

Sanjay Jain vs Central Bureau Of Investigation on 27 September, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2194/2021

SANJAY JAIN

..... Petitioner
Through: Mr.Vivek Aggarwal, Advocate
(through VC)

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr.Ripu Daman Bhardwaj, SPP

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 27.09.2021 (Through Physical Hearing) The petitioner vide the present petition has assailed the impugned order dated 16.8.2021 of the learned Principal District & Sessions Judge- cum-Special Judge (PC Act), CBI Rouse Avenue District Court, New Delhi in case No.Cr.Rev. No. 4/2021 whereby an application dated 3.5.2021 filed by the applicant seeking the summoning of the Trial Court record of the connected trial cases against the petitioner was declined. The said revision petition CR Rev. No. 4/2021 filed by the petitioner assailed the order dated 19.4.2018 of the learned Trial Court in relation to RCBSK2014E0002/Kolkata under Sections 420/468/471 read with Section 120B of the Indian Penal Code, 1860, with assertions made in ground D thereof that as four cases RCBSK2014E0002, RCBSK2013E0004 & Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.

RCBD12014E0001 & RCBD12015E0001 are based on the same transaction, they should be tried together jointly with it having been averred in ground E that a separate cognizance could not be taken for cases based on the same transaction involving the same conspiracy by the same set of persons in the alleged illegal transaction of funds through account of M/s Falcon Jersey Pvt. Ltd, which was opened by forging signatures. It has thus been submitted on behalf of the petitioner that as averred vide the application dated 3.5.2021 filed by the petitioner before the learned Revisional Court in CR No. 4/2021 to the effect that the charge sheets filed in cases filed in, RCBSK2014E0002, RCBD12014E0001, RCBD12015E0001 and RCBD12015E0001 all referred to the same allegations and

that the contents of the CFSL reports are the same in all the three FIRs in as much as the CFSL reports are RCBD12014E001 and RCBD12015E0001 are the one and the same and that it has further been submitted that only the CFSL report numbers were different in the charge as submitted vide paragraph 4 of the application to the effect:

"4. That the case of the revisionist, as stated in the captioned revision petition is that the Central Bureau of Investigation (CBI) has registered multiple FIRs against the revisionist and in some of the FIRs, cognizance has already been taken and the impugned order is an order taking second cognizance against the revisionist. It is the specific case of the revisionist that all the different FIRs arise out of the same transaction and hence there cannot be different trial for offences arising out of the same transaction.

The same is clear from the fact that the chargesheets filed in the present case i.e. RCBSK2014E0002, RCBD12014E001 and RCBD12015E0001, all refer to the same allegations and Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.

contents of the CFSL Report are same in all three FIRs (since CFSL in RCBD12014E001 and RCBD12015E0001 is the one and the same). Only CFSL report numbers are different in all chargesheets. (CFSL-2014/D-1426/2976 in RCBD12014E001 & RCBD12015E0001, CFSL-2014-D- 1799/3988 in RCBSK2014E0002 and CFSL-2014-D- 1798/3983 in RCBSK2014E0004) but contents of the said report are same."

Other submissions were made through paragraph 5 of this application which reads to the effect:

"5. In fact, as per page 15, point 15 of RCBD12015E0001, it is clear that the CBI in the case is relying upon the CFSL report bearing no. CFSL-2014/D- 1426/2976 which was filed in RCBD12014E001. Also, as per the last paragraph on Page 34 of the Chargesheet in RCBD12015E0001 case it is stated that "During the course of investigation the copy of the documents, letters and CFSL Report etc. pertaining to RC BD1 2014 E 0001 (registered against M/s SVIL on the complaint of lead bank PSB) which were found common in instant case for the purpose of investigation." which clearly shows that RCBD12015E0001 and RCBD12014E001 are based on same transactions."

It has thus been submitted that in as much as the FIRs arise out of the same transaction, the requisitioning of the record of the learned Trial Court in all the four cases would be of assistance to the Court to appreciate the arguments of the revisionist qua the challenge of the petitioner to his summoning in the same.

Vide the impugned order dated 16.8.2021 in Cr.No. 4/2021, the application dated 3.5.2021 of the petitioner was declined with it having been observed vide paragraph 8 thereof to the effect:

"8. The Trial Court took the cognizance vide order dated 19.04.2018 on the basis of material submitted by the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.

prosecution after completion of investigation. The material which was available before the Trial Court at the time of taking of cognizance vide order dated 19.04.2018 was the report submitted by the CBI as per the mandate of Section 173 CrPC. The Trial Court has applied its judicial mind before taking the cognizance vide order dated 19.04.2019 on the material submitted in the final report under section 173 CrPC. The Trial Court was not competent to take note of other material collected during investigation of other FIRs. At this stage it is not appropriate to appreciate that the other FIRs bearing no. RCBSK2013E0004, RCBD12014E0001 and RCBD12015E0001 are based on similar material/allegations which are subject matter of present FIR. The trials arising out of FIR bearing no. RCBSK2013E0004, RCBD12014E0001 and RCBD12015E0001 are subject matter of different adjudication before the different courts and no judicial opinion can be given on the trial arising out of FIRs bearing no. RCBSK2013E0004, RCBD12014E0001 and RCBD12015E0001. If the Revisionist is having any defence regarding the similar allegations in all the FIRs as mentioned hereinabove and reliance on same documents particularly CFSL report in all the said FIRs, the said defence can only be taken at the appropriate stage of the trial. The subject matter of the present revision petition is the adjudication as per law whether the order dated 19.04.2018 was passed on the basis of legal principles. The scope of present revision petition can not be enlarged by considering and appreciating the contents of final reports under section 173 CrPC submitted in other three FIRs. The Revisionist cannot be allowed to summon the records of judicial record of other connected FIRs or judicial record of other connected FIR cannot be summoned in order to decide the present revision petition. The application is devoid of any merit. Hence dismissed."

observing thus inter alia to the effect that the subject matter of the revision petition was whether the order dated 19.4.2018 was passed on the basis of Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.

legal principles and that the scope of the of the revision petition could not be enlarged by considering and appreciating the contents of the final reports under Section 173 of the Cr.P.C., 1973, submitted in other three FIRs and that thus the application seeking the summoning of the records of a judicial record of other connected FIRs could not be allowed.

In reply to a specific Court query, the learned counsel for the petitioner submits that the petitioner seeks the summoning of the said records as prayed vide the application dated 3.5.2021 declined vide the impugned order dated 16.8.2021 by the learned Principal Judge, District & Sessions Judge (PC Act-CBI) to show that the petitioner cannot be tried more than once for the same alleged offence of the commission of forgery in terms of Section 467/468 of the Indian Penal Code, 1860 in relation to which there are four FSL reports bearing different numbers that had been filed in the other matters with the same content.

On behalf of the CBI , it has been submitted that the petitioner's ploy is only to detract the trial of the cases and that it is for the Trial Court to proceed on the basis of the averments made in the single charge sheet and that the Trial Court cannot be aware of any other transactions that may have occurred and in terms of Section 190 of the Cr.P.C., 1973 it is not required that the details of other cases are put forth in the charge sheet before the learned Trial Court.

Be that as it may, the submission made on behalf of the petitioner is to the effect that the petitioner could not be summoned qua the alleged commission of the offences punishable under Sections 467 and 468 of the Indian Penal Code, 1860, more than once qua the same transaction. In these circumstances, it is considered appropriate that the records of the TCRs Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.

prayed by the applicant in Cr.No. 4/2021 vide the application dated 3.5.2021 be summoned only in the e-form before the learned Revisional Court in Cr.No. 4/2021 for the date 25.10.2021. It is made expressly clear that the records in the case in which the prayer has been made vide the application dated 3.5.2021 shall be placed before the learned Revisional Court only in the e-form and shall not be summoned physically.

The petition is disposed of accordingly. A copy of this order be sent to the learned Revisional Court. Nothing stated herein above shall amount to any expression on the merits or demerits of the trials of any of the proceedings in relation to RCBSK2014E0002, RCBSK2013E0004 & RCBD12014E0001 & RCBD12015E0001.

ANU MALHOTRA, J SEPTEMBER 27, 2021/sv Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2021 20:03:04 This file is digitally signed by PS to HMJ ANU MALHOTRA.