

**IN THE COURT OF MS. GEETANJLI GOEL,
ADDITIONAL SESSIONS JUDGE /
SPL. JUDGE (PC ACT) (CBI)-24
ROUSE AVENUE DISTRICT COURT, NEW DELHI**

M-66/2023

CNR No.DLCT11-000125-2019

CC No.01/2020

CIS No.55/2019

CBI Vs. Lalu Prasad Yadav & Ors.

RC No.220 E 0013/2017

PS : CBI/EO-II/ND

**under Section 120-B r/w Section 420 IPC
& Section 13 (2) r/w 13 (1) (d) of the PC Act**

05.04.2023

O R D E R

1. Vide this order, I shall dispose of the application filed on behalf of CBI seeking appropriate directions. It is submitted that the application has been filed in light of certain facts and developments, as transpired before the Court during arguments on charge on 27.03.2023. On that day, on multiple occasions in the first session while arguing on charge, the CBI vehemently objected to the innuendoes and/or imputations made on the agency by the Ld. Counsel for A-5, A-6 and A-14. These were primarily around the agency acting at the behest of the 'higher ups' and despite knowing that no case was made out herein, the officers and the agency were under instructions and/or under pressure to file the final report from the very top. It is submitted that despite objections, the Ld. Counsel for A-5, A-6 and A-14 did not refrain from the use of innuendoes and/or imputations in the second session also on 27.03.2023. All in all, the usage of such innuendoes and/or imputations was done on about 7 or more

occasions. After vehement objections by the CBI, the Court in its order dated 27.03.2023 had to direct the Ld. Counsel for A-5, A-6 and A-14 to refrain from using such innuendoes and/or imputations, including the case being registered at the direction of Higher-Ups, which 'Higher-Ups' were openly stated to be above and beyond the Director, CBI.

2. It is stated that it is the settled law that the counsels have absolute independence and freedom to fearlessly represent their clients in courts of law, without any threat, also enjoying privilege and in furtherance of the same right, the counsel(s) are also entitled to criticize the investigation of the case, which averments can include *inter alia* investigation being mala fide; investigator not understanding the details of the sector and/or case; partisan investigation; and investigation being a farce and no case being made out. It is in the said backdrop that the agency ignored the personal remarks made on the Ld. Special Public Prosecutor during the course of hearing on 27.03.2023 and the exaggerations in the submissions made by the Ld. Counsel for A-5, A-6 and A-14. It is submitted that it is equally true that such statements outside court(s) by politicians or public may be permissible, albeit for extraneous considerations. However, such statements cannot and ought not be permitted in a court of law, and the same are against the very majesty of the court hearing the matter, having already found sufficient ground to proceed against the accused. It is averred that the independence and freedom accorded to defend an accused cannot and ought not be exercised while laying down such imputations and/or innuendoes, bereft of

any tangible material and/or evidence on record and the same becomes critical when the CBI, being the premier independent investigation agency of the country, enjoys the confidence of the public in upholding the rule of law. It is submitted that such bald imputations and/or innuendoes undermine the confidence of the public and have the tendency of adversely impacting the impartial investigations being conducted by the CBI.

3. It is thus prayed that the Court call upon the Ld. Counsel for A-5, A-6 and A-14 and/or A-5, A-6 and A-14 to justify the use of the innuendoes and/or imputations mentioned with any material or evidence on record for them to cast such aspersions on the agency, which aspersions are scandalous to say the least and to clarify whether the said innuendoes and/or imputations were under the instructions of A-5, A-6 and A-14 or simply submissions made by the Ld. Counsel for A-5, A-6 and A-14.

4. The Ld. Counsel for A-5, A-6 and A-14 submitted that no reply was to be filed to the application and he would argue the application.

5. I have heard Shri D.P. Singh, Ld. SPP for CBI and Shri Shadan Farasat, Ld. Counsel for A-5, A-6 and A-14 and perused the record.

6. The Ld. Counsel for A-5, A-6 and A-14 submitted that there was no provision under which the application had been filed. It was submitted that it was the case of A-5, A-6 and A-14 that all the points referred to in para 4 of the application were applicable in the present case and it was their case that the

investigation of CBI was hit by malice in law and despite there being all material to the contrary, CBI had chosen the other side. The investigator did not understand the details of the case and the investigation was partisan and a farce and no case was made out. It was submitted that there was malice in law if the record indicated that the authority had done something which it was not entitled to do and in the present case the CBI could not have filed the charge-sheet and as such it could be contended that the same was done for extraneous reasons which was so in the present case and it was purely a legal submission that there was malice in law in filing the charge-sheet. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Ravi Yashwant Bhoir v. District Collector, Raigad and Others** (2012) 4 SCC 407. It was submitted that it was not necessary for him to name anyone and the record itself showed that the considerations were not legal and the charge-sheet had been filed without lawful excuse. It could not be that the State would have ill feeling or spite but the instant was not just a case of discharge but of something higher as to how the CBI had filed the charge-sheet and had acted for purposes foreign to what was intended.

7. The Ld. Counsel had further submitted that speech of arguing counsel in the Court was fully protected and if the Counsels were to be scared of applications, then the Counsels would not be able to frame arguments thinking that the IO may or may not like the arguments. It was submitted that the application was an intimidating tactic and if the Ld. SPP for CBI had been hurt by any remarks, he had already apologized to him. It was

argued that what CBI had done was extraneous and the investigation was extraneous, the Court was to decide the issue and there was no purpose of filing the present application. Moreover, as regards being asked to reveal whether the innuendos and/ or imputations were under the instructions of A-5, A-6 and A-14 or not, it was submitted that Client Attorney Privilege was claimed and the application missed the basics of law. It was contended that there could be exchanges between Counsels in the Court but such an application could not be moved and it was nothing but an intimidating tactic. The Counsels should have the freedom to put forth their arguments freely and not under the threat of applications and if the Ld. SPP had felt aggrieved, the Counsel had already apologized at the personal level.

8. The Ld. SPP for CBI, on the other hand had referred to paras 4 and 5 of the application and submitted that 'extraneous' meant that the IO or the Agency were personally interested or that there were extraneous demands and it was not when somebody stated that the CBI was working under fear or commands of someone at the top. The Ld. Counsel for A-5, A-6 and A-14 had been asked specifically if he meant the Director, CBI to which he had stated above that. It was submitted that the CBI is an independent agency and the common man or the court deemed it to be an independent agency. The Director of CBI was appointed by a Committee which included the Hon'ble Chief Justice of India and its independence was attacked and it was alleged that CBI was taking a call on the instance of someone

which was beyond saying that there were extraneous considerations and it meant that the CBI was working under the directions of someone else. It was contended that before making such allegations, the Ld. Counsel should have had evidence to show that the CBI was working under duress or pressure and it was not about malice in law but about challenging the basis of the institution and not about investigation. It was argued that it was incumbent on the Ld. Counsel to share with the Court the basis of the said allegations as if there was no basis, then such allegations could not be made.

9. The Ld. SPP had further submitted that there were different remedies in law, if the lawyer had stated such a thing on his own or if he had done so on the instructions of the client for which the remedy may lie elsewhere and if privilege was claimed, then the remedy would lie against both. It was submitted that recently in a judgment of the Hon'ble Supreme Court, it was held to be contempt of Court when baseless allegations were made against the Judge. It was submitted that one could not start alleging that the Authority was working under pressure of someone and rule of law prevailed in the country. The Court had already taken a prima facie view and called the accused persons before the Court. It was submitted that the Ld. Counsel could have attacked the investigation but not the institution and in the present case, the institution had been attacked without any basis or any material evidence to show to that effect. The insinuations made could not be ignored and that went to the foundation of authority and Rule of Law that

somebody from the top was giving directions to investigate, otherwise the CBI would not have come to such a conclusion. It was submitted that CBI was only invoking the faith of common man and Courts in the institution and Rule of Law.

10. It is seen that the present application has been filed essentially on the basis of certain arguments advanced by the Ld. Counsel for A-5, A-6 and A-14 during the course of arguments on charge wherein he had submitted that CBI, in the present case had acted at the behest of 'higher ups' and despite no case being made out, the officers and the agency were under instructions from the very top to file the charge-sheet. During the course of arguments, the Ld. SPP for CBI had objected to the same several times and thereafter the Court had orally asked the Ld. Counsel to desist from making such remarks and the same was also recorded in the ordersheet dated 27.03.2023 as under:

“The Ld. SPP for CBI has objected to the repeated submissions made by the Ld. Counsel for the accused Vijay Kochar (A-5), Vinay Kochar (A-6) and accused company M/s Sujata Hotel (A-14) that the case was registered at the direction of Higher-Ups. The Ld. Counsel has been told to refrain from doing so and he has stated that he would not refer to the same again.”

It is thus seen that the objections taken by the Ld. SPP were duly noted in the ordersheet and the Ld. Counsel for A-5, A-6 and A-14 had also stated that he would not refer to the same again.

11. The Ld. Counsel for A-5, A-6 and A-14 had submitted that he had criticized the investigation of the case on all the four points which were stated in para 4 of the application that is, the

investigation was malafide and was hit by malice in law. Reliance in this regard was placed on the judgment in **Ravi Yashwant Bhoir v. District Collector (supra)** wherein it was observed as under:

“MALICE IN LAW :

47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

*48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: **ADM, Jabalpur v. Shivakant Shukla**, AIR 1976 SC 1207; **Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors.**, (2005) 8 SCC 394; and **Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.**, AIR 2010 SC 3745).”*

It was submitted that the CBI in the instant case had acted for purposes foreign to those for which it was intended and acted on extraneous considerations to which the Ld. SPP for CBI had submitted that it was open to the Counsel to attack the investigation and not the agency and what was argued was beyond saying that the investigation was done for extraneous

reasons, which was permissible. However, the issue whether the investigation was hit by malice in law or was done for extraneous reasons is to be decided by the Court, based on the material on record.

12. The Ld. Counsel for A-5, A-6 and A-14 had then submitted that the Counsels should have absolute freedom to frame the arguments in the Court and they should not be forced to act under the threat of applications and the present application was nothing but an intimidating tactic and reliance in this regard was placed on the judgment of the Hon'ble High Court of Delhi in **Pankaj Oswal v. Vikas Pahwa** 2023 SCC OnLine Del 730 wherein it was observed as under:

“42. Accordingly, it is manifest that counsels cannot be obligated to examine the complete relevancy of the statements made by them during course of court hearing. Independence and freedom needs to be accorded to the counsels for putting their case before the Court with complete liberty, without any fear or threat that they may be embroiled in a litigation for any statement made by them in Court during judicial proceedings. Thus, any statement made by a counsel during court hearings is a privileged occasion and no counsel can be made liable for any action for libel or slander in respect of any statement made thereto.”

Thus, the Hon'ble High Court in a very recent judgment has held that it is manifest that the Counsels cannot be obligated to examine the complete relevance of the statements made by them during the course of Court hearing and independence and freedom needs to be accorded to the Counsels for putting forth their case before the Court with complete liberty. There can be no dispute with the said proposition that the arguing counsels should

have complete freedom to put forth their arguments before the Court.

13. The Ld. SPP for CBI had then submitted that freedom to argue did not mean that the counsel would allege that CBI which was an independent agency and the premier investigating agency of the country was acting at the behest of someone and there is merit in the submission that the investigation may be attacked but not the Agency itself. The Ld. Counsel for A-5, A-6 and A-14 had then submitted that as regards the prayer that he should be asked to justify the use of the innuendoes and/or imputations mentioned with any material or evidence on record, there was no basis for such a prayer. Even otherwise, the Hon'ble High Court of Delhi in **Pankaj Oswal v. Vikas Pahwa (supra)** has held that the statement made by a counsel during court hearings is a privileged occasion and as such the Ld. Counsel for A-5, A-6 and A-14 cannot be called upon to justify the arguments put forth by him.

14. The Ld. Counsel for the A-5, A-6 and A-14 had then submitted that as regards the prayer that he should be asked to clarify whether the innuendos and/ or imputations were at the instructions of A-5, A-6 and A-14 or simply submissions made by him, he was claiming Client Lawyer privilege to which the Ld. SPP had submitted that there were different remedies if the allegations were made at the behest of the clients and different remedies if the Counsel himself had so stated and a separate remedy would lie if privilege was claimed but there is merit in the submission of the Ld. Counsel for A-5, A-6 and A-14 that he cannot be asked to inform whether whatever was stated by him

during the course of arguments was done as part of his arguments or at the behest of his clients. At the same time, it is pertinent that the Ld. Counsel even the during the course of arguments had apologized several times to the Ld. SPP for CBI, if he had been hurt by any personal remark passed by him and even during the course of arguments on the application he had apologized to the Ld. SPP if he had felt aggrieved by any statement made by him. Moreover, after the Court asked the Ld. Counsel to desist from making any comments about the Agency, he stated that he would not do so and thereafter, he did not make any such references and even during the course of arguments on 29.03.2023, no such remarks were passed.

15. In these circumstances, it would be appropriate that the application is disposed of without any further directions since the Ld. Counsel for A-5, A-6 and A-14 has already apologized to the Ld. SPP for CBI and has also refrained from making further references which were objected to by the Ld. SPP for CBI and suffice it to say that there is nothing to doubt the independence of CBI as an Investigating Agency and that the Courts and the agencies in the country are governed by Rule of Law.

16. The application is accordingly disposed of.

ANNOUNCED IN THE OPEN COURT (GEETANJLI GOEL)
ON 05.04.2023 ASJ/SPL. JUDGE (PC ACT) (CBI)-24
ROUSE AVENUE DISTRICT COURT
NEW DELHI