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

% *Date of Judgment: 24.01.2014*

+ CRL.REV.P. 286/2013

MAJ.GEN. V.K.SINGH RETD. .... Petitioner

Through: Mr.Chander M. Maini, Advocate.

versus

THE DIRECTOR CBI .... Respondent

Through: Mr.B.R.Handa, Sr. Advocate,  
SPP for CBI.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

**Crl.M.A. No.5993/2013 ( for condonation of delay of 95 days)**

1 Petitioner by way of this application seeks condonation of delay of 95 days in filing this revision petition.

2 Notice of this application had been issued on 13.5.2014. Respondent has chosen not to file reply. He has not opposed the application. The delay is accordingly condoned. Application is allowed.

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3 Petitioner is aggrieved by the impugned order dated 16.10.2012 passed by the court of Special Judge, CBI wherein an application filed by the petitioner under Section 156(3) of the Code Criminal Procedure

(hereinafter referred to as the Code) seeking directions to the CBI to register FIR had been dismissed.

4 Record shows that an application under Section 156(3) Cr.P.C. had been filed by the present petitioner before the Special Judge. The averments in the said application have been perused. Submission being that he had filed a complaint dated 29.5.2008 before the CBI Director bringing to his notice instances of corruption in Research and Analysis Wing (RAW). Contention of the complainant being that he had held several important posts and last being of Chief Signal Officer of Western Command; he was thereafter posted on a deputation to the Cabinet Secretariat, RAW, as Joint Secretary where he remained till 30.6.2002 when he superannuated. Contention is that in spite of notice to the CBI no action was taken on the specific instances of corruption in the RAW which had been brought to their notice.

5 Status report had been filed by the CBI dated 16.4.2012 as also a second report dated 7.8.2012. Request for dismissal of the complaint had been made.

6 The Special Judge by the impugned order had dismissed the complaint holding that a Special Judge, CBI does not have the power under Section 156(3) Cr.P.C. to pass an order for registration of an FIR and order further investigation. It had noted that such directions can be given by a Magistrate to an officer in-charge of the police station and a Special Judge neither being a Magistrate and nor exclusively a court of session but being akin to a court of session, the powers enjoyed by a magistrate under Section 156(3) Cr.P.C. were not bestowed upon the

court of the Special Judge. Relying upon a judgment of the Supreme Court report as 2001 CRI L.J. 968 CBI Vs. State of Rajasthan; it had noted that magisterial powers cannot be extended and an order directing the CBI to investigate an offence vested exclusively with the High Court and Supreme Court. The application of the present petitioner was accordingly dismissed.

7 This is the grievance of the petitioner. His submission is that there is a legal question involved and the moot submission being that a Special Judge is also a court of original jurisdiction; he in fact has the same powers which are vested in a magistrate which is also a court of original jurisdiction. The powers enjoyed by a magistrate under Section 156 (3) Cr.P.C. are also available to the Special Judge and nothing prevented the Special Judge from ordering the registration of an FIR and investigation in the matter. Learned counsel for the petitioner has placed reliance upon a judgment of a Coordinate Bench of this Court in W.P.(Crl.) 1626/2011 decided on 20.4.2012 titled Dr.A.S. Narayan Rao Vs. CBI. It is submitted that while relying upon the Constitutional Bench Judgment of the Apex Court reported as AIR 1984 SC 718 A.R. Antulay Vs. Ramdas Srinivas Nayak & Anr. a Bench of this Court while distinguishing the judgment of State of Rajasthan (supra) had held that where a complaint has been filed before a Special Judge, the Special Judge has the power to proceed under Section 156(3) Cr.P.C.; in that case the impugned order had been set aside and the matter has been remanded back to the Special Judge.

8 Learned counsel for the CBI while not refuting this submission of

the learned counsel for the petitioner submits that the judgment of the State of Rajasthan has answered this question and it is later in time that the judgment in the case of A.R.Antulay (supra). This judgment has to be followed.

9 In the case of State of Rajasthan (supra) magisterial powers of a magistrate under Section 156(3) Cr.P.C. were the issue. As is evident from the judgment, the question in that case was that when a complaint which was before a magistrate had alleged serious offences could the magistrate order an investigation to be conducted into the offence. The words time and again used in the judgment refer to the words “magistrate” and “magisterial powers”; it was not dealing with the powers of a Special Judge. A Special Judge as the terminologically itself suggests is a Special Judge who has been appointed under a special Statute. In this case the statute is the Prevention of Corruption Act.

10 The judgment of A.R.Antulay (supra) was dealing with offences under Sections 7,8,12 and 13 of the Prevention of Corruption Act, 1988. It was in this context that the following observations had been made by the Constitutional Bench. It had noted as follows:

*“Shorn of all embellishment, the court or a special Judge is a court of original jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.”*

11 A Special Judge thus has all the powers vested in the court of an original jurisdiction except those which are specifically prohibited. The jurisdiction under Section 15(3) Cr.P.C. has not been denied to the Special Judge. As already noted supra it is a court of original jurisdiction. This was also noted by the Coordinate Bench of this Court in Dr.A.S.Narayana Rao (supra). In the judgment of State of Rajasthan as noted supra the words used were “magistrate”/ “magisterial power”; they were under issue.

12 In view thereof the impugned order is liable to be set aside. It is accordingly set aside. Matter is remanded back to the Special Judge who will consider as to whether the present case is a fit case for directing registration of an FIR under Section 156(3) Cr.P.C. or not.

13 Parties to appear before the learned Special Judge on 12.02.2014.

14 With these directions, petition stands disposed of.

**INDERMEET KAUR, J**

**JANUARY 24, 2014**

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