

Rahul Gupta vs Cbi & Anr on 15 September, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 1561/2021, CRL.M.A.No.13108/2021
RAHUL GUPTA

Through: Mr.Akhil Sibbal, Sr. Adv
Ms.Jyoti Taneja, Ms.S
Mr.V. Kamra and Ms.De
Mukherjee, Advocates.

versus

CBI & ANR.

Through: Mr.Mridul Jain, SPP for
Mr.Satish Aggarwala,
Mr.Gagan Vaswani, Adv
R2/Customs.
Mr.Harpreet Singh, Sr
Counsel with Ms.Suhan
Advocate for DRI/R3.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 15.09.2021

1. The hearing has been conducted through Video Conferencing.
2. This application is seeking impleadment by DRI.
3. Heard.
4. The DRI (Directorate Of Revenue Intelligence) is treated as respondent No.3.
5. Amended memo of parties be filed within a week from today.
6. The application stands disposed of.

W.P.(CRL) 1561/2021, CRL.M.A.No.13108/2021

7. This petition is filed with following prayers :

(a) Quash FIR No. RC2202020E0008 dated 20.3.2020 (Annexure P-1) registered by Respondent No. 1 under Sections 120-B, 420, 467, 468, 471 IPC and Section 7(c) of

Prevention of Corruption Act, 1988 at Police Station EO-II Delhi and all consequential proceedings arising therefrom as the same are a gross and blatant abuse of the process of law.

8. Learned senior counsel for the petitioner submits the foundation of the FIR registered by CBI is a show cause notice dated 26.09.2019 issued by Customs - respondent No.2. It is stated the proceedings on such notice before the customs were stayed vide order dated 12.04.2021 in W.P.(Crl) No.821/2021 and custom authorities have simply forwarded a complaint which is nothing but replica of show cause notice and on its basis the present FIR came to be registered.

9. The learned senior counsel for the petitioner refers to an order dated 09.09.2020 in W.P.(Crl) No.1229/2020 wherein the wife of the petitioner, a Director in Its My Name Pvt. Ltd. was granted no coercive order. The following paras of the order dated 09.09.2020 are relevant:

2. It is contended on behalf of the petitioner that she is neither named in the complaint nor any of the offences under section 467/468/471/420 mentioned in the FIR are reflected by the allegations made in the complaint.

3. After some arguments Mr Jain, learned counsel appearing for the CBI seeks time to examine as to the documents in respect of which allegations of commission of offence under Sections 467/468/471 of the IPC have been made. He further states that the petitioner has been named in the FIR in question only on the ground that she is a Director of M/s Its My Name Private Limited and not for any other purpose.

4. Mr Bansal, learned counsel who appears for respondent no.2 (the Commissioner of Customs, IGI Airport) at whose instance the FIR has been registered, states that there is no allegation against the petitioner and the complaint was restricted for instituting proceedings for offences under the Prevention of Corruption Act, 1988 against one of the valuers.

5. Mr Sibal has also drawn the attention of this Court to the FIR wherein allegations of conspiracy have been made against Rahul Gupta (another director of M/s Its My Name Pvt. Ltd) but no allegations have been made against the petitioner. He contends that there is no ground whatsoever to include her name as an accused in the FIR.

6. It is clear that respondent no.2 (complainant) has not made any complaint against the petitioner. It is also apparent that there is also no allegation in the body of the FIR against her. There is also no allegation that she has been in active control of M/s Its My Name Private Limited or has acted on its behalf in respect of the alleged transactions.

7. In view of the above, it is directed that till the next date of hearing the petitioner is not required to join in any proceedings relating to the said FIR.

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9. Mr Bansal further states that the entire investigation was conducted by the Directorate of Revenue Intelligence (DRI) and the complaint has been filed only on the basis of the said investigation.

10. The DRI and Customs have given their counter affidavits in the said WP(Crl) no.1229/2020.

11. The counter affidavit filed by Sh.Sunil Kumar Pandey, Assistant Commissioner, Customs/complainant states the following :

2. That it is pertinent to mention here that the answering Respondent vide letter dated 09.03.2020 had only referred the names of Government Officials and their roles to CBI. The Respondent No. 1 registered the FIR in the name of Government Officials as well as in the name of private persons, including the Petitioner. Hence, the answering Respondent is not in position to offer any comments on inclusion of the name of the Petitioner in the said FIR. It is humbly submitted that grounds on which her name was included in the FIR can only be provided by the Respondent No. 1.

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4. That in response of the above letter, the answering respondent had examined the matter thoroughly in light of the relevant provisions of the Prevention of Corruption Act, 1988 and found that the Section 17A could be invoked in the instant case. Accordingly, the answering Respondent vide letter dated 27.11.2019 intimated to the Central Bureau of Investigation (CBI) that the role of Sh. Vikram Bhasin needs to be examined under the Prevention of Corruption Act, 1988 and forwarded the matter, as Cadre Controlling Authority (Competent Authority) authorized them to investigate the matter under the provisions of Section 17A of the Prevention of Corruption Act, 1988. Copy of letter dated 27.11.2019 is attached herewith as ANNEXURE R-4.

12. The counter affidavit filed by Sunil Kumar, Senior Intelligence Officer in the office of Directorate of Revenue Intelligence (Hqrs) also notes:-

Re: Para 1 (i- iii) That, at the outset it is most respectfully submitted, the impugned FIR has admittedly been registered by Respondent No.1 [CBI] on a complaint made by the Commissioner of Customs, IGI Airport, New Delhi [Respondent No.2] and which was got reduced into the impugned FIR. In so far as the role of the office of the deponent is concerned, it is investigating a case of illegal import of assorted gold jewelery weighing about 51172.40 gms by three employees namely Sh. Gopal Gupta, Sh. Amit Pal Singh & Mohd. Nashruddin, of a company viz. Its My Name Pvt. Ltd., of which the Petitioner is a Director along with her husband Sh. Rahul Gupta. A show

cause notice dated 26.9.2019 proposing confiscation of the said gold has been issued and the same is pending adjudication. Whatever the investigations conducted by the office of the deponent revealed, the same was intimated to Respondent No.2 and which Respondent No.2 communicated to Respondent No.1 and which ultimately culminated into the impugned FIR.

That, the contents of the para under reference do not call for any reply. It is respectfully submitted that the question/issuance sought to be urged by the petitioner already stands raised by the petitioner in Writ Petition (Crl.) No. 173/2019) wherein, the applicability of the provisions of the Criminal Procedure Code to Customs Act has been challenged. It is submitted that the said matter is presently pending before the Hon'ble Supreme Court of India alongwith other similar matters which are tagged therewith.

xxxx Re: Para 2.1 That, in reply to the contents of the para under reference, it is most respectfully submitted that the Show Cause Notice under Section 124 of the Customs Act regarding seizure of the goods has already been issued on 26.09.2019. However, the investigation into the previous violations of the Customs Act is still underway. Therefore any statement regarding the involvement of the Petitioner in the DRI investigation is still premature. Further, the impugned FIR has been registered by the CBI on a complaint made to it by the Customs department and not the answering respondent.

13. It is submitted by learned senior counsel for the petitioner the complainant DRI as also the customs have categorically stated they have sent complaint only qua the Government officials and not against private person and they in fact do not know why the FIR has been registered against other accused person.

14. Learned senior counsel for the petitioner stated even the offences under the IPC are also not made out and he can demonstrate the same.

15. On an inquiry the learned SPP for CBI says the investigation is still going on as they have received bunch of documents only in August, 2021 under orders of learned trial court and they are examining the facts. He intends to file reply/status report. Be filed within 4 weeks from today with an advance copy to learned counsel for the petitioner.

16. Learned senior SPP for customs and learned senior standing counsel for DRI also seek time to file replies. Be filed within 4 weeks from today with an advance copy to learned counsel for the petitioner.

17. Rejoinder, if any, be filed within two weeks thereafter.

18. List on 23.11.2021 and till then if the Investigating Officer of CBI comes to a conclusion there are grounds of arrest, he shall give a four working days notice to the petitioner to approach the appropriate forum for grant of bail.

YOGESH KHANNA, J.

SEPTEMBER 15, 2021 VLD