

Spl. Case No. 7 of 2013

Order No. 13

Date : 11.09.2017

Today is fixed for order and appearance of the accused person.

Sole accused Soumen Das on CB is present and files hazira.

The petition filed praying for discharging the accused on 13.06.2017 is heard on 04.08.2017 from both sides.

It is submitted by Ld. Advocate for defence that on 22.10.2013 the present accused was arrested on the basis of a complaint lodged by one Uttam Saha on allegation of demanding bribe money from the complainant though the accused was a public servant. The investigation was completed by ACB and charge sheet was submitted, but in this instant case no preliminary inquiry was done, though it was directed by Hon'ble Apex court in P. Sirajuddin – Vs.- State of Madras, Cri. L.J. 523 (Vol. 77, C.N.154) that in a corruption case while registering any case against the person who is a public servant, the preliminary inquiry must be done there. It is further submitted that as per Govt. order [Vigilance 283 (SPAR) 12] that ACB will carry out investigation of those cases only which will be assigned to them by the State Govt. in P & AR Department, but that was not complied with. So the ACB had no legal sanction to register the said complaint. The procedure of registering complaint as mentioned in the said Govt. order was not at all complied with in this case and thus, the prayer is made for drop of proceeding at this stage. In support of argument the copy of P. Sirajuddin case and the recent judgement of our Hon'ble High Court, Calcutta in Brajesh Jha – Vs. - U.O.I. and Ors. are filed.

On the other hand, it is specifically argued by Ld. P.P. that the present case is at the stage of evidence where charge has been framed and already one witness has been examined. Moreover, the charge sheet when submitted the sanction was accordingly accorded from the Govt. as required under Prevention of Corruption Act. Other procedure of investigation was followed in compliance of Cr. P.C. where the statute remains silent. So any executive order can not be the guiding factor while there is specific guide line of investigation of the case in the statute itself. It is further submitted that as it is the settled principle of law as prescribed by Hon'ble Apex Court in HN Rishbud – Vs. - State of Delhi AIR 1955 that any illegality or defect in investigation can not frustrate the prosecution case unless it causes serious miscarriage of justice. It is further submitted that the executive order is for their departmental guideline. It has no

overriding effect over the statute. Moreover, the judgement referred by Ld. Defence counsel as observation of Hon'ble Supreme Court is not applicable in this case because that section has already been repealed and at present the Prevention of Corruption Act in its amended form is applicable. It is further submitted that even the question of preliminary inquiry does not arise in this case because the case was started not only on the basis of complaint but also on the effect of trap and naturally where the allegation is of demanding bribe if the preliminary inquiry will be held, the case will be frustrated and in that case there will be no utility of trap. It is also submitted that in the recent judgement of Hon'ble High Court, Calcutta as referred by Ld. Defence counsel itself reflects that the preliminary inquiry can be directed to conduct considering the specific

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fact in issue and thus in this fact and circumstance, the points raised by Ld. Defence counsel are not at all acceptable and thus the prayer should be rejected.

Considered the submission of both sides. The record is perused.

It is very much clear from the record that from the first day of arrest till the date of submission of charge sheet or on the date of framing of charge or on the first day of evidence, the petition was not filed. The defence counsel filed a petition U/s. 231 Cr. P.C. to cross examine PW1 along with other witnesses. But perhaps the Govt. order inspired him to agitate that issue before this court of law. There is no provision under which I can accept the prayer of drop of proceeding under Cr. P.C. even I have no inherent power to quash the proceeding. Apart from that, the concept of preliminary inquiry as coined by our Hon'ble Apex Court in Lalita Kumari case clearly indicates that if there is clear allegation of cognizable offence the case must be registered. But if there is any confusion, the investigating authority is to conduct the preliminary inquiry to assert any material to make the allegation cognizable or not. So, in this case where the allegation was of demanding bribe and where the accused was arrested in the trap process, so I think there is no scope of preliminary inquiry in this type of case. Regarding the submission of non compliance of Govt. order, I am of view that no administrative order prevails over the statute and the sanction given by the particular authority concerned is sufficient enough to assert that there was no objection of the Govt. to initiate the proceeding and thus, in my opinion the petition, the form and the content in which it was made is not maintainable and thus it is liable to be rejected on contest.

As the date was earlier fixed for evidence, fix **13.11.2017** for further evidence and appearance.

Dictated & corrected by me.

Addl. Dist. & Sessions Judge,
Bench - II,