

Ravina And Associates Pvt Ltd & Anr vs Central Bureau Of Investigation & Anr on 16 April, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 783/2021 & CRL.M.A. 5709/2021

RAVINA AND ASSOCIATES PVT LTD & ANR..... Petitioners

Through: Mr. Sidharth Luthra, Sr. Adv. with

Mr. Ajay Vohra, Sr. Adv. with Mr.

Sandeep Kapur, Mr. Shivek Trenon,

Mr. Abhimanshu Dhyani, Mr. Vivek

Suri.

versus

CENTRAL BUREAU OF INVESTIGATION & ANR.

..... Respondents

Through: Mr. Anupam S Sharma, SPP

Mr. Prakarsh Airan, Mr. Harp

Kalsi, Advs. for R-1.

Mr. Ruchir Bhatia, SSC for R

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 16.04.2021 (through video conferencing) In terms of the proceedings dated 08.04.2021, a status report has been filed by the CBI in a sealed cover along with the copy of the closure report that has been filed before the learned trial Court previously. The same has been perused. The status report is directed to be placed on record by the Registry. However, the closure report is directed to be placed in a sealed cover again in terms of the proceedings dated 08.04.2021.

The arguments have been addressed at length. It is considered appropriate in the interest of justice that the proceedings of the present petition are confined to prayer clause (c) made in the present petition Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

whereby the petitioner has sought an alternative prayer seeking directions to the learned Special Judge, CBI to decide the application under Section 226(4) of the Income Tax Act 1961, filed by Respondent No.2 forthwith.

In as much as the prayer made by the respondent no.2 in relation to an application filed by the Income Tax Department under Section 226 (4) of the Income Tax Act, 1961 dated 23.08.2012

pending before the learned trial Court, whereby vide order dated 28.02.2015, it had been observed by the learned Special Judge, CBI-01 to the effect:

"In the considered opinion of this court, it would be appropriate that the application, moved by the income tax department, is decided only after the decision in the closure report of the CBI."

with the matter having been adjourned also by the learned trial Court for orders on the closure report for the date 10.03.2021.

Vide order dated 08.04.2015, the learned Special Judge, CBI-01 had renotified the matter for passing of orders on the closure report to the date 18.04.2015 with it having also been observed vide the said order qua the application under Section 226 (4) of the Income Tax Act, 1961, the application dated 23.08.2012 of the Income Tax Authority to the effect:

"But, this court is of the considered opinion that the claim of the Income Tax Department is dependent on the fate of the closure report, pending before this court and therefore, it would be appropriate if this " application is decided by the court, after consideration of the closure report and after passing of the appropriate orders on it. Therefore, no orders on the application of the Income Tax Department, u/s 226(4) of the Income Tax Act, 1961, dated 23.08.2012, is being passed by the court, at this stage."

The proceedings dated 18.04.2015 of the learned Special Judge, CBI- Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

01 in the matter indicate that the final report under Section 173 of the Cr.PC, 1973 was filed and that the final report was not accepted by the learned Special Judge, CBI-01 vide order dated 18.04.2015 and the request made by the CBI thus for acceptance of that final report was declined and the complete closure report along with the original documents were directed to be returned back to the CBI against appropriate receipt with directions to the CBI to conduct further investigation in the matter and to file a fresh final report under Section 173 of the Cr.PC, 1973 preferably within a period of three months.

The proceedings dated 23.09.2016 before the learned Special Judge, CBI-01 indicate that subsequently on 23.08.2016, a final report under Section 173 of the Cr.PC, 1973 was filed by the CBI qua which, there were observations vide para 4 made therein to the effect:

"4. Perusal of this final report I charge sheet further shows that an incomplete charge sheet has been filed and nothing has been mentioned in this charge sheet regarding the compliance of the order dated 18.04.2015. No further investigation has been done by the CBI for the last more than 1½ year"

Vide observations in paras 6, 7, 8, 9, 12 & 11 of the said order dated 23.09.2016, it was observed to the effect:

"6. Perusal of the present charge sheet clearly indicate that the CBI officials have not complied the order dated 18.04.2015, deliberately and intentionally, for the reasons best known to them. It appears that the CBI officials are not inclined to further. investigate the matter to ascertain the criminal negligence or abuse and misuse of official positions by the senior NTPC officials, as well as the members of the Cabinet committee on infrastructure, Government of India, as these senior officers and the politicians appear to have high connections and appear to have a big say in the functioning of Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the Government of India. It is clear that the CBI had intentionally and deliberately not investigated the matter properly, only to save the senior officers of NTPC and the members of the Cabinet Committee on infrastructure, Government of India.

7. Perusal of the record further shows that despite clear orders on 18.04.2015, the relevant files from the concerned Ministry and Cabinet Committees on infrastructure, Government of India have not been placed on record, with the present charge sheet, for perusal of this court.

8. In these circumstances, this court is not inclined to accept the present charge sheet. The same' be, therefore, returned back to the CBI, alongwith all the documents, for further investigations, as per the "directions issued by this court vide orders dated 18.04.2015.

9. It. is further directed that the Director, CBI, shall supervise the further investigations of this matter himself and shall assign the further investigation of the matter to an officer not below the rank of a Joint Director, CBI.

10. It is further directed that the further investigations in the matter shall be concluded by the CBI, as directed by this court on 18.04.2015, within a further period of three months from today.

11. The complete charge sheet as well as the original record be sent back to the CBI, alongwith a copy of this order, for information and necessary compliance. A photocopy of the charge sheet be retained on record."

The proceedings dated 09.02.2017 of the learned Special Judge, CBI- 01 further indicate to the effect that "No report u/s 173 Cr.P.C. has been filed by the C.B.1. in compliance of the orders dated 18.04.2015 &, 23.09.2016. An application has been filed by the 10 Inspector Shitanshu Sharma, wherein, it has been stated that the order dated 23.09.2016 has been challenged before the Hon'ble

High Court, in Criminal Misc. Application Nos. 970-72/2017 and the next date of hearing before the Hon'ble High Court is now fixed for Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

28.02.2017. A self-attested copy of the order dated 18.01.2017, passed by the Hon'ble High Court is also placed on record alongwith this application. It has been prayed by the IO and the Ld. Sr. PP for the CBI that the present proceedings be kept pending, till the decision of the Hon'ble High Court, in the said applications.

Perusal of the order dated 18.01.2017, passed by the Hon'ble High Court shows that the Hon'ble High Court has not stayed the present proceedings or the order dated :23.09.2016 and the Hon'ble High Court has fixed these applications for hearing the arguments on the maintainability of the said petitions. Perusal of the record shows that this court is repeatedly directing the CBI to investigate the matter properly' and several orders have been passed by this court for proper investigation of the case, since April, 2015. But, the CBI is not investigating the matter properly and is not complying the previous court orders. Even on 23.09.2016, this court had again directed that the matter shall be investigated further and the relevant case files, seized from the concerned Ministry, as well as from the Cabinet Committees on infrastructure, Government of India, shall be placed before this court for perusal of the court. But, the same has not been done by the CSI, till date. It appears that the CSI is deliberately and intentionally not complying the court orders and is not investigating the matter properly and is concealing the relevant files from this court, to shield the real culprits, for the reasons best known to it.

Perusal of the record further shows that on 23.12.2016, DLA Shri S.K.Bhatt had appeared before the court and he requested for adjournment and grant of some more time to file the complete report, u/s 173 Cr.P.C., after compliance of orders dated 18.04.2015 & 23.09.2016, on the ground that the Director CSI was busy in some other serious matter and therefore, the further investigations could not be concluded in compliance of the order dated 23.09.2016.

It appears that DLA Sh. S.K.Bhatt had made a false statement before this court, only to seek adjournment and to take time from the court. Even in the application, moved before the court today, by 1.O. Inspector Shitanshu Sharma, nothing has been mentioned Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

about the further investigations and filing of thf9 report u/s 173 Cr.P.C., in compliance of the orders dated 18.04.2015 & 23.09.2016.

In the circumstances, a show cause notice be issued to the concerned IO, as well as SP and the Director CBI, with the direction to appear before this court, in person, and to show cause as to why the previous orders dated 18.04.2015 & 23.09.2016 are not being complied by them, deliberately and intentionally. The relevant case files, seized by the IO from the concerned Ministry, as well as the files pertaining to the notings of the Cabinet Committees on infrastructure, Government of India, shall also be produced before this court on the, next date of hearing, for perusal of the court."

Vide order dated 14.02.2017 of this Court in Crl.M.C.619/2017, which was filed by the CBI assailing the directions in the order dated 09.02.2017, vide directions in para 3 of the said order are to the effect:

"3. Operation of the impugned order directing issuance of show cause notice to the Director, CBI and seeking his personal appearance before the Court is stayed till the next date of hearing."

The operation of the impugned order of the learned Special Judge, CBI dated 09.02.2017 directing the issuance of the show cause notice to the Director, CBI and seeking his personal appearance before the learned trial Court was stayed till the next date of hearing.

The proceedings in Crl.M.C.619/2017 are stated to be now listed for the date 24.05.2021.

A submission has been made on behalf of the petitioners to the present petition seeking in relation to the stated urgency of the prayers made by the petitioners for consideration of the application under Section 226 (4) of the Income Tax Act, 1961 filed by the respondent no.2 submitting to the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

effect that the petitioners seek to avail of the Direct Tax Vivad Se Vishwas Act, 2020 and the provisions thereunder, in relation to which, the petitioners are required to deposit the income tax arrears towards their demands on or before 30.04.2021. A submission has also been made on behalf of the petitioners that in terms of the proceedings in Crl.Rev.Pet.128/2010, the learned Special Judge, CBI had been directed to pass appropriate orders for bringing back the amount lying in account nos. 1400103368092, 44259816 in the name of the petitioner and 1400021000697 and 18009336 in the names of her company by the name of Ravina and Associates Pvt. Ltd. with Natwest Bank, 102, St. Johns Wood High Street, London, NW87D with further directions therein to the effect that while passing the orders to the aforesaid effect, the learned Special Judge shall also direct the money to be remitted to the State Bank of India, Tis Hazari Branch, Delhi in the name of the Court of the Special Judge and once the money is received, the Special Judge would then be at liberty to deal with that in anyway which it would think appropriate after taking into consideration the rival claims of the petitioner, CBI and the Income Tax Department and that the entire exercise should be completed as expeditiously as possible.

During the course of submissions that have been made on behalf of the petitioners, reliance is sought to be placed on the verdict of the Hon'ble Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others (1975) 3 SCC 706 with observations made therein to the effect:

"The question as to the scope and ambit of the inherent power of the High Court under Section 561A vis-a-vis an earlier Order made by it was, therefore, not concluded by this decision and the matter was res Integra so far as this Court is concerned. Mr. Signature Not Verified Digitally Signed By:SUMIT GHAI Signing

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Mukherjee cited in support of this contention three decisions, namely, *Raj Narain v. The State*, *Lai Singh v. The State*, and *Ram Vallabh v. State of Bihar*. It is, however, not necessary for us to examine the true effect of these observations as they have no application because the present case is not one where the High Court was invited to revise or review an earlier Order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier Order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents Nos. 1 and 2 for the of deciding whether it should exercise its inherent jurisdiction under Section 561 A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the Order of the High Court. Even on the merits, we find that the Order of the High Court was justified as no prima facie case appears to have been made out against respondents Nos. 1 and 2."

which Section 561A of the Cr.PC, 1973 apparently is the precursor to present Section 482 of the Cr.PC, 1973.

In the circumstances, despite the opposition on behalf of the CBI, it is considered appropriate to direct the learned Special Judge, CBI-01 seized of the proceedings in relation to RC No.06(A)/2006 (bearing new No.CC/R- 82/2019) to dispose of the application filed by the Income Tax Authority dated 23.08.2021, under Section 226 (4) of the Income Tax Act, 1961 by the date 26.04.2021.

A submission has been made on behalf of the CBI with reference to the aspect of the TCR in the matter having been requisitioned by this Court in an appeal preferred by the CBI assailing the orders dated 18.04.2015 and 23.09.2016 of the learned Special Judge, CBI-01 and it was thus submitted on behalf of the petitioners that the directions to the learned Special Judge, CBI-01 to dispose of the prayer under Section 226 (4) of the Income Tax Act, 1961 as moved by the Income Tax Authority would be made difficult in view of the pendency of the TCR before this Court, qua which, it is essential to observe that it is always open to the petitioners to seek redressal before Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

this Court for the TCR to be placed before the learned Special Judge, CBI- 01 for disposal of the application under Section 226 (4) of the Income Tax Act, 1961, in relation to which, the prayer can always be made before the concerned Bench of this Court.

The petition is disposed of accordingly.

ANU MALHOTRA, J APRIL 16, 2021 vm Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:20.04.2021 13:11:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.