.

14. Article 226 of the Constitution of India confers power on the Court to issue to any person or authority including in appropriate cases any writ for the enforcement of any of the rights conferred by Part-III or for any other purpose. Though the discretion conferred under Article 226 of the Constitution of India are very wide in nature but it has to be exercised in circumspect manner. There has to be some right vested in the person invoking the jurisdiction of the Court. In absence of any right being infringed, prejudiced or adversary affected, the Court would be slow in invoking such jurisdiction.

15. It is also a settled proposition that in order to invoke the jurisdiction under Article 226 of the Constitution of India, the petitioner should ordinarily be a person who has a personal or individual right in the subject matter except in the writ petition in the nature of Habeas Corpus or Quo Warranto.

16. In *Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors.* AIR 1976 SC 578 it was *inter alia* held that-

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:10 some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter, (see *State of Orissa v. Madan Gopal Rungtas*; *Calcutta Gas Co. v. State of W.B.* 26; *Ram Umeshwari Suthoo v. 25. Member, Board of Revenue, Orissa*27; *Gadde Venkateswara Rao v.*

*Government of A.P.*28; *State of Orissa v. Rajasaheb Chandanmall*; *Satyanarayana Sinha Dr v. S. Lal & Co.*30).

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self- devised rules of practice,

such as the availability of an alternative remedy, the conduct of the petitioner etc. can go This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:10 a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money."

17. Furthermore, similar view was taken in *Shirpal Bhati & Anr. vs. State of U.P. & Ors.* (2020) 12 SCC 87 and *K. Kumara Gupta vs. Sri Markendaya and Sri Omkareswara Swamy Temple & Ors* (2022) 5 SCC 710 whereby it was inter alia held that the petitioner must have a personal or individual right in the subject matter. However, a stranger can also invoke the jurisdiction of the Court, but he should have a substantial and genuine interest. It is a settled proposition that the individuals who interfere in the matter that do not concern them under the disguise of acting in public interest should be discouraged. The Court must verify the credentials of such litigants. The Court has to be cautious of such litigants, who under the guise and pretend of "Whistle Blower" may only be arm-twisting the private individuals or statutory bodies. The Court has also to be extra cautious because such mischievous and unscrupulous litigants may be abusing the process of the Court to settle their private scores. Such litigants try to take the benefit of huge backlog. In fact such bad case kill the good cases.

18. It is a settled proposition that if the petitioner has genuine reason to pursue the matter, and he has any equally efficacious remedies available. It would not be proper for this Court to entertain the petition which is based on mere unsubstantiated allegation and in particular coming through the person who does not seem to have come with clean hands. It is relevant to note that the petitioner in the entire writ petition has not disclosed that he was an employee of the real estate company This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:10 and had been advising them. Mischievously, only in the list of dates the petitioner stated that he joined the private respondents and has been part of the top management for around 10 years. It is also relevant to note that in the writ petition the petitioner stated that the documents filed along with the petition are either obtained from public domain or through proper official channels only. However, the perusal of the annexures filed along with the writ petition reveals that none of the document is authenticated or a verified document. The documents are either the photocopies, emails or the photocopies of some communication written to the Government authorities. The petitioner in the writ petition has alleged that the real estate company has committed certain irregularities which fall within the ambit of tax evasion and corruption. Such kind of offences are very serious in nature and are to be probed by the investigating agencies with all discreetness and responsibility. It is a matter of record that the petitioner has not filed any complaint with the department. The petitioner as being stated above, only obliquely referred in the list of dates that he was an employee of such company. Therefore, people whose credentials are not verified cannot be

given the opportunity to meddle into such affairs.

19. In *Kunga Nima Lepcha and Other vs State of Sikkim and Others* (2010) 4 SCC 513 wherein it was inter alia held as under:

"15. Furthermore, we must emphasise the fact that the alleged acts can easily come within the ambit of statutory offences such as those of "possession of assets disproportionate to known sources of income" as well as "criminal misconduct" under the Prevention of Corruption Act, 1988. The onus of launching an investigation into such matters is clearly on the investigating agencies such as the This is a digitally signed order.

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16. While it is true that in the past, the Supreme Court of India as well as the various High Courts have indeed granted remedies relating to investigations in criminal cases, we must make a careful note of the petitioners' prayer in the present case. In the past, writ jurisdiction has been used to monitor the progress of ongoing investigations or to transfer ongoing investigations from one investigating agency to another. Such directions have been given when a specific violation of fundamental rights is shown, which could be the consequence of apathy or partiality on the part of investigating agencies among other reasons. In some cases, judicial intervention by way of writ jurisdiction is warranted on account of obstructions to the investigation process such as material threats to witnesses, the destruction of evidence or undue pressure from powerful interests. In all of these circumstances, the writ court can only play a corrective role to ensure that the integrity of the investigation is not compromised. However, it is not viable for a writ court to order the initiation of an investigation. That function clearly lies in the domain of the executive and it is up to the investigating agencies themselves to decide whether the material produced before them provides a sufficient basis to launch an investigation.

17. It must also be borne in mind that there are provisions in the Code of Criminal Procedure which empower the courts of first instance to exercise a certain degree of control over ongoing investigations. The scope for intervention by the trial court is hence controlled by statutory provisions and it is not advisable for the writ courts to interfere with criminal investigations in the absence of specific standards for the same.

18. Hence it is our conclusion that the petitioners' prayer This is a digitally signed order.

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20. It is a matter of record that the petitioner in this case has not approached the jurisdictional Court or the respondent department and has approached this Court directly by invoking the writ jurisdiction. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere. In *Sakiri Vasu v. State of Uttar Pradesh and Ors.* (2008) 2 SCC 409 the Supreme Court inter alia held that such practice of directly filing a writ ought not to be encouraged when an alternate remedy is available.

21. It is also relevant to note here that the allegations made in the present petition are all disputed questions of facts which cannot be examined in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:10 the writ jurisdiction. Recently, this court in *Eliamma Sebastian vs. Delhi Development Authority & Others* 2024 SCC OnLine Del 3112 inter alia held that the principles of law governing entertaining of a writ petition under Article 226 of the Constitution are well settled and have been succinctly enunciated by the Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh* wherein para 27 reads as under:

"27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate

remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under This is a digitally signed order.

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27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

30. During the course of submissions the attention of the Court was invited to the order of the Hon'ble Supreme Court passed on 04.03.2024 in Civil Appeal No. 1140 of 2023 titled as Gurinder Singh vs. Union Of India & Ors. wherein the question mark was put upon the credibility of the petitioner. Learned senior counsel for the petitioner submitted that in that case the credentials of petitioner Gurinder Singh was doubtful and the Supreme Court had imposed the cost upon Gurinder Singh. This Court has perused the order passed by the Hon'ble Supreme Court in Gurinder Singh (Supra), in that case Gurinder Singh had filed the subject appeal in which an application was moved for withdrawal of the same. During the proceedings appellant Gurinder Singh stated that the present appeal was filed at the instance of one Vivek Sehgal and Ramesh Sanka i.e., the present petitioner and they had misled him for their illegal monetary gain, to file several cases against the private respondents. The appellant also alleged that the said two persons are extortionists and blackmailers and with the intention to extort huge money from the respondent company had allured the appellant to file cases against the private respondents. In these circumstances, the Apex Court noted that having regard to the contents of the application, it This is a digitally signed order.

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31. In view of these proceedings it cannot be said that the credentials of the present petitioner were clear. Furthermore, this Court has noted that the petitioner was an employee of the company against which serious allegations have been made. However, neither in the writ petition nor in the affidavits this fact was disclosed. The petitioner only disclosed this fact obliquely in the list of dates. This is a serious concealment on the part of the petitioner and amounts bordering to playing fraud with the Court.

32. It is relevant to note that the judgments cited by learned senior counsel for the petitioner, Lok Prahari (Supra), S.P. Gupta (Supra) and AR Antulay (Supra) are respectfully distinguishable on the facts and circumstances of the case. It is pertinent to mention here that if the petitioner has actual, genuine interest to pursue the matter, which on the fact of it does not seem to be, he always has remedies available under the law and he could very well apprise the relevant authorities of any such wrong doings. The petitioner in the present case has made generalised averments which seem to be wild allegations at this stage. The forum of the Court cannot be misused to initiate the investigation. The Court is conscious of the fact that initiation of investigation is a serious act and has serious consequences. The alleged acts falls within the ambit of statutory offences and the departments have sufficient power to investigate such offence. The initiation of investigation falls This is a digitally signed order.

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33. The jurisdiction of the High Court cannot be misused on mere unsubstantiated allegations. The Court has to be cautious that the writ jurisdiction should not be misused and abused by the unscrupulous litigants. Such jurisdiction cannot be allowed to be used for personal gain or any oblique consideration. The Court is required to filter out the frivolous petitions and ought to dismiss them with cost so that the message goes loud and clear that the petitions filed with oblique motive do not have approval of the Courts.

34. In view of the huge pendency, the Court cannot allow any unscrupulous person to waste, the precious time of the Courts and public money in order to get his private affairs settled in the matter. The jurisdiction can be used only when there is involvement of public interest or there are any exceptional circumstances.

35. The petitioner in the present case has invoked the jurisdiction under Article 226 of the Constitution of India and despite the opportunity having been given; the petitioner has failed to satisfy the Court regarding its maintainability.

36. During the course of submissions, learned senior counsel for the petitioner sought permission to withdraw the present petition. However, this Court considers that granting permission to withdraw the petition with liberty, in such cases will only be encouraging the gross misuse This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 17/11/2024 at 12:10:11 and abuse of the process of law.

37. In view of the discussions made herein above, the present petition along with all the pending applications stands dismissed.

DINESH KUMAR SHARMA, J SEPTEMBER 23, 2024 AR/KR This is a digitally signed order.

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