

**IN THE COURT OF SHRI AJAY GULATI
SPECIAL JUDGE (PC ACT), CBI-12, ROUSE AVENUE COURT
COMPLEX, NEW DELHI.**

CC No. 283/2019

CBI V/s Texcomash International Pvt Ltd & Ors.

10.01.2020

ORDER

Application u/s 156 (3) Cr.PC moved by accused Kapil Chugh seeking directions to the CBI to withdraw the Notice u/s 91 Cr. PC issued to the applicant-accused, and for seeking Court monitoring of the Investigation.

1. The application at hand has been moved with a twofold prayer – *first*, to direct the investigating officer to withdraw the notice issued by him to the applicant-accused for the reason that it is beyond of the scope of section 91 of the Cr.PC; and *second*, for monitoring of the further investigation of this case by this Court.

2. In so far as the first prayer is concerned, it has been averred in the application (and supplemented by oral submissions) that an accused does not fall within the ambit of section 91 of the Cr.PC and hence, accused cannot be asked to supply documents/thing so as to aid the investigation since the accused cannot be compelled to provide self-incriminatory material to the investigating agencies, which is a fundamental protection guaranteed by the Constitution of India under *Article 20 (3)*. Ld. Counsel for the applicant-accused has placed reliance on a judgment delivered by the Hon'ble Supreme Court which is titled as **State of Gujarat vs. SM Choksi and Another** (AIR 1965 SC 1251). At

this stage, it needs a highlight that vide Notice u/s 91 Cr.PC, applicant-accused has been asked to furnish details of his business visits abroad during the period 5.12.2018 to 30.5.2019 and also regarding previous visits (without specifying the length of period of previous visits), **and** information regarding his association with STARORAMA TECHNOLOGIES Pvt. Ltd. (whose immovable property title documents was sought to be substituted by the applicant in place of FDR's furnished by him on record and which prayer, vide a separate order, stands declined).

3. In response, Investigating Officer of the CBI through his written reply submitted that the necessary information does not fall within the ambit of self-incriminating evidence as the same has been sought only for the purpose of assessing the conduct of the accused since he has repeatedly sought permission from the Court to go abroad on the pretext of business visits but it is not certain whether the visits have been actually utilised for the scheduled purpose. It has been specifically stated in the reply filed by the investigating officer that the information so sought **will not be used as evidence against the accused**. It has also been submitted that the documents /information sought cannot be refused to be provided on the ground that it is self incriminatory since the said information is already in the public domain being a part of judicial record as applicant had willingly disclosed all the information while seeking permission to travel abroad.

4. Rival submissions have been carefully considered.

5. Ld. PP appearing for the CBI has not been able to counter the argument put forth on behalf of the applicant to the effect that section

91 of the Cr.PC is not applicable to an *accused person* in which regard, reliance has been placed on a judgment (referred to above) delivered by the **Hon'ble Apex Court**. The cited **judgment** dealt with the scope of section 94 of the Cr.PC which Section in the old code of 1898 is analogous to section 91 of the present code of criminal procedure and it clearly laid down that an accused person cannot be compelled to furnish documents under section 94 of the code of 1898.

6. It needs a highlight that authority under section 91 of the Cr.PC can be exercised by an Investigating Officer as also by the Court. The precondition for exercise of the authority under section 91 is that a document or other thing is in possession of a person and is required for investigation, trial, inquiry or other proceeding under the Code. In its reply, Investigating Officer has specifically stated that the information sought will not be used as evidence against the accused but has only been sought to examine the conduct of the accused **i.e.** whether he has been utilising the concession granted by the Court for the purposes for which the said concession of foreign travel had been sought. However, a perusal of the contents of Notice under section 91 Cr.PC issued to the applicant-accused reveals that the information has been sought specifically for the purpose of investigation. **The reply of CBI is thus running counter to the language of the Notice under section 91 Cr.PC.** In any case, in the understanding of the Court, the issuance of Notice u/s 91 of the Cr.PC to an accused (applicant here-in) is not permitted by law.

7. Further, it is the assertion of the Ld. PP appearing for the

CBI that the information sought is already in the public domain since the applicant-accused had voluntarily parted with the said information while seeking permission of the Court to go abroad. If that be so, the judicial records can be accessed by the investigating officer through a proper application and the information regarding the places visited by the accused **or** the business purpose for which travel was sought, can all be accessed. Thereafter, the investigating Officer can conduct verification through law enforcement agencies of the countries which the applicant-accused has visited or claims to have visited for specified purposes.

8. Ld. PP for the CBI has further argued that by seeking the relevant information vide Notice u/s 91 Cr.PC, there has been no transgression of the constitutional safeguard provided to the applicant under article 20 (3) since the information sought in itself is not incriminatory in nature, having already been furnished by the accused himself while seeking permission of the Court. This argument is just a repetition of the earlier argument and in which regard it has already been observed in the preceding paras that if the information sought has been furnished voluntarily by the accused, CBI may have access to it through prescribed mechanism. In so far as the information regarding association of the applicant-accused with STARORAMA TECHNOLOGIES Pvt. Ltd. is concerned, the appropriate response could have been to issue Notice to STARORAMA TECHNOLOGIES Pvt. Ltd. for seeking relevant information rather than sending the Notice to the applicant-accused.

9. Regarding the prayer of monitoring of the further investigation of this case by the Court, ld. Counsel for the applicant has

highlighted a number of judgments to buttress the submission, the most notable being the judgment delivered by the Hon'ble Supreme Court in Sakiri Vasu's case (Sakiri Vasu vs. State of UP and Others 2007 AIOL 1861). However, perusal of all the cited judgments brings out one common pre-condition for court monitored investigation which is that either the investigation is not being done at all or it is not being done properly. Mere delay in the investigation is no ground for the Court to take up the responsibility of monitoring the same. The present application does not allege at all that the investigation is not being done in a competent manner or is being delayed deliberately. It only says that there are a large number of documents and witnesses which await the examination by IO or the forensic labs, as the case maybe. Since there is nothing to show that the investigation is being done in an improper manner, there is no requirement for the Court to monitor the same. Moreover, Id. Counsel for the applicant placed reliance on a full bench judgment delivered by the **Hon'ble Supreme Court** titled as *Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another* in Criminal Appeal nos. 478-479 of 2017 to support his submission that an application u/s 156 (3) Cr.PC is maintainable on behalf of the accused also. However, after carefully reading the judgment, I find no such ratio having been laid down. Instead, the cited judgment highlighted another judgment, also delivered by the **Hon'ble Supreme Court** titled as **Romila Thapar vs. Union of India** (2018) 10 SCC 753 wherein it has been held that an accused has no right to pray for court monitored investigation. The present application therefore is not even maintainable. There is, however, a predicament in as much as the prayer for directing

the IO to withdraw the Notice u/s 91 Cr. PC is a part of the application moved u/s 156 (3) Cr. PC. Though the Court concurs with the prayer of the applicant-accused regarding illegality of Notice u/s 91 Cr.PC, the prayer itself is a part of the application u/s 156 (3) Cr.PC which in the understanding of the Court is not maintainable. Nevertheless, since the Court has now been apprised of the issuance of Notice u/s 91 Cr.PC to the applicant, it will be appropriate to hold that IO has no such power and has acted beyond authority conferred by law, and as a corollary, the applicant is not bound to respond to the same. The Application is thus dismissed but with the above observations. A copy of this order be given dasti to the ld. counsel for the applicant as also the ld. PP for the CBI.

**Announced in the open court
on 10.01.2020.**

**(AJAY GULATI)
Spl. Judge (PC Act),CBI-12
RADCC/New Delhi/10.01.2020**