

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.A. No. 302 OF 2019

IN

WRIT PETITION (CIVIL) NO. 401 OF 2013

SUBRATA CHATTORAJ

.....

PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

.....

RESPONDENTS

WITH

CONTEMPT PETITION (CIVIL) NO. 166 OF 2019

IN

WRIT PETITION (CIVIL) NO. 401 OF 2013

AND

I.A. NO. 58327 OF 2019

IN

CONTEMPT PETITION (CIVIL) NO. 166 OF 2019

IN

WRIT PETITION (CIVIL) NO. 401 OF 2013

ORDER

SANJIV KHANNA, J.

By a slew of orders in the main Writ Petition and the order dated February 05, 2019 in the Contempt Petition, this Court had sought to allay confrontation and clash between the Central Bureau of

Investigation (for short, 'CBI'), a Central Investigating Agency, and the Police Force in the State of West Bengal (for short, 'WBSPF'). With regret, we acknowledge and accept that despite orders and words of advice, antagonism and acrimony has escalated and not ebbed as is evident from the pleading and arguments addressed before us. To avoid prolixity and as limited controversy arises for consideration, we are not referring the earlier orders for the purpose of the present judgment, *albeit* express our disappointment and dismay seeing the CBI and the WBSPF pitted and casting aspersions against each other and being embroiled in this feud. They have forgotten that the primary purpose and role of the police is to investigate crime, collect evidence and prosecute the offenders. Situation is grim as both sides have hardened their stand and there is no administrative mechanism in place to avoid and resolve such conflicts between the two wings of the police force in the country. At the receiving end are silently waiting lakhs of small town and rural investors who have been deprived and looted of their savings.

Keeping in view the magnitude, inter-State ramifications, plight of investors, and need for swift and efficient investigation, this Court had, vide judgment dated May 09, 2014 passed in Writ Petition (Civil) No. 401 of 2013, transferred the chit-fund scam cases registered in different police stations in the States of West Bengal and Odisha from the State Police Agencies to the CBI. This Order had required that the State

Police Agencies who were investigating these cases to provide fullest cooperation to the CBI, including assistance in terms of manpower and material, to enable them to conduct and complete the investigation expeditiously.

The CBI alleges non-cooperation and charges WBSPF with obfuscating the investigation by causing impediments and roadblocks with a view to protect big names and members/leaders of the ruling party in the State of West Bengal. By the interim order dated 15th December, 2017, this Court was constrained to direct that the CBI officers shall not be called by the State Police i.e. WBSPF. The CBI claims having substantial material implicating Mr. Rajeev Kumar, a senior officer of the Indian Police Service, and former Commissioner of Police, Kolkata, and the then Commissioner, Bidhannagar Commissionerate, of connivance and complicity with the principal accused. Notices dated October 18, 2017, October 23, 2017 and December 08, 2018 were issued to Mr. Rajeev Kumar to appear and join investigation, but he did not respond. Compelled, the CBI alleges their officers had made a *bona fide* visit to Mr. Rajeev Kumar's residence on February 03, 2019 but were prevented from entering and interrogating Mr. Rajiv Kumar by the WBSPF, who in retaliation had laid a seige around the CBI Office at Kolkata. Mr. Rajeev Kumar, who was the day-to-day In-charge of the SIT appointed by the State Government

investigating into the chit-fund scam cases, should explain the reason for release of mobile phones and laptop belonging to the accused Ms. Debjani Mukherjee. Further, full and complete call record data has not been provided and the data provided to the CBI was tampered and incomplete. An earlier Investigating Officer, in his statement recorded on September 18, 2018 under Section 161 of the Code of Criminal Procedure, 1973, (for short, 'the Code') had stated that he used to receive instructions from one Mr. Arnab Ghosh, who in turn would receive instructions from Mr. Rajeev Kumar. Diary maintained by the principal accused to record day-to-day transactions, which as per Ms. Debjani Mukherjee was seized by the WBSPF is missing or has for ulterior reasons been withheld from the CBI. Mr. Rajeev Kumar, during his interrogation at Shillong, was arrogant, non-cooperative and ambiguous in his answers, therefore, his custodial interrogation is required.

The Government of West Bengal, WBSPF and Mr. Rajeev Kumar, on the other hand, have alleged political vendetta and have made allegations against Mr Nageswara Rao, former Acting Director, CBI. Statement of Mr. Debrabrata Banerjee, purportedly recorded under Section 161 of the Code, is not the true and correct version given to the CBI. Reliance is placed upon Sections 172(1A) and (1B) of the Code. Laptop and mobile phones, it is submitted, were examined by the

Serious Fraud Investigation Unit, Enforcement Directorate and other agencies which did not find them to be relevant and incriminating, and therefore, were returned. Besides, the data downloaded from mobile phones and laptop was not compromised and is available with the said agencies. Timing of notices under Section 160 and the time gap between the first, second and third notices have been highlighted. Mr. Rajeev Kumar, it is submitted, was not the Investigating Officer and had a limited role. Further, Mr. Rajeev Kumar had fully cooperated, a fact which can be verified from the video recording of the interrogation that had prolonged for more than forty hours, cumulatively, on different dates. Custodial interrogation, it is alleged, is being sought to tarnish the image and reputation of Mr. Rajeev Kumar, a meritorious IPS Officer of 1989 batch, who had won the President's Medal in the year 2015 for his distinguished police service.

We have merely noted the contentions in the present order and would not comment on merits for we find that the issue pending before this Court is rather limited and confined to the application filed by the CBI for modification of the order dated February 05, 2019 by which this Court had restrained them from arresting Mr. Rajeev Kumar. Relevant portion of the order dated February 05, 2019 reads:

"M.A. No. 302/2019 in W.P. (C) No. 401/2013

Having heard learned counsels for the parties, we direct Shri Rajeev Kumar, Commissioner of Police, Kolkata to

appear and make himself available before the M.A. 302/2019 etc. 3 investigating agency, namely, the Central Bureau of Investigation (C.B.I.) and to faithfully cooperate with the investigating agency at all times.

However, we make it clear that no coercive steps including arrest shall be taken against the Commissioner of Police.

To avoid all unnecessary controversy, we direct the Commissioner of Police to appear before the investigating agency in Shillong, Meghalaya on such date(s) as may be fixed.”

The aforesaid directions were issued in the Miscellaneous Application No. 302 of 2019 in Contempt Petition (Civil) No. 166 of 2019 which relates to the incidents at the residence of Mr. Rajeev Kumar, the former Commissioner of Police, Kolkata, and the Regional Office of the CBI in the late afternoon of February 03, 2019.

By the aforesaid order and directions, we had attempted to resolve the controversy by ensuring interrogation of Mr. Rajeev Kumar, in view of the allegations made by the CBI, yet, concomitantly barred the CBI from arresting Mr. Rajeev Kumar. This, however, has not worked out.

Further the contention of the State of West Bengal and Mr Rajeev Kumar is that the allegations against Mr. Rajeev Kumar at best would disclose an offence under Sections 201/202 of the Indian Penal Code, but for which no First Information Report (FIR) has been registered, which contention is disputed by the CBI on the ground that the present

investigation is connected with the FIRs registered in the chit-fund scam cases pending investigation.

However, both the parties are *ad idem* that this Court in contempt jurisdiction while examining the events on February 03, 2019 cannot go into the issues that arise for consideration. The CBI claims that the embargo against coercive steps including arrest of Mr. Rajeev Kumar should be withdrawn. WBSPF states that no such permission or liberty can be granted. We find considerable force in the opposite contentions, which in a way in seriatim emphasise that in the contempt proceedings we cannot determine whether or not Mr. Rajeev Kumar should be arrested by the CBI for custodial interrogation. Indeed, the CBI and the Central Government do not dispute this legal position and have stated that the applications have been preferred to vacate the protection from arrest granted vide order dated February 05, 2019, which order/direction should not be given in contempt jurisdiction.

Therefore, in the given facts, we would withdraw the protection given to Mr. Rajeev Kumar, former Commissioner of Police, Kolkata, *vide* our order dated February 05, 2019 restraining the CBI from arresting him and thereby, leave it open to the CBI to act in accordance with the law. At the same time, we direct that the interim order dated February 05, 2019 would continue for a period of seven days from the date of pronouncement of this order to enable Mr. Rajeev Kumar to

approach competent Court for relief, if so advised. The aforesaid directions would be in consonance with the decision in **A.R. Antulay v. R.S. Nayak and Another**, (1988) 2 SCC 602, which mandates that the procedure established in law should be strictly complied with and should not be departed from to the disadvantage or detriment of any person.

We clarify that we have not made any comments on the merits of the contentions and the reasons recorded in the present order would not be a ground to accept or reject the request of custodial interrogation or grant of protection, if any such application/petition is moved.

Recording the above, M.A. No. 302 of 2019 and IA No.58327 of 2019 in Contempt Petition (Civil) No. 166 of 2019 are disposed of. The contempt petition be listed in due course.

.....CJI.
(RANJAN GOGOI)

.....J.
(DEEPAK GUPTA)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
MAY 17, 2019.**