

Sh Jagdish Prakash Shantanu Prakash vs Central Bureau Of Investigation & Ors on 9 July, 2020

Author: Yogesh Khanna

Bench: Yogesh Khanna

\$~9 & 10 (connected matters)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1007/2020

+ W.P.(CRL) 1008/2020

SH JAGDISH PRAKASH
SHANTANU PRAKASH

Through: Mr.Hariharan, Seni
Mr.Rohan Jaitley,
Mr.Vishvendra Toma

versus

CENTRAL BUREAU OF INVESTIGATION & ORS.

...
Through: Mr.Ashish Khari, Advocate f
Mridul Jain, SPP for CBI
Mr.Santosh Kumar Rout, M
Mohapatra, Advocates for
Mr.Ravinder Aggarwal, Ad
R3 (CVC).
Insp.Charandeep, BS&FC /
Delhi.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 09.07.2020

1. The hearing has been conducted through video conferencing. CRL.M.A.8678/2020 in W.P.(CRL) 1007/2020 CRL.M.A.8682/2020 in W.P.(CRL) 1008/2020

2. Exemption allowed, subject to the condition that petitioner will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.

3. The application stands disposed of.

CRL.M.A.8679-80/2020 in W.P.(CRL) 1007/2020 CRL.M.A.8683-84/2020 in W.P.(CRL) 1008/2020

4. Exemption allowed, subject to all just exceptions.

5. The application stands disposed of.

CRL.M.A.8677/2020 in W.P.(CRL) 1007/2020 & CRL.M.A. 8681/2020 in W.P.(CRL) 1008/2020

6. It is submitted M/s.ESL was incorporated in the year 1994 and M/s.ESPL in the year 2009. An initial public offer was issued by M/s.ESL in December, 2005.

7. It is submitted M/s.ESL and M/s.ESPL availed various loan facilities from consortium of 13 banks between November 2011 to December 2012, amounting to Rs.1995.36 crores approx. as on 30.05.2017. In July 2013 M/s. ESL opted for a loan restructuring. The process for Corporate Debt Restructuring (CDR) was initiated by State Bank of Patiala (now State Bank of India). The loan as on cut off date 04.04.2013 was Rs.1344.22 crores. On 17.12.2014 the CDR was approved.

8. It is submitted at the time of loan restructuring in the year 2014 no fraud was observed by any of the banks. Between the years 2014- 15 fresh corporate loans were given amounting to Rs.767.00 crores; and a loan of Rs.290.00 crores was also given by Axis Bank. It is alleged M/s. ESL purchased receivables charged at M/s.ESPL and no fraud or misfeasance was found while approving CDR. It is further submitted M/s. ESPL discharged its obligations under CDR and there were no liabilities.

9. In May, 2017 M/s. ESL initiated insolvency proceedings under Section 10 of the Insolvency and Bankruptcy Code, 2016 before the NCLT. On 30.05.2017 the petition was admitted and Resolution Professional was appointed. The resolution professional on 08.10.2018 had filed affidavit before the NCLT stating inter alia there was no fraudulent transaction. Such affidavit was authorised by the consortium of Banks.

10. However on 27.03.2019 Yes Bank filed a complaint before the EoW against M/s.ESL cell alleging inter alia fraudulent transactions. A detailed inquiry was conducted and no fraud was found. The complaint was thus closed. The SBI had also made a similar complaint and on 23.05.2019 the CBI found it was not a fit case for registration of FIR.

11. The CVC viz. respondent no.3 had also issued circulars wherein it has directed to all PSBs to refer their complaints to Advisory Board of Banking Fraud (ABBF) for their advisory before filing any complaint with the investigating agencies.

12. In November 2019 a second complaint was filed by respondent no.2 with the CBI. Admittedly a preliminary enquiry was registered but no merit was found in the complaint and FIR was never registered. On 15.01.2020 CVC again issued a circular reiterating its advisory to all the PSBs.

13. On 06.02.2020 yet again respondent no.2 filed a complaint with the CBI on similar allegations but within four days viz. on 10.02.2020 the FIR was registered despite enquiries conducted earlier.

14. It is argued on similar facts the EoW as well as CBI on at least two occasions have found it was never a fit case for registration of FIR since these authorities could not find fraud or mis-appropriation.

Even the Resolution Professional had also filed an affidavit before the NCLT, with authorisation of the Banks stating inter alia no fraudulent transactions was found. It is submitted by the learned senior counsel for the petitioner in previous two investigations conducted by the CBI no role of any public servant was also found.

15. It is submitted in W.P.CRL.645/2020 on 10.06.2020 the Coordinate Bench of this Court had passed the following order:

"22. Therefore, looking into the facts and circumstances of this case that on 2 previous occasions and on the basis of similar allegations no action was taken by the CBI or EOW and the contention of the Ld. Sr. Counsel for the petitioner that despite two closures, again on the same facts, the present FIR has been registered within a period of 4 days of the complaint dated 06.02.2020 without conducting any preliminary inquiry and without following the procedure established by law in regard to the alleged bank fraud cases and moreover, in the instant case, the petitioner had joined the company as a director on 13.11.2013 and all the loan facilities as per the FIR were prior to the petitioner joining the ESL as one of the Director and the only facility pursuant to his Directorship are under the CDR in which no fraud is alleged. Therefore, in these circumstances, the respondent (CBI) is directed to file a detailed reply/status report mentioning about the outcome of the two previous complaints dated 27.03.2019 and 23.05.2019 and as to whether complicity of any public servant was found during the previous two investigations.

23. List on 30.07.2020 before the Roster Bench. Till further orders the investigation in regard to the petitioner is stayed and no coercive action be taken against him. Detailed reply/status report be filed by the respondent-CBI within 4 weeks with an advance copy to the counsel for the petitioner, rejoinder if any within two weeks thereafter. Notice be also issued to respondent No. 2 by all permissible modes on the steps being taken by the petitioner, returnable on 30.07.2020 before the Roster Bench."

16. Since the learned SPP for the CBI is not present today the Investigating Officer on his behalf submits they intend to file a reply. Be filed within two weeks from today with an advance copy to the learned counsel for the petitioner.

17. List on 30.07.2020 and till then the order dated 10.06.2020 passed in W.P.CRL.645/2020 shall be applicable in the present two matters also.

18. Lastly it is submitted by the learned counsel for the respondent no.2 the name of DGM, Mukesh Kumar Dhingra appears in the memo of parties which may be deleted by the petitioner, since the

complaint is filed by DGM, SAMB-II, SBI, New Delhi. The learned senior counsel for the petitioner seeks time to take instruction in this regard.

YOGESH KHANNA, J.

JULY 09, 2020 M/DU