

CASE NO.:
Appeal (crl.) 1181 of 2001

PETITIONER:
CENTRAL BUREAU OF INVESTIGATION

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 21/06/2007

BENCH:
Dr. ARIJIT PASAYAT & B.P. SINGH

JUDGMENT:
JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal by the Central Bureau of Investigation (in short CBI") is to the order passed by a learned Single Judge of the Gujarat High Court dismissing the petition filed to set aside the orders dated 29.9.1999 and 26.10.1999 passed by the learned Chief Judicial Magistrate, Nadiad. By the first order, the learned Chief Judicial Magistrate had directed the investigation of the case to be undertaken by CBI. By the latter order, the prayer to recall the earlier order was rejected.

2. The brief facts are as follows:

Special A.C. B. Case No.2 of 1996 came up for hearing and evidence for the first time on 7.1.1999 before Additional Sessions Judge, Nadiad and at that time the Bench Clerk of the aforesaid court called for Muddamal from the office of Nazir, which was given to the clerk Shri Shukla and in turn given to Shri Kiran Joshi, Senior Clerk. During the recording of the evidence of the witnesses when Muddamal was required to be identified, in the bag containing Muddamal article No. 2 (Rs. 35000/- i.e. 70 notes of Rs.500/- denomination) could not be found therein. Though rigorous search was made but the said Muddamal was not found and ultimately a criminal complaint was filed in Nadiad Town Police Station which was registered as ICR No. 22/99 for the offence punishable under Section 381 of the Indian Penal Code, 1860 (in short the 'IPC') by the Court Officer. The Investigating Officer, Nadiad Town Police Station, Nadiad could not get any fruitful result in the matter for about 9 months. The Nazir of the District Court of Kheda at Nadiad wrote a letter dated 29.9.1999 to the learned Chief Judicial Magistrate, Nadiad requesting therein to hand over the investigation of the case to the CBI. On 29.9.1999 the Chief Judicial Magistrate, Nadiad passed an order directing the CBI to investigate the matter and report to him at the earliest. The CBI through its Public Prosecutor filed an application in the Court of Chief Judicial Magistrate, Nadiad praying therein for recalling of the order dated 29.9.1999. This application was rejected by the Chief Judicial Magistrate, Nadiad under its order dated 6.10.1999. The High Court was moved against both the orders.

3. The High Court observed that the CBI was a litigant before the Court like any other litigant and it cannot be placed in a special category or in a privileged category. According to the

High Court, prima facie that appears to be the claim of the appellant. It was held that the petition was not maintainable and the orders of the learned Chief Judicial Magistrate could have been challenged before the Sessions Court in terms of Section 397 of Code of Criminal Procedure (in short 'Cr.PC'). It was held that the CBI ought to have taken care to move the proper court and instead of that the CBI, bypassed the alternative remedy and moved the High Court directly. After having said so, the High Court felt that the approach of the CBI deserved to be deprecated and was deprecated. A cost of Rs. 1000/- was imposed holding that the CBI had chosen a wrong path and it was not respecting and adhering to law. The Director of CBI was directed to hold an inquiry in the matter and whoever was found responsible for filing the petition before the High Court was to reimburse the cost to be deposited by the CBI. It was further directed that the inquiry as directed by the learned Chief Judicial Magistrate was to be completed within six months.

4. In support of the appeal, learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. The CBI was not a litigant. In fact without giving an opportunity to it, the order was passed by the learned Chief Judicial Magistrate directing it to take over the investigation. Had an opportunity been granted, it could have been shown to the court that the concerned case was of a routine nature and did not involve any specialised investigation. Therefore, it was not proper for the Court to direct the CBI to investigate in such a routine matter overlooking the fact that the CBI normally investigates complex matters. The case in which direction was given did not involve any complexity. It is pointed out that under Section 397 Cr.P.C. either the Sessions Court or the High Court could be approached. In that sense, the High Court was not justified in holding that the CBI had bypassed the remedy. It is brought to our notice that the CBI is aggrieved by the criticism levelled against it and the cost imposed. There was no occasion for the High Court to doubt the bona fides of CBI in filing the petition before it. In any event, the learned Sessions Judge was moved as was directed by the High Court and by order dated 17.5.2001, the orders passed by the learned Chief Judicial Magistrate were set-aside.

5. We find that the High Court was not right in its approach. This Court in Central Bureau of Investigation through S.P. Jaipur Vs. State of Rajasthan & another [2001] 3 SCC 333 has laid down the principles as to whether direction can be given to the CBI under Section 156(3) Cr.P.C. It was held that magisterial power cannot be stretched under the said provision beyond directing the officer incharge of a police station to conduct the investigation and no such direction can be given to the CBI. In the instant case, the first information report was already registered and in that sense Section 156(3) Cr.P.C. had no application. There is substance in the plea of learned counsel for the CBI that routine matters should not be entrusted to the CBI as the investigating agencies of various States can effectively investigate such matters. Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to the CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of Muddamal property. The learned Sessions Judge, therefore, rightly appears to have set aside the orders passed by the learned Chief Judicial Magistrate. The High Court had no basis to doubt the bona fides of the

CBI in moving the application before it under Section 397 Cr.P.C. There was no bar for the High Court to entertain the said petition. The criticism levelled against the CBI and its officers and cost imposed do not have any legal sanction. They are accordingly set-aside.

6. Appeal is allowed.

JUDIS