

Pawan Kumar Vs. C B I and anr

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Court : Delhi

Decided On : Sep-12-2013

Judge : Sunita Gupta

Appellant : Pawan Kumar

Respondent : C B I and anr

Advocate for Def. : Mr. P.K. Sharma, Mr. Anil Kumar Singh, Mr. Bakul Jain

Advocate for Pet/Ap. : Mr. Prashant Bhushan, Mr. Somnath Bharti, Ms. Aakanksha Jha

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(CRL) 1386/2013
Date of decision:

12. h September, 2013 PAWAN KUMAR Through: Petitioner Mr. Prashant Bhushan, Mr. Somnath Bharti and Ms. Aakanksha Jha, Advocates. versus C B I & ANR Through: Respondents Mr. P.K. Sharma, SC for CBI with Mr. Anil Kumar Singh and Mr. Bakul Jain, Advocates. CORAM: HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226/227 of the Constitution of India read with Section 482 and 397 of the Code of Criminal Procedure, 1973 seeking the following reliefs: a. Set aside the order dated 26.08.2013 and direct the concerned authorities to release the petitioner-accused from the custody; and b. Direct setting up of a SIT to investigate the conspiracy and corruption surfaced in looting crores of public money; and c. Direct the consolidation of the aforementioned three criminal cases and be heard by the same court as the parties to the cases are common; and d. Transfer the two cases CC354/55/2012 from the Court of Ms. Poonam A. Bamba to another court of competent jurisdiction; and e. Quash the three criminal cases and associated FIRs/Charge-sheets qua the petitioner-accused in the interest of justice; and f. Order the call records of the accused, their counsels and the public prosecutors of the cases to unearth the conspiracy as revealed by the witness Mr. B.S. Diwakar; and g. Direct the trial court to take the audio film on record in complete confidentiality in the interest of justice; and/or h. Pass such other writ, orders or directions as this Honble Court deems fit in the circumstances of the case and in the interest of justice including the costs of this petition.

2. Notice of the writ petition was served upon the respondent. I have heard Mr. Prashant Bhushan, Advocate for the petitioner and Mr. P.K.Sharma, Standing Counsel for CBI and have perused the record.

3. It is submitted by learned counsel for the petitioner that the petitioner is an employee of State Bank of Mysore since 2006. Respondent no.1 CBI is prosecuting the petitioner in the following three criminal cases: a. CBI vs. Yogesh Jain & Ors (CC No.54/2012, RC not BD1/2011/E/0001/BS&FC/CBI/New Delhi). b. CBI vs. Satbir Yadav & Ors. (CC No.55/2012, RC not BD1/2011/E/0001/BS&FC/CBI/New Delhi). c. CBI vs. Texcomas & Ors. (CC No.11/2012, RC not BD1/2011/E0002/BS&FC/CBI(New Delhi). While first two cases are pending adjudication in the Court of Ms. Poonam A. Bamba, Special Judge CBI, Patiala House Court, New Delhi and is at the stage of cross-examination of three bank officials, the third one is yet to come up for arguments on charge before the Court of Mr. Vinay Kumar Gupta, Special Judge, CBI, Patiala House Courts, New Delhi.

4. During the course of cross examination of PW-1, Mr. B.S.Diwakar, AGM IFB, New Delhi of the respondent bank, the counsel for the accused confronted him for the lies he was speaking, identified on the basis of a tele-talk he had with him in the past. The accused sought permission from the Court to bring the audio of the conversation on record to effectively confront the witness and that the audio will open the truth. Thereupon, CBI moved an application for cancellation of bail granted to the accused on 10.07.2012. Vide a common order dated 26.08.2013, the learned Judge disallowed the application of the accused for bringing the audio conversation on record and cancelled the bail. The same is absolutely in violation of Constitutional rights and laws as laid down by Honble Supreme Court. The conversation would surface the truth. As such, it was submitted that the order cancelling the bail be set aside; the audio conversation be directed to be taken on record; the matter be directed to be investigated by setting up of SIT to look into the aspect of conspiracy and corruption surfaced in looting crores of public money; consolidation of the three criminal cases and be heard by the same Court; transfer of the cases from the Court of Ms. Poonam A. Bamba to another Court; quashing of three criminal cases; order for calling the call records of the accused, their counsels and the Public Prosecutor.

5. At the outset, learned counsel for CBI challenged the maintainability of the writ petition on the ground that the order of cancellation of bail cannot be set aside in the writ jurisdiction which is an exceptional Constitutional remedy. W.P(Crl.)1386/2013 petitioner cannot invoke the revisional jurisdiction of this Court inasmuch as same is barred u/s 19(3)(c) of Prevention of Corruption Act, 1988. The only remedy available to him was to file a bail application for grant of regular bail u/s 439 Cr.P.C. Furthermore, only on the basis of some tape recorded conversation which is still unverified, no direction can be given for setting up SIT for investigating the matter. After due investigation by CBI, the case is pending trial and during the trial, another mini trial cannot be ordered. As regards transfer of the case or clubbing of the cases, it was submitted that the petitioner can move appropriate application before the District Court as provided under the Code of Criminal Procedure. Since the alternative remedy is available to the petitioner, the writ petition does not lie. Reliance was placed on Sakiri Vasu vs. State of U.P. & Ors., AIR 200.SCC 90.and Anur Kumar Jain vs. CBI, 178(2011) DLT 501.

6. I have given my considerable thoughts to the respective submissions of learned counsel for the parties.

7. Perusal of record reveals that a charge-sheet in case not RC/BD1/2011/E/0001 was filed by respondent CBI before Special Judge, CBI against the petitioner and others. Petitioner was not arrested during the course of investigation. After the charge-sheet was submitted, petitioner along with four others was admitted to bail, on their furnishing personal bond in the sum of Rs. one lakh each with one surety in like amount, subject to the condition: a. That they shall not leave the country without the permission of the Court; b. They shall not tamper with evidence or try to win over any witness; c. They shall attend the Court as and when directed to do so; d. They shall deposit their passports in the Court.

8. During the trial of the case, when PW-1, Mr.B.S.Diwakar was under cross-examination, at that time, the petitioner wanted to confront him with an audio conversation and wanted to place the same on record. Thereafter, application for cancellation of bail was moved by the respondent CBI on the ground that the petitioner has tried to tamper with evidence and has thus violated one of the conditions of bail. The application was allowed by the Special Judge by observing that conduct of petitioner and his advocate is not only highly objectionable, unethical but also amounts to tampering of evidence. Since the petitioner has violated one of the conditions, subject to which he was admitted to bail, as such, the bail was cancelled and he was taken in custody.

9. By virtue of this petition, the petitioner seeks to set aside this order of cancellation of bail, maintainability of which is challenged by learned Standing Counsel for CBI on the ground that the writ jurisdiction under Article 226 is a constitutional remedy which is to be exercised sparingly. If alternative remedy is available, then the High Court should not ordinarily interfere. In *Sakiri Vasu* (supra), petition was filed for investigation by CBI which was dismissed by the High Court. In appeal before Honble Supreme Court, it was observed that directions should be issued only in some rare and exceptional cases. If alternative remedy is available, then the High Court should not ordinarily interfere. The revision does not lie against such an order inasmuch as Section 19(3)(c)

specifically bars revision against an interlocutory order. In Anur Kumar Jain (supra) it was observed that jurisdiction under Article 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a cloak of an appeal in disguise or to reappreciate evidence. The aforesaid proceedings should be used sparingly with more care, caution, circumspection and only to prevent grave miscarriage of justice.

10. Much discussion is not required on this issue inasmuch as after the filing of this writ petition, the petitioner has filed a regular bail application No.1624/13 which has been transferred to this Court. That being so, in view of the filing of the regular bail application, no orders are required to be passed in regard to this relief.

11. As regards setting up of SIT to investigate the conspiracy and corruption surfaced in looting crores of public money, since after due investigation, the charge-sheet was submitted by CBI and the trial is still pending, as such, no direction can be given for setting up of an SIT only on the basis of some tape-recorded conversation which, as per version of CBI is still unverified and has not even come on record.

12. Regarding the relief of consolidation of the three criminal cases to be heard by the same Court and transfer of two cases from the Court of Ms. Poonam A. Bamba to another Court of competent jurisdiction, appropriate remedy is available to the petitioner under the Code of Criminal Procedure itself. Section 408 of the Code of Criminal Procedure provides for power of Session Judge to transfer cases and appeals. Relevant portion of the Section reads as under: 408. Power of Sessions Judge to transfer cases and appeals. (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division. It empowers the learned Sessions Judge to transfer the case from one Court to another if the circumstances so warrant.

13. Under the circumstances, since alternative remedy is available to the petitioner by filing appropriate application before the learned District Judge, there is no ground to invoke the jurisdiction of this Court. Moreover, the petitioner has not

assigned any reason as to why the case which is pending in the Court of Ms. Poonam A. Bamba be transferred to another Court.

14. As regards quashing of three criminal cases and FIR/charge-sheet qua the petitioner, merely because the bail of the petitioner is cancelled, that by itself cannot be made a ground for quashing of three criminal cases and the charge-sheet against him in the absence of placing on record any cogent grounds.

15. No reason has been disclosed in the petition as to why the call record of the accused, their counsel or the PP is required.

16. The learned Trial Court has dismissed the application of the petitioner for taking on record the audio recordings of the conversations on the ground that the accused has ample opportunity to elicit facts from the witness by questioning him during cross-examination. In case the petitioner is aggrieved by the same, he may take recourse to the appropriate remedy as available to him under law, but for that he cannot invoke the writ jurisdiction of this Court. In fact, during the course of arguments, learned counsel for petitioner did not press reliefs `c to `g.

17. In view of the foregoing discussion, the writ petition is dismissed. SUNITA GUPTA (JUDGE) SEPTEMBER 12 2013 as

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