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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 8399/2024 & CRL.M.A. 32063, CRL.M.A. 32064/2024

DIRECTORATE OF ENFORCEMENT

.....Petitioner

Through: Mr. Zoheb Hossain, Special Counsel
with Mr. Manish Jain, SPP, Mr.
Vivek Gurnani, Panel Counsel, Mr.
Pranjal Tripathi and Mr. Suradhis
Vats, Advocates.

versus

LAKSHAY VIJ AND ORS.

.....Respondents

Through: Mr. Vanya Gupta, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

24.10.2024

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By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner/Directorate of Enforcement ('ED') impugns order dated 05.10.2024 made by the learned Special Judge (PC Act) (CBI), Rouse Avenue District Courts, New Delhi ('Special Judge') in CT Case No. 25/2024 titled *Directorate of Enforcement vs. Lakshay Vij & Ors.*

2. The petition was listed for the first time yesterday; however, since a subsequent order dated 19.10.2024 made by the learned Special Judge in the matter was not on record, the court directed the ED to bring the



said order on record; and posted the matter for consideration today *i.e.* 24.10.2024.

3. Though in the petition order dated 05.10.2024 has been challenged in its entirety, Mr. Zoheb Hossain, learned special counsel appearing for the petitioner submits, that in essence and substance, the petitioner prays only for striking-off certain remarks that have been made by the learned Special Judge in order dated 05.10.2024, pursuant to which the learned Special Judge has issued/contemplated certain steps and directions in the subsequent order dated 19.10.2024.
4. Mr. Hossain submits, that in order dated 05.10.2024, the learned Special Judge has *inter-alia* made the following remarks, which directly relate to the competence, integrity and credibility of the Investigating Officer ('I.O. '), who is an Assistant Director in the ED. The remarks referred to by the ED have been extracted below :

“The present prosecution complaint was filed on 20.09.2024 and is pending consideration on the point of cognizance. I have gone through the prosecution complaint. As per the prosecution complaint, one Karan Chugh is stated to be one of the main conspirator, kingpin and is “absconding”. It is stated in the prosecution complaint that despite several summons, best efforts he is evading the proceedings initiated by Directorate of Enforcement. Let that be the case and despite the fact that ECIR was recorded in December 2023 and despite the investigation allegedly revealing in depth role of Karan Chugh then atleast since July 2024 if not before, Directorate of Enforcement has failed to take coercive steps against Karan Chugh so as to join him in the investigation. The present prosecution complaint has instead been filed against him with his status as an “absconder”. I completely fail to understand the rational behind the same. The Directorate of Enforcement, if indeed its investigation revealed the role of Karan Chugh and as is stated in the prosecution complaint then there was more than



enough time to initiate coercive steps against Karan Chugh. Having not done so itself smells of foul play, more so when the law as on date is well settled as regards courts power qua those accused persons against whom prosecution complaint/charge sheet has been filed without arrest. It somewhere appears that Directorate of Enforcement, the Assistant Director being well aware of the said legal position, deliberately wants to give benefit of the same to Karan Chugh or else I absolutely find no reason why the prosecution complaint in the present form has been filed against Karan Chugh with his status as “absconder”. Having said that this court is not commenting upon the prosecution complaint filed against the other accused persons without their arrest. No doubt arrest and investigation is the sole prerogative of investigating agency but the manner in which it is conducted should reflect fairness and not arbitrariness or whimsical attitude.

In these circumstance, let detailed report be called from Director, Directorate of Enforcement in view of above observation for next date of hearing.”

(emphasis supplied)

5. Furthermore, Mr. Hossain argues, that in its subsequent order dated 19.10.2024, the learned Special Judge has again made some observations and appears to be contemplating a course of action, which is *ex-facie* unfounded and misconceived, and appears to arise from a misunderstanding of the extant position of law.
6. In the above context, Mr. Hossain has drawn attention of the court to the following extracts of order dated 19.10.2024:

“The last date of hearing in the present matter was 05.10.2024 and despite lapse of almost two weeks, no compliance report has been filed in terms of the observations made by this court. Prosecution complaint was filed on 19.9.2024 and since then, it is pending at the stage of consideration. The short comings/lacunas were pointed out to the ld. Counsel and the IO initially orally and then vide orders dated 05.10.2024, as no



compliance was done by 05.10.2024 and accordingly, the court was constrained to pass details orders on 05.10.2024. One month's time has not been sufficient for the ED to comply, satisfy the court as regards the observation made by the court. Infact, the IO did not bother to even appear in the court today. All this reflects poorly upon the ED. Such lackadaisical approach on the part of the ED is absolutely unacceptable. ED is showing complete apathy to the observations of this court and absence of the IO today is ample proof of the same.

Let the Director be summoned for the next date of hearing. Relist the matter on 28.10.2024.

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“In view of submissions made by ld. Special PP for the ED, considering the request, no need to issue summons to the Director, ED for the next date of hearing. Compliance report/reply be filed positively by the next date of hearing.”

(emphasis supplied)

7. Learned special counsel submits that insofar as order dated 05.10.2024 is concerned, as detailed in the grounds raised in the petition, in ***Dinesh Dalmia vs. CBI***¹ the Supreme Court has held that the I.O. need not await the presence of an absconding accused to file a charge-sheet against him; and further, in ***Tarsem Lal vs. Directorate of Enforcement***², the Supreme Court has also clarified that it is available to the ED to seek custody of an accused who has appeared after issuance of summons for conducting further investigation in the same offence, and that the court is empowered to pass appropriate orders on such request.

¹ (2007) 8 SCC 770

² (2024) 7 SCC 61



8. Mr. Hossain argues, that in the aforesaid two orders the learned Special Judge appears to have rendered ‘findings’ to the effect that the I.O. has not taken appropriate steps to apprehend the absconding accused Karan Chugh, which are wholly misconceived on point of fact. Counsel submits, that as detailed in paras 12, 13 and 14 of the petition, the I.O. not only issued summons to Karan Chugh on multiple occasions, he also undertook physical verification of the various available addresses of the accused. It is submitted, that while investigation was on-going, the I.O. also issued requisite intimation to the Bureau of Immigration to open a Look-Out-Circular against the accused, in accordance with the standard procedures followed by the ED when accused persons are not traceable.
9. It is accordingly argued, that there is nothing on record that would warrant the learned Special Judge making the observations made in order dated 05.10.2024, which then culminated in the passing of order dated 19.10.2024, which order even contemplates summoning the Director of the ED on a subsequent date.
10. Mr. Hossain also submits, that the position is that the I.O. in the present case functions under the direct supervision of a Deputy Director of the ED, who (latter) is under further oversight of a Joint Director. Counsel clarifies that the Director, ED has no role in the day-to-day investigation of the matter; and therefore there is no reason why the personal presence of the Director, ED was contemplated by the learned Special Judge.
11. In view of the nature of the relief prayed-for, all parties arrayed as respondents in the matter are *pro-forma* parties, and it is therefore not



considered necessary to issue formal notice or to call for any reply from the respondents.

12. The court has carefully perused orders dated 05.10.2024 and 19.10.2024; as well as what has been averred in the petition, which is duly supported by an affidavit.
13. *Inter-alia* paras 12, 13 and 14 of the petition, the ED has given details and specifics of the steps taken and efforts exercised by them to trace and serve summons on accused Karan Chugh.
14. In light of the extant position of law as enunciated by the Supreme Court *inter-alia* in *Dinesh Dalmia* (supra) and *Tarsem Lal* (supra), the court is persuaded to agree with the submissions made on behalf of the petitioner, namely that merely because the prosecution complaint has been filed by the ED without tracing or arresting Karan Chugh, that is in itself ground for assuming that the ED has been derelict in investigating the case. Furthermore, the law is also clear, that custody of an accused can be sought even after filing of a chargesheet or complaint.
15. This court must also respectfully notice the observations made by the Supreme Court recently in *State of Bihar & Ors. vs. Ghanshyam Prasad Singh*³, where it has observed as follows :

“4. No doubt that the authorities of the State are bound to comply with the directions issued by the High Court.

5. In a matter wherein there is a patent disregard and disobedience to the directions issued by the Court, the Court would be justified in securing the presence of the officers.

³ Order dated 18.07.2023 in SLP (C) No. 15373/2023



6. However, such a practice should not be adopted as a routine. The Officers of the State Governments are required to discharge their duties towards the citizens of the country.

7. Their presence in the Court wastes precious time which could be otherwise utilized for rendering service to the citizens.

8. Issuing such directions at the drop of the hat, rather than upholding the majesty of the Court, undermines it.”

(emphasis supplied)

16. Similar observation has also been made previously by the Supreme Court in ***The State of Uttar Pradesh & Ors. vs. Dr. Manoj Kumar Sharma***⁴, which may also be noticed :

“18. A practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. The line of separation of powers between judiciary and executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.”

17. Furthermore, it needs no emphasis, that adverse remarks made by a court against government servants have a serious deleterious impact on their official record and on their careers, especially if such remarks are unwarranted or unjustified.
18. As a sequitur to the above, the observations made by the learned Special Judge in orders dated 05.10.2024 and 19.10.2024, to the extent they have been extracted above, shall stand expunged.
19. Needless to add, that nothing in this order is to be construed as an observation on the proceedings being conducted by the learned Special Judge in the matter. It is also clarified that there is no stay of

⁴ State of U.P. v. Manoj Kumar Sharma, (2021) 7 SCC 806



the on-going proceedings, whether in investigation or prosecution of the matter.

20. The petition stands disposed-of in the above terms.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 24, 2024

V.Rawat