

Shiv Dutt Bakshi vs Central Bureau Of Investigation on 26 July, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1191/2021
SHIV DUTT BAKSHI

Through: Ms.Geeta Luthra, Sr Advocate
Mr.Nitin Saluja, Ms.Shiv
Lohiya, Ms.Ayushi
Ms.Priyanka Parasnath, M
Khurana and Mr.Sahil Mon
Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

Through: Mr.Nikhil Goel, SPP with M
Koshy Roy, Advocate for
Mr.Brij Bhushan Solanki,
for Intervener - Amit An
applicant.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 26.07.2022

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

3. This application is filed under Section 482 Cr.P.C. by the applicant- Amit Anand for intervention and directions. Reference is made to the misconduct by the petitioner herein, the then administrator of Dr.Karni Singh Shooting Range, conducted by a private television news channel Samachar Plus which was aired on national broadcast on 17 th-18th July, 2016. The operation exposed the manner in which rules were being flouted in Dr.Karni Singh Shooting Range in return for cash and gifts, to facilitate shooting practice by potential shooters. The said operation was broadcasted on national Television. There was an enquiry against the petitioner and later a case RC No. 11(A)/2017-SCU.V/CBI/SC II/New Delhi under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act was registered on the basis of a written complaint dated 02.09.2017 received from Sh.S.S.Chabra, IFS, Secretary, Chief Vigilance Officer, Sports Authority of India (SAI), Jawaharlal Nehru Stadium Complex, New Delhi.

4. Admittedly a closure report 11/2019 has been filed in the present case by the CBI before the learned Special Judge but he rejected the closure report, hence the present petition is filed against the order dated 02.03.2020.

5. It is in this petition the applicant has filed an application to be impleaded as a party. Admittedly the RC was lodged by the CBI, on ground of bribery but now the applicant herein intends to give a twist to the said case by alleging high level of corruption committed by the petitioner i.e. by transferring the proceeds of his illicit earnings as a Government servant, abroad through hawala transactions, besides purchasing real estate in India for building assets and adjusting cash. The petitioner herein laundered money through depositing large sums of illicit money into his then minor son Yajat Bakshi and daughter's in various NRO accounts. It is alleged a proper investigation of the CBI would reveal the criminal activities and the limitless wealth of the petitioner. Reference is also made to various properties acquired by the petitioner both in India as well as in Canada.

6. It is submitted on 12.02.2022 the applicant has filed a complaint before SHO, PS Pul Prahaladpur for registration of case(s) against the petitioner and his wife and also against Manav Bharti International School, Musoorie, Dehradun under the provisions of Arms Act, IPC, Prevention of Corruption Act, FEMA and Money Laundering Act and other laws but the SHO has not taken any action and hence he intends to move the present application by relying upon T.T.Antony vs. State of Kerala and Others in Crl.Appeal No.689/2001; Damodaran P. and Others vs. State of Kerala and Others in Civil Appeal No.4066/2001; State of Kerala and Others vs. Revada Chandrashekhar & Others Crl.Appeal Nos.690-91/2001 to say that there can be no second FIR or no fresh investigation on receipt of every subsequent information in respect of same cognizable offences or same occurrence giving rise to one or more cognizable offences, hence, it is submitted since there can be no second FIR, the applicant be allowed to intervene and the CBI be directed to re-investigate on his allegations.

7. In his application the identity of the applicant-Amit Anand is not disclosed as to who is he and how he has this information which he is alleging against the petitioner. He simply says he is a public spirited person. Admittedly, there is an ongoing dispute between the petitioner and one Devinder Singh Sidhu for whom Shri Brij Bhushan, the learned counsel for the intervener herein has been appearing before the learned Trial Court viz Civil Suit No.CSDJ 1599/2017 and it appears the said Mr.Sandhu and his counsel Mr.Brij Bhushan is using Amit / the applicant as a proxy. Secondly, the applicant after filing a complaint with SHO on 12.02.2022 did not prefer to take any further steps either by moving an application under Section 156(3) Cr.P.C. or by filing a complaint with the CBI and hence cannot be allowed to hijack the proceedings before this Court by pretending to be a public spirited person. Moreso, what the petitioner intends to initiate is not the re-investigation of the same offence for which the petitioner is under investigation viz of bribe but another offence of disproportionate assets of the petitioner for which the petitioner has alternative modes of addressing his grievance and to proceed with it.

8. In Sanjay Tiwari vs. State of Uttar Pradesh and Anr. 2020 SCC OnLine SC 1027, the Court held as under:

"11. It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under Prevention of Corruption Act are offences which affect not only the accused but the entire society and administration. It is also well settled that the High Court in appropriate cases can very well under Section 482 Cr.P.C. or in any other proceeding can always direct trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by respondent No.2 does not appear to be a bona fide proceeding. Respondent No.2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent No.2 in his application under Section 482 Cr.P.C. in paragraph 6 has described him as a social activist and an Advocate. An application by a person who is in no way connected with the criminal proceeding or criminal trial under Section 482 Cr.P.C. cannot ordinarily be entertained by the High Court. A criminal trial of an accused is conducted in accordance with procedure as prescribed by the Criminal Procedure Code. It is the obligation of the State and the prosecution to ensure that all criminal trials are conducted expeditiously so that justice can be delivered to the accused if found guilty. The present is not a case where prosecution or even the employer of the accused have filed an application either before the trial court or in any other court seeking direction as prayed by respondent No.2 in his application under Section 482 Cr.P.C.

12. With regard to locus of a third party to challenge the criminal proceedings or to seek relief in respect of criminal proceedings of accused had been dealt with by this Court in Janata Dal vs. H.S. Chowdhary and others, (1993) 1 SCC 756. In the above case the CBI had registered FIR under the IPC as well as under the Prevention of Corruption Act, 1947 against 14 accused. On an application filed by the CBI the learned trial Judge allowing the application to the extent that a request to conduct necessary investigation and to collect necessary evidence which can be collected in Switzerland passed order on 05.02.1990 which is to the following effect:

"In the result, the application of the CBI is allowed to the extent that a request to conduct the necessary investigation and to collect necessary evidence which can be collected in Switzerland and to the extent directed in this order shall be made to the Competent Judicial Authorities of the Confederation of Switzerland through filing of the requisite/proper undertaking required by the Swiss law and assurance for reciprocity."

13. A criminal miscellaneous application was filed by Shri H.S. Chowdhary seeking various prayers before the Special Judge which petition was dismissed by the Special Judge. A criminal Revision under Sections 397/482 Cr. P.C. was filed by H.S. Chowdhary in the High Court to quash the order of the Special Judge, which Revision was also dismissed by the High Court. The appeals were filed in this Court by different parties challenging the said order including H.S. Chowdhary. This Court while dismissing the appeals filed by the H.S. Choudhary and others made the following observations:

"26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

"27. We, in the above background of the case, after bestowing our anxious and painstaking consideration and careful thought to all aspects of the case and deeply examining the rival contentions of the parties both collectively and individually give our conclusions as follows:

1. Mr. H.S. Chowdhary has no locus standi (a) to file the petition under Article 51A as a public interest litigant praying that no letter rogatory/request be issued at the request of the CBI and he be permitted to join the inquiry before the Special Court which on 5.2.90 directed issuance of letter rogatory/request to the Competent Judicial Authorities of the Confederation of Switzerland; (b) to invoke the revisional jurisdiction of the High Court under Sections 397 read with 401 of the CrPC challenging the correctness, legality or propriety of the order dated 18.8.90 of the Special Judge and (c) to invoke the extraordinary jurisdiction of the High Court under Section 482 of the CrPC for quashing the First Information Report dated 22.1.90 and all other proceedings arising therefrom on the plea of preventing the abuse of the process of the Court.

28. In the result, we agree with the first part of the Order dated 19.12.90 of Mr. Justice M.K. Chawla holding that Mr. H.S. Chowdhary and other intervening parties have no locus standi.

We, however, set aside the second part of the impugned order whereby he has taken suo moto cognizance and issued show cause notice to the State and CBI and accordingly the show cause notice issued by him is quashed."

9. In Directorate of Enforcement vs. State of Maharashtra & Ors.

W.P.(CRL.)3122/2020 wherein it was held:

"2. The short question that arises in the aforesaid petition is, the locus of the petitioner-ED in a closure report filed by the State of Maharashtra before the Magistrate, in a case registered at the behest of respondent No.2-Akbar Travels (India) Pvt. Ltd.

11. Having heard learned ASG for the petitioner and the learned counsel for the respondents and having perused several judgments relied upon by the respective parties, the answer to the question raised in the aforesaid petition, with respect to the locus of the petitioner-ED in a closure report filed by the respondent No. 1-State of

Maharashtra in a case SQ Pathan 13/25 30-wp-st-3122-2020.doc registered at the behest of respondent No.2- Akbar Travels (India) Pvt. Ltd. is, in the negative, for the reasons set out hereinunder.

12. Admittedly, the respondent No. 2-Akbar Travels (India) Pvt. Ltd. filed a private complaint as against respondent Nos. 3 to 5 in the Court of the learned Metropolitan Magistrate at Ballard Pier, Mumbai, praying therein for an order under Section 156(3) Cr.P.C. The learned Magistrate was pleased to pass an order under Section 156(3), pursuant to which, the M.R.A Marg Police Station registered an FIR being C.R. No. 66 of 2020 as against respondent Nos. 3 to 5 for the alleged offences punishable under Sections 406, 420, 465, 467, 468, 471 and 120-B of the IPC. The said offences being scheduled offences under the PMLA, the petitioner-ED registered an ECIR as against the respondent Nos. 3 to 5 under the PMLA and proceeded with its investigation. In the meantime, the respondent- State, after investigation, filed its closure report (in C.R. No. 66 of 2020), in the Court of the learned Magistrate. It is not in dispute that pursuant to the notice issued by the learned Magistrate, the respondent No.2/complainant-Akbar Travels (India) Pvt. Ltd. filed a Protest Petition before the learned Magistrate. It appears that the petitioner-ED, on being informed by the respondent No.2 about the closure report, also filed a Protest Petition before the learned Magistrate and prayed that they be heard SQ Pathan 14/25 30-wp-st-3122-2020.doc before any order could be passed on the closure report filed by the respondent No.1-State. As noted above, the learned Magistrate rejected the said Protest Petition filed by the petitioner-ED, which was challenged by the petitioner before the learned Sessions Judge. Learned Sessions Judge dismissed the revision application both on the ground of maintainability as well as on merits.

13. From a perusal of the judgments of the Apex Court, in particular, the judgment in Bhagwat Singh (supra), it is evident that there are three categories of persons who have locus and who can be heard before the closure report is accepted i.e. (i) the complainant/first informant is entitled to a notice and to be heard; (ii) injured person and (iii) relative of the deceased, to whom the Magistrate may not issue notices but have locus to appear before the Magistrate and a right to be heard. However, the discretion of giving notice to the injured person or relative of the deceased vests with the Magistrate.xxxxxx 17 The petitioner-ED claims to be an injured/a victim, in a representative capacity of the victims. According to the petitioner-ED, the ED being a victim of economic offences, which are serious in nature, having large repercussions on the economy of a country, would have locus to be heard before the closure report is accepted. According to the petitioner-ED, the offence being a crime against the Society, it is its duty to ensure that the culprits are properly prosecuted. Learned ASG submitted that the petitioner-ED would fall in the category of interested person, as the SQ Pathan 19/25 30-wp-st-3122-2020.doc agency i.e. ED is not only entrusted in bringing the offenders to book, but is also entrusted with the task of ensuring that money laundering does not take place. He further submitted that the petitioner-ED, being intrinsically interested in the outcome of the FIR, is entitled to be heard before

the closure report is accepted. Reliance placed by the learned ASG on the observations in the judgments relied upon, stating the object and reasons for enacting the PMLA, cannot be disputed. However, the judgments relied upon, have no bearing in the facts of the case, inasmuch as, the said judgments pertain to rejection of bail under the PMLA. Having considered the law in this regard, the petitioner- ED, by no stretch of imagination, can either be construed to be a victim or an aggrieved/injured/interested person, thus entitling them to be heard before the Magistrate decides whether the closure report ought to be accepted or not. The respondent No. 1-State of Maharashtra is the investigating agency in the present case, who has filed the closure report in a case instituted by the respondent No. 2-Akbar Travels (Idia) Pvt. Ltd. The petitioner-ED is not a supervisory authority over the respondent No. 1- State, who has investigated the case. Take a hypothetical example, a converse situation. If in a given case, any other investigating agency feels that the Enforcement Directorate has not investigated a case properly, can the said investigating agency intervene in the investigation carried out by the Enforcement Directorate? Can they be SQ Pathan 20/25 30-wp-st- 3122-2020.doc permitted to do so? The obvious answer is `NO'. Each investigating agency is expected to investigate the case before it, fairly on the basis of the material gathered by them during investigation and thereafter submit its report. No investigating agency can claim supervisory jurisdiction over the other in the matter of investigation. In the present case, the Magistrate is yet to pass orders on the closure report. It is for the Magistrate, after hearing the parties, to consider whether to accept the closure report or not or to direct further investigation or issue process. The respondent No.2-complainant is contesting the closure report by filing a protest petition.

18 The petitioner-ED is an independent investigating agency, empowered to investigate offences under the PMLA and FEMA and in the facts, cannot be termed as a victim or aggrieved/injured/interested person, having regard to the judicial pronouncements. There is no provisions in law which supports the claim of the petitioner-ED with respect to its locus to intervene and contest the closure report filed by the respondent No.1- State. Thus, the petitioner cannot be permitted to intervene and contest in the closure report filed by the respondent No.1-State. 21 Reliance placed by the learned ASG on the judgment of the Apex Court in the case of Sheonandan Paswan (supra), is also misplaced. It is pertinent to note that the observations made in para 14 with respect to the issue of locus to withdraw prosecution, on which reliance is placed by the learned ASG is the minority view of the Judges, whereas, the majority judgment had not adhered to the same and the same is evident from para 36 of the said judgment. Infact, this Court in the case of Harsh Mandar (supra) has categorically taken a view after referring to Sheonandan Paswan (supra) that the said judgment is restricted in its applicability to Section 321 Cr.P.C. It is not in dispute that the said judgment i.e. Harsh Mandar's case (supra) has been upheld by the Apex Court. As far as the other judgments relied upon by the learned ASG in support of his submission to show that the petitioner has locus, pertain to cases where the wife or the brother's right has been recognized. Some

judgments pertain/relate to actual de facto complainant who were the aggrieved persons. Thus, the said cases are clearly distinguishable and reliance on the same is clearly misplaced."

10. In *Thakur Ram and Others vs. State of Bihar* (1966) 2 SCR 740, the Court held as under:

"9. xxxx In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of S. 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book. xxxx"

11. The statement of the complainant annexed at Annexure P7 shows he has rather denied of any bribe being paid by him to the petitioner.

12. This application, admittedly, is not moved by the complainant nor is moved by injured or a relative of deceased. The applicant is in no way connected with initiation of proceedings and neither is a part of investigation of the case.

13. The learned counsel Sh. Brij Bhushan, Advocate of the applicant, admittedly, has put in appearance in civil and criminal matters of Devinder Singh Sidhu filed against the petitioner herein and it does show the instant application, through a proxy of his client, is not a bonafide act.

14. The learned counsel for the respondent through referred to *Sheo Nandan Paswan vs. State of Bihar* 1987 SCR (1) 702, but it has already been discussed in Directorate of Enforcement (supra).

15. In the circumstances, this application is misconceived as the applicant has no locus standi and thus is dismissed. No order as to costs. CRL.M.C. 1191/2021 & CRL.M.A. 6085/2021

16. List on 14.09.2022.

YOGESH KHANNA, J.

JULY 26, 2022 DU