Central Bureau Of Investigation vs Arvind Khanna on 17 October, 2019

Equivalent citations: AIR 2020 SUPREME COURT 3448, AIRONLINE 2019 SC 1390, 2019 (10) SCC 686, (2019) 14 SCALE 84, (2019) 3 UC 1691, (2019) 4 MAD LJ(CRI) 439, 2020 (1) SCC (CRI) 94

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Bench: N.V. Ramana, R. Subhash Reddy, B.R. Gavai

REPORTAB

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1572 OF 2019
[Arising out of S.L.P.(Crl.)No.1420 of 2017]

Central Bureau of Investigation ... Appel

Versus

Arvind Khanna ... Respo

J U D G M E N T

R. Subhash Reddy, J.

1. Leave granted.

2. This civil appeal is filed by the Central Bureau of Investigation (for short 'CBI'), through the Investigating Officer, CBI/SPE, ACP, New Delhi, aggrieved by the common judgment and order dated 30.11.2015, passed by the High Court of Delhi at New Delhi in Crl. M.C. No. 2784 of 2011 and Criminal M.C. No. 3342 of 2011.

3. The aforesaid Criminal Miscellaneous Cases were filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'). Vide Crl. M.C. No. 2784 of 2011, the respondent-petitioner sought quashing of First Information Report (for short 'F.I.R.') bearing No. RC-AC-1-2007-A-0003 dated 02.04.2007, charge sheet dated 13.12.2010 and the order dated 05.07.2011, passed by the learned Additional Chief Metropolitan Magistrate- 01 (ACMM), Patiala House Courts, New Delhi.

4. By order dated 05.07.2011, the Additional Chief Metropolitan Magistrate took cognizance of the offence under Section 35 read with Section 3 of Foreign Contribution (Regulation) Act, 2010 (for short 'FCRA, 2010') and issued summons to the respondent-petitioner. Vide Crl. M.C. No. 3342 of 2011, the respondent- petitioner sought quashing of the order dated 20.08.2011, passed by the learned Revisional Court in Criminal Revision No. 02/2011, filed by the appellant herein.

5. While allowing the Revision Petition, order dated 05.07.2011 was substituted providing that deemed cognizance has been taken under Section 23 read with Section 4 of the Foreign Contribution (Regulation) Act, 1976 (for short 'FCRA, 1976').

6. By the aforesaid common order passed by the High Court, in exercise of powers under Section 482 of Cr.P.C., the operating portion of the order, as contained in paragraph 82, reads as under:

> "In view of the facts recorded above and the law discussed, I am of the opinion that the material placed on record with chargesheet by prosecution is not sufficient even to frame charge against the petitioner. Therefore, I hereby quash the FIR mentioned above with all proceedings emananting thereto with liberty to the Central Government to compound the case of the petitioner under Section 41(1) FCRA, 2010."

7. The respondent-petitioner was a Member of Legislative Assembly (MLA), Punjab from 24.02.2002 to 27.02.2007.

8. During the said period from 06.03.2002 to 04.03.2006, he received a sum of Rs. 9,04,84,770/- (Rupees Nine Crores Four Lacs Eighty-Four Thousand Seven Hundred and Seventy Only) from eight foreign entities, one of these is an entity known as 'New Heaven Nominees'. The other seven entities are managed by an entity known as 'CI Law Trust'.

9. On the ground, that the foreign contribution received by the respondent-petitioner was in violation of provisions under FCRA, 1976, the appellant herein on 02.04.2007, registered the crime in F.I.R. No. RC-AC-1- 2007-A-0003 under Section 23(1) read with Section 4(1) of FCRA, 1976.

10. It was the case of the respondent-petitioner, that the funds which were received, were gifts from his father, Mr. Vipin Khanna, an Indian passport holder. It was his case that the foreign entities through whom such funds were sent, were holding the same on behalf of his father, Mr.Vipin Khanna. After completing the investigation, charge-sheet was filed and by order dated 05.07.2011, the Additional Chief Metropolitan Magistrate had taken cognizance under Section 35 read with Section 3 of FCRA, 2010. As the offence was committed, when the FCRA, 1976 was in force, the

appellant-CBI has filed Criminal Revision Petition No. 2 of 2011 before the Revisional Court i.e. the Special Judge, CBI-03, New Delhi. The Revisional Court, by order dated 20.08.2011, on the ground that the learned Additional Chief Metropolitan Magistrate, New Delhi has committed a "jurisdictional error", by proceeding under the wrong provision of law, allowed the Revision Petition, thereby providing that cognizance is deemed to have been taken under Section 23 read with Section 4 of the FCRA, 1976.

11. So far as such order passed by the Revisional Court is concerned, respondent-petitioner has questioned the same, mainly on the ground that the said order was passed without notice to him. At the same time, the respondent sought quashing of the F.I.R., charge-sheet and further consequential order, on the ground that the amount which he has received, is a gift from his father, Mr. Vipin Khanna, who is an Indian passport holder. The foreign entities, through whom such funds were sent, were holding the same on behalf of his father. The respondent relied on the statement allegedly given by his father, Mr. Vipin Khanna, on 11.07.2006 and also the statement dated 13.04.2007, issued on behalf of New Heaven Nominees', stating that the funds which were sent, were from funds standing to the credit of respondent's father, Mr. Vipin Khanna. It was also pleaded that Income Tax Authorities, vide order dated 11.12.2010, in proceedings under Section 147 of the Income Tax Act, 1961, accepted the said receipts as gift, and the same is confirmed by order dated 15.04.2014, passed by the Income Tax Appellate Tribunal in ITA Nos. 1915 to 1917/DEL of 2010.

12. The appellant has filed an application, for issuance of Letters Rogatory (LRs), which was allowed by the Trial Court vide order dated 10.12.2007, for the purpose of collection of evidence from United Kingdom. Though they have received only part/incomplete execution of such LRs, it was also the case of the respondent that FCRA, 1976 is repealed and replaced by FCRA, 2010 with effect from 01.05.2011 and Section 4 of FCRA, 2010, now removes the requirement of prior permission from Central Government, before receipt of foreign contribution. Further, it was pleaded that though cognizance of offence was taken under Section 35 read with Section 3 of FCRA, 2010 and summons were issued to the respondent, however, on Revision filed by the C.B.I, same was allowed without notice to him.

13. After FCRA, 2010 has come into force, on the ground that offence alleged against the respondent is now compoundable under Section 41 of the Act, respondent has filed an application dated 04.06.2012 before the Ministry of Home Affairs, seeking compounding of offence. However, the Ministry of Home Affairs, by order dated 28.04.2014, rejected the same. Thereafter, the respondent filed Writ Petition (Criminal) No. 1168 of 2014 before the High Court, and the High Court vide order dated 08.07.2014, allowed the petition and directed the authorities to take decision afresh after hearing the respondent-petitioner. Thereafter, no decision was taken.

14. Before the High Court, the quash petition filed by the respondent was opposed by the appellant herein, stating that the petition filed under Section 482 Cr.P.C, by the respondent, is not maintainable, as the allegations made in the F.I.R and charge-sheet, prima facie discloses the commission of offence under Section 23 read with Section 4 of FCRA Act, 1976. The F.I.R. was registered on sanction by the Ministry of Home Affairs, Government of India, vide letter dated 18.12.2006, by which, the appellant-C.B.I was authorized under Section 28 of the FCRA, 1976, to

investigate receipt of foreign funds amounting to Rs.9.60 crores by the respondent, who was the then MLA of Punjab, from eight overseas Companies, without obtaining prior permission from the Central Government. It was their case before the High Court that charge-sheet was filed before the FCRA, 2010 came into force on 01.05.2011 and it was further pleaded on their behalf that the Revisional Court has rightly held that cognizance and summoning of the respondent is deemed to have been taken under Section 3 read with Section 24 of FCRA, 1976. It was categorically pleaded that benefit of Section 41 of FCRA, 2010 is not available to the respondent, as the same is available only for the offences committed under the Act of 2010.

15. The High Court, in common impugned order, has observed paragraphs 60-62 as under:

> "60. Admittedly, the amount in question has been received by the petitioner from his father Mr. Vipin Khanna, who is an Indian passport holder. The foreign entities through whom such funds were sent were holding the same on behalf of his father. To this effect, Mr. Vipin Khanna made a staement dated 11.07.2006, whereby stated that these funds were sent on his instructions to the petitioner. Moreover, vide statement dated 13.04.2007, New Heaven Nominees' stated that the funds sent to the petitioner by way of gifts were from funds standing to the credit of petitioner's father with them. Moreover, similar gifts or funds were also given to the petitioner's siblings, namely, Mr. Aditya Khanna, Mr. Naveen Khanna and Ms. Vineeta Singh by Mr. Vipin Khanna, i.e, their father. The statement dated 10.08.2007 made by CI Law Trust, corroborated that funds sent to the petitioner were paid by way of gifts from funds standing to the credit of Mr. Vipin Khanna and further stated that similar gifts or funds were given to other siblings mentioned above by father of the petitioner. {
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> 61. It is pertinent to mention that the Income Tax Authorities vide order dated 11.12.2010 passed by the Commissioner of Income Tax (Appeals) in proceedings under Section 147 of the Income Tax Act, 1961, that similar income received by the petitioner from the same CI Law Trust (formerly known as West Way) had been treated as a 'gift' from the father of the petitioner. The above order stands confirmed by order dated 15.04.2014 passed by the Income Tax Appellate Tribunal in ITA Nos.

1915 to 1917/DEL/2010.

62. It is further important to note here that the Ministry of Home Affairs by order dated 28.04.2014, rejected the compounding application of the petitioner. Accordingly, the petitioner challenged said rejection order vide W.P.(Crl.) No. 1168/2014, which was set aside by this Court vide order dated 08.07.2014 and directed a fresh hearing to the petitioner.

Accordingly, a fresh hearing was granted on 09.03.2015, however, till date no decision is taken thereon by the Ministry."

16. Initially, cognizance was taken by the trial court under provisions of FCRA, 2010. Aggrieved by the same, the appellant-CBI has filed the Revision. The Revision Authority, by order dated

20.8.2011, has allowed the Revision. The Revisional Authority, in its order dated 20.08.2011, has observed that the learned Additional Chief Metropolitan Magistrate, New Delhi, has committed a "jurisdictional error" and has proceeded under the wrong provision of law. It was further observed that while allowing the Revision, cognizance is deemed to have been taken under Section 23 read with Section 4 of the FCRA, 1976.

17. About the order of the Revisional Authority, mainly it was the grievance of the respondent that Revisional Authority has passed the order, without giving notice and opportunity.

18. We have heard Sri Rana Mukherjee, learned senior counsel for the appellant and Sri Mahesh Jethmalani, learned senior counsel for the respondent and perused the impugned order and other material placed on record.

19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegtions made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.

21. From a reading of the impugned order, it appears that the High Court has proceeded on the premise that the appellant has admitted the receipt of foreign contribution from his father Mr. Vipin Khanna, who is an Indian passport holder. Infact, it is not so. It is a case of the appellant-CBI, that the foreign contributions were received by the respondent from different entities in the foreign country, without permission from the Government. On the other hand, the case of the respondent, in defence, is that he has received such funds from his father Mr. Vipin Khanna. The High Court has taken into consideration the statement, alleged to have been made by Mr. Vipin Khanna on 11.07.2006 and one of the statements given on behalf of one of the entities by the name 'New Heaven Nominees'. It is a defence of the respondent that the foreign entities which have sent the funds to the respondent are from available funds, standing to the credit of respondent's father, Mr. Vipin Khanna.

22. The correctness of the defence whether such amounts were received by the respondent from his father or not is a serious factual dispute. It is not an admitted position, as recorded by the High Court. The correctness of the defence of the respondent is to be gone into only after appreciating the evidence during the trial. Merely, by referring to statements alleged to have been made by father of the respondent, Mr. Vipin Khanna, and also on behalf of one of the entities i.e New Heaven Nominees', the High Court has committed an error in recording a finding in favour of the respondent. The High Court also committed an error in observing that, even otherwise, there is

material to show that funds were indeed a gift from father of the respondent and the prosecution has neither disputed the said fact as false nor alleged that the funds in question did not belong to the father of the respondent. The said observation made by the High Court is also contrary to the record.

23. When it is mainly the defence of the respondent that the funds were received from his father, burden is on him to prove that he received such funds from his father, as such, no permission was required. Even with regard to applicability of provisions under FCRA, 1976, findings are to be recorded after trial.

24. Learned senior counsel Sri Mahesh Jethmalani, appearing for the respondent, in support of his argument, relied on the judgment of this Court, in the case of Ahmedabad Urban Development Authority v. Manilal Gordhandas and Ors.1 Learned senior counsel also placed reliance on the judgment in the case of Mohit Alias Sonu and Anr. v. State of Uttar Pradesh and Anr.2. In this 1 (1996) 11 SCC 482 2 (2013) 7 SCC 789 case, when the Sessions Court refused to issue summons, on the ground that no prima facie case is made out and when such order is challenged before the Revisional Court, it was held that it was incumbent upon the Revisional Court to give opportunity of hearing, as contemplated under sub-section (2) of Section 4 of Cr.P.C.

25. So far as the order passed by the Revisional Authority is concerned, if any adverse order is passed by the Revisional Court, without issuing notice to the respondent, it is open to the High Court to set aside the order and remit the matter back for fresh consideration but, at the same time, it is not open to allow the Revision in its entirety.

26. For the aforesaid reasons, this appeal is allowed, impugned common order dated 30.11.2015 is set aside. It is open for the trial court to proceed from the stage at which the proceedings were stopped and to decide the same in accordance with law, uninfluenced by any of the findings and observations made by this Court or the High Court. So far as the order dated 20.08.2011, in Crl. Revision Petition No.02/2011, passed by the Special Judge, CBI-03, New Delhi, we quash the same and remit the matter to the Revisional Court for fresh consideration, after issuing notice to the respondent. The respondent, without waiting for any formal notice, shall make his appearance before the Revisional Court within a period of four weeks from today. Thereafter, it is open to the Revisional Court to fix a date for hearing, and pass an appropriate order, on its own merits.

..... J.

[R. Banumathi] ..... J.

[R. Subhash Reddy] NEW DELHI, October 17, 2019