IN THE COURT OF SH. AMIT KUMAR,
SPECIAL JUDGE, PC ACT (CBI) - 04, ROUSE AVENUE COURTS, DELHI

CNR No. DLCT11-001463-2019

CC No. 371/2019

CBI Vs. Dr. Laxmi Chand Gupta & Anr.

02.05.2022

O R D E R

1) Vide this Order, I shall dispose off the application filed by accused no. 1 U/s 19 of the PC Act for dropping further proceedings against accused.

2) The brief facts necessary for disposal of this application are that the present RC was registered on the basis of source information that accused no. 1 Dr. L.C. Gupta, who was initially employed on contractual basis as Junior Specialist Forensic with Govt. of NCT Delhi on 09.10.1998 at a monthly salary of Rs. 15,000/- with allowances had accumulated assets beyond his source of income. His wife Smt. Manju Gupta has aided, facilitated and abated her husband to purchase the properties in her name, thereby permitting A-1 to invest his ill gotten money in her name. As per prosecution, there are disproportionate assets to the tune of Rs. 3,04,53,687/-, which is 148.19% of the total income of both the accused. After completion of investigation, charge sheet was filed on 30.09.2015 and thereafter, charges against both the accused were framed on 20.01.2017 in continuation to the Order on charge dated 29.11.2016. After framing of charges, admission and denial of documents was done and the prosecution examined 15 witnesses including PW1 Sh.

Amar Nath, the then Secretary, Health, Govt. of NCT, who is the signatory to the sanction order on behalf of the Sanctioning Authority i.e. the Lieutenant Governor of Delhi.

3) The present application has been moved by A-1 on the ground that the sanction order Ex. PW1/A required to be signed by the Hon'ble Lieutenant Governor (LG) has not been signed by him and has been signed by PW1 in his capacity as Secretary, Department of Health though PW-1 had no authority to sign the same. As per this application, the concerned file was received in the office of Lieutenant Governor on 22.09.2015 and was dispatched back on 07.10.2015 whereas sanction order is dated 29.09.2015 and the charge sheet was filed on 30.09.2015 alongwith the sanction order, which practically is impossible when the file from the LG office was dispatched only on 07.10.2015. It is claimed in the application that the competent authority did not see the entire material, which has been sent to this court alongwith the charge sheet and the competent authority could not and did not, apply its mind on the basis of half cooked material. Further, PW1 admitted that draft sanction order was sent to him by CBI and he only made few changes, which reflects that the so called sanction order is nothing but copy paste document and reflects non-application of mind of the competent authority. The sanction order does not convey the date on which Lieutenant Governor granted sanction. Neither PW1 nor the Lieutenant Governor considered various aspect relevant for the purpose of evaluating, grant or refusal of sanction, specifically merits and demerits of the allegations in the charge sheet.

Witness PW1 admitted in the cross-examination that only file Ex. PW1/DX1 was sent for perusal of competent authority, which admittedly did not contain statement of witnesses, relied documents etc. and the same proves that there was no opportunity with competent authority to apply its mind. Further, as per law, it was necessary for CBI to place entire record/material before the competent authority for getting sanction for prosecution, which was not done in this case. The file Ex. PW1/DX1 clearly shows that it contains only 76 pages, which were only sent to the Lieutenant Governor and same is contrary to the charge sheet, which contains more than 3500 pages. There is nothing in the note sheets to suggest that the Hon'ble LG has authorized PW1 to sign or convey the sanction order to CBI. CBI did not submit the essential and relevant documents with its request for grant of prosecution sanction with competent authority, which was essential on its part and therefore, competent authority could not have applied its mind for want of relevant documents. Perusal of Ex. PW1/DX1 shows that there was no statement of witnesses or documents supplied by CBI to PW1 or to Hon'ble LG and therefore, sanction accorded in this case is invalid and without jurisdiction and therefore, the accused is entitled to be discharged at this stage. Ld. Defence counsel in support of his arguments has relied upon the following judgments:

i. *C.B.I. Vs. Ashok Kumar Aggarwal, AIR 2014 SC 827*

ii. *State of T.N. Vs. M.M. Rajendran, (1998) 9 SCC 268*

iii. *Nanjappa Vs. State of Karnataka, (2015) 14 SCC 186*

iv. *Central Bureau of Investigation Vs. Ram Pat Garg, MANU/DE/2781/2017*

v. *Sarif-Ud-Din Vs. Abdul Gani Lone, AIR 1980 SC 303*

vi. *R.R. Kishore Vs. C.B.I., 142 (2007) DLT 702*

vii. *P.L. Tatwal Vs. State of Madhya Pradesh, AIR 2014 SC 2369*

viii. *Mansukhlal Vithaldas Chauhan Vs. State of Gujrat, AIR 1997 SC 3400*

ix. *Madhu Sankla Vs. State, MANU/DE/1754/2017*

x. *Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi), 2019 (16) SCALE 741*

xi. *Central Bureau of Investigation and Ors. Vs. Pramila Virender Kumar Agarwal and Ors., 2019 (4) JCC 4030*

4) In the reply filed by the CBI, the application has been strongly opposed on the ground that there is a office circular dated 04.07.2000, which authorizes all the Chief Secretaries, Principal Secretary, Secretary, Special Secretary and Additional Secretary in any Department of Govt. of NCT to sign orders for and on behalf of Hon'ble Lieutenant Governor of Delhi after his approval and therefore, there is no force in the argument that PW1 was not competent to sign the sanction order on behalf of LG. It is further submitted that a perusal of file Ex. PW1/DX1 will show that the Hon'ble LG approved the sanction on 24.09.2015 and thereafter, the file was marked to Secretary, Health, who signed on 29.09.2015 and thereafter, the file was cleared and received in the office of Principal Secretary and as such the issuance of the sanction order on 29.09.2015 is valid and proper and in view of this primary evidence, the reply received by the accused through RTI is of no value. It is also stated that CBI had forwarded copies of all the documents

collected during investigation alongwith the statement of witnesses to the competent authority which can be seen from the CBI letter dated 26.06.2015 and mere unavailability of theses documents in the file produced before this court Ex. PW1/DX1 does not mean that the documents were never supplied nor perused by the competent authority. It is claimed that since the documents were voluminous, it is possible that same may be kept in different file separately. It is claimed that the competent authority applied its mind and then accorded sanction for prosecution of A-1 and therefore, there is no reason to drop the proceedings against the accused persons. The sanction order was issued after due and proper application of mind by the competent authority after perusing documents and the application is only to delay the trial and should be dismissed with cost. Ld. PP for CBI in support of her arguments has relied upon the following judgments:

- *i.* *C.S. Krishnamurthy Vs. State of Karnataka, (2005) 4 SCC 81*
- *ii.* *Suresh Kumar Duggal Vs. State (NCT of Delhi) C.B.I., 2013 (3) JCC 2065*
- *iii.* *Superintendent of Police (C.B.I.) Vs. Deepak Chowdhary and Ors., (1995) 6 SCC 225*
- *vi.* *State of Maharashtra and Ors. Vs. Ishwar Piraji Kalpatri and Ors.,(1996) 1 SCC 542*
- *v.* *State of Maharashtra through C.B.I. Vs. Mahesh G. Jain, (2013) 8 SCC 119*
- *vi.* *State of M.P. Vs. Harishankar Bhagwan Pd. Tripathi, (2010) 8 SCC 655*
- *vii.* *Indu Bhushan Chatterjee Vs. The State of West Bengal, AIR 1958 SC 148*

5) I have heard the submissions and perused the record and the judgments relied upon. The basic contention of the accused is that the competent authority did not have the opportunity to examine all the material as it was never sent to him and resultantly did not apply its mind before granting sanction. The cross-examination of PW1, who is the signatory of the sanction order as well as the sanction order are the most important things to be considered. The sanction order Ex. PW1/A mentions that the CBI report as well as the documents annexed in file Ex. PW1/DX1 and PW1/DX2 were considered by the competent authority before according sanction. The sanction order in first paragraph says that the disproportionate assets are 256.47% of the income whereas para 5 of this sanction order says that the same is 148.19% of the total income of A1 and his family members. Ld. Counsel for the accused has strongly argued that this variation in the percentage of the disproportionate assets clearly reflects that the competent authority did not apply its mind as the order itself refers to two different figures. I have seen the order. The para 1 of this order talks only about the allegations as it begins with the words "whereas it is alleged". On the other hand, in para 5, the figure of 148.19% has been mentioned after calculation done in the preceding para 4 of this order. The para 5 contains the finding of the investigation whereas para 1 are the allegations and I do not find any reason to hold that the order itself is wrong or without application of mind only because it has talked about two different figures of the percentage of the income for disproportionate assets.

6) Coming to the second argument that complete material was not seen by the competent authority, the cross-examination of PW1 is relevant in this regard. Ld. Defence counsel has argued that PW1 in the cross-examination dated 17.07.2017 stated that Ex. PW1/DX1 and PW1/DX2 were the only files, which had gone to the office of LG for seeking prosecution sanction and therefore, the same proves that the competent authority did not have sufficient material to apply its mind. It is settled proposition of law that the evidence cannot be read in piecemeal for the benefit of any litigant and has to be read as a whole. PW1 in his examination in chief has stated that the request received from CBI seeking permission for prosecution sanction was accompanied by CBI report, statement of witnesses and other documents. The letter received from CBI also mentions that copy of all original documents and statement of witnesses are enclosed with this letter. This documentary evidence cannot be ignored and the oral testimony of the witness in the court cannot be given more weightage than the document itself. A perusal of cross-examination of PW1 reflects that there is not even a suggestion to him during cross examination that the statement of witnesses and the other documents were not received from CBI alongwith the letter for grant of prosecution sanction despite specific statement in examination in chief. PW1 while appearing in the court after two years of signing the sanction order stated in his cross-examination dated 17.07.2017 on page 5 that "it is difficult to say at this stage that apart from documents so annexed in the file Ex. PW1/DX1, I have not perused any other document". He also

stated in the same paragraph that "it is correct that file Ex. PW1/DX1 and PW1/DX2 were the only files, which has gone to the LG office for seeking prosecution sanction". This cross-examination clearly reflects that witness at this stage is not sure whether he perused other documents or not, though he was sure that these two files were sent to LG office. In these facts, it can not be said that complete material was not sent by CBI.

7) Let us now peruse the two files Ex.PW1/DX1 and Ex. PW1/DX2. Ex. PW1/DX1 contains detailed office notes, whereby it was recommended that prosecution sanction may kindly be granted and the Hon'ble LG approved the same. Admittedly Hon'ble LG had the occasion to consider both these files. File Ex. PW1/DX1 shows that it had detailed CBI report at page no. 39C to 74C. This detailed report contained statements A, B, C, D pertaining to income and expenditures and acquisition of assets by the accused. The statements and the particulars provided in this report are so detailed that they are clear in itself. All the figures are specifically mentioned and leaves no ambiguity. Further, the file Ex. PW1/DX2 contains copies of the documents of the few properties acquired by A-1 during the relevant period. The documents available in these files are self sufficient and even if it is presumed for the sake of argument that only these two files were sent to LG for consideration of granting prosecution sanction of A-1, the same are sufficient in itself to arrive at a decision by the competent authority. Though for the sake of repetition, it is clarified that the request letter of CBI and the examination in chief of PW1 clearly shows that all the

material was sent by CBI for consideration. Why that material is not available in the file Ex. PW1/DX1 is not to be considered as these are the office files and there may be a situation where the record has not been properly maintained and mishandled. It is also relevant to mention here that PW1 on page 7 of his cross-examination conducted on 17.07.2017 stated that apart from the material submitted by CBI alongwith the request letter, he might have taken inputs from the other sources like staff etc. There is no embargo in this regard though the same might not be mentioned in the note sheet of file Ex. PW1/DX1. In view of the above discussion, I am of the considered opinion that competent authority had sufficient material before it to apply its mind for granting prosecution sanction for prosecution of A-1.

8) The other argument of Ld. Defence counsel that PW1 was not competent to sign the sanction order has no force as there is a notification dated 04.07.2000 available on record issued by the office of Lieutenant Governor, NCT of Delhi, which empowers the Secretaries, Special Secretaries, Additional Secretaries and likewise to sign for and on behalf of Lieutenant Governor.

9) One more contention of Ld. Defence counsel that file was never sent to Law Department as required under Rule 44 of Transaction of Business Rules of Govt. of NCT of Delhi holds no ground as consultation of law department is not required for according prosecution sanction in any case. Rule 44 talks about initiating/instituting or withdrawing prosecution at the instance of Administrative Department, which are to be referred to Law Department. Grant/Refusal of sanction for prosecution by LG has

nothing to do with Rule 44 nor same is required to be referred to Law Department.

10) Ld. Defence counsel has also argued that as per the reply given under RTI Act, the sanction file moved out from the office of LG on 07.10.2015 whereas the sanction order is dated 29.09.2015 and charge sheet was filed on 30.09.2015 alongwith sanction order and the same reflects the manipulation. I do not find any force in this argument as the record shows that the LG approved the grant of sanction on 24.09.2015 and the sanction order was signed on 29.09.2015. The movement of file showing that it came out from the LG office on 07.10.2015 can be because of late posting of the entry in the computer by the concerned person and that RTI reply cannot be considered sufficient material to hold that the file never came out from the LG office prior to 07.10.2015.

11) Coming to the case law relied upon by both the sides, it is relevant to say that each case is based on its own facts and it has to be seen whether the same applies to the facts of the case in hand. Though it is correct that the Hon'ble Supreme Court in para 8 of the judgment relied upon by the Ld. Defence counsel titled as *CBI Vs. Ashok Kumar Aggarwal (supra)* has laid down the legal preposition regarding sanction, yet on the other hand the law laid down by larger bench of Hon'ble Supreme Court in *Indu Bhushan Chatterjee Vs. State of West Bengal (supra)* relied upon by Ld. PP cannot be ignored. The Hon'ble Supreme Court in this judgment held that even if the sanctioning authority did not call for complete record in connection with the matter from the

office, yet the sanction granted cannot be held to be invalid as it was not for the sanctioning authority to judge the truth of the allegations made in the record. The paper placed before sanctioning authority apparently gave it the necessary material upon which the authority accorded sanction, which can be seen from the detailed sanction order itself. The Hon'ble Supreme Court held that the sanction order in that case clearly states all the facts, which concern the prosecution case and the sanction in valid. In the present case also, the sanction order is clear in itself and mentions all the details required to be considered by sanctioning authority. There is no embargo in law if draft sanction order is sent by prosecuting agency along with its request seeking prosecution sanction.

12) The argument that no preliminary enquiry was conducted before registration of FIR also lacks any force as preliminary enquiry is not essential in all cases and further the same has no bearing on the sanction order.

13) In view of the above discussion, it is held that the sanction accorded for prosecution of A-1 Ex. PW1/A is valid sanction and trial is not vitiated on this ground. Accordingly, the application is dismissed.

ANNOUNCED IN THE OPEN COURT TODAY i.e. on 02.05.2022

AMIT KUMAR

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Date: 2022.05.05 10:19:44 +0530

(AMIT KUMAR)
SPECIAL JUDGE, PC ACT,
CBI-04, ROUSE AVENUE COURTS,
NEW DELHI