REPORTED

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

% DATE OF RESERVE: April 22, 2009

DATE OF DECISION: May 6, 2009

\+ **CRL.M.C. 2525/2008 and CRL. M.A. 9326/2008**

JAVA SINGH ..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Advocate with Mr. Siddharth Aggarwal and Mr. Simon Benjamin, Advocates.

versus

C.B.I. ..... Respondent

Through: Mr. P.P. Malhotra, ASG with Mr. Chetan Chawla, Advocate

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: REVA KHETRAPAL, J.

1. The present petition under Section 482 of the Code of the Criminal Procedure has been filed challenging the summoning order issued by the learned Special Judge, New Delhi dated 21st July, 2008 as well as the challan under Section 173 Cr.P.C., which is alleged to be *"incomplete"* and in contravention of the provisions of Section 190 Cr.P.C.

2. The facts leading to the filing of the petition are that FIR bearing No.RC

2(A)/2005 ACU (V) dated 19th March, 2005 under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act came to be registered at P.S. C.B.I./SPE/ACU(V), New Delhi. The aforesaid FIR was initially registered against one Shri Akhand Pratap Singh (Retd. IAS), the father of the petitioner herein, and was registered on the allegation that he possessed assets disproportionate to his known sources of income almost two years after his retirement. The period of commission of the offence was set out as 01.01.1978 to 31.05.1991 in the FIR and it was alleged that the acquisition of the disproportionate assets were to the tune of Rs.21,45,872/- (Rupees Twenty One Lakhs Forty Five Thousand Eight Hundred and Seventy Two only) during the said period. The investigating agency conducted investigation and after a period of three years, on 27th / 28th March, 2008, it submitted a report under Section 173 Cr.P.C. before the Court of the learned Special Judge, New Delhi. In the said report filed by the CBI on 27th / 28th March, 2008, it was submitted that **"Further investigation on certain aspects is going on"** and that **"The report in respect of the same will be submitted in due course"**.

3. The grievance of the petitioner is that on the basis of the said report filed under Section 173 Cr.P.C., the learned Special Judge by his order dated 21st July, 2008 took cognizance of the offences under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and Sections 109, 120-B,

467 and 471 of the Penal Code and ordered issuance of summons to the accused persons, including the petitioner.

4. Aggrieved by the filing of the report dated 27th / 28th March, 2008 and the consequent taking of cognizance and issuance of summons by means of order dated July 21, 2008, the petitioner instituted the present petition seeking quashing of the impugned order and the report under Section 173 Cr.P.C. which, according to the petitioner, is an *"incomplete"* report irrespective of the nomenclature sought to be given to it.

5. I have heard Mr. Sidharth Luthra, the learned senior counsel for the petitioner and Mr. P.P. Malhotra, the learned Additional Solicitor General for the respondent/Central Bureau of Investigation and gone through the impugned order as well as the relevant provisions of law adverted to by the parties.

6. The principal contention of Mr. Luthra, the learned senior counsel for the petitioner is that the filing of a temporary report during the course of an on-going investigation is an act not contemplated by the legislators as evidenced by the relevant provisions of the Cr.P.C. and as such, the report dated 27th / 28th March, 2008 which is not a "police report" within the meaning of Section 173 Cr.P.C. ought to be rejected. Mr. Luthra vehemently contended that there was a vital difference between the terms "investigation", "further investigation" and "re-investigation". He urged that admittedly in the instant

case, the investigation itself had not been completed on the date of the filing of the report, and that taking of cognizance and issuance of summons to the accused persons whilst the investigative process is still on-going is unknown to law and in violation of the basic *jurisprudential tenents* of criminal law. Thus, the cognizance taken in the instant case under Section 190(1)(b) is illegal and liable to be set aside, since the very foundation or basis of the said cognizance, being a police report, does not exist.

7. Mr. Luthra submitted that further investigation predicates the existence and discovery of fresh material and necessarily implies the exhaustion of the material already in possession of the investigating agency. While sub-section (2) of Section 173 deals with the forwarding of the police report on *completion of the investigation*, sub-section (8) of Section 173, which has been subsequently incorporated in the Code, deals with further investigation. Re-investigation, on the one hand, is quite different and distinct from further investigation and predicates investigation anew, which may be necessitated on account of the earlier investigation having been found to be faulty on account of one reason or the other.

8. According to Mr. Luthra, the principal requirement for invoking sub-section (8) of Section 173 is that there must be a report filed in terms of sub-section (2) of Section 173. In the instant case, Mr. Luthra submitted that the

police report was an *"incomplete"* report, and, accordingly could not be taken into consideration by the learned Special Judge, CBI for the purpose of taking cognizance of the the offences alleged to have been committed by the petitioner and others.

9. Mr. Luthra, the learned senior counsel for the petitioner placed strong reliance on a Single Bench judgment of the Delhi High Court in ***Hari Chand & Raj Pal vs. State*** reported in ***ILR (1977) II Delhi 367*** and on a judgment of a Single Judge of the Andhra Pradesh High Court rendered in ***T.V. Sarma vs. Smt. Turgakamala Devi and others*** reported in ***1976 Crl. L.J. 1247*** to contend that if the investigation is not complete, there is no police report, and consequently there is no question of the Court taking cognizance of the case on an incomplete challan.

10. Mr. P.P. Malhotra, the learned Additional Solicitor General urged on behalf of the respondent that the contention of the petitioner that the challan was *"incomplete"*, merely on account of the fact that it was incorporated in the charge-sheet that further investigation was going on, was specious. In the instant case, after three years of investigation a challan had been filed by the investigating agency, which challan, by no stretch of imagination, could be labelled as an "incomplete challan", as was evident from a bare reading of the same. Mr. Malhotra further contended that the challan on all the aspectes

investigated upon was in form and substance a complete challan, and the investigating agency could not be precluded from carrying on further investigation. In any case, it was not incumbent upon the investigating agency to have stated in the report that further investigation would be undertaken. It was only as a matter of courtesy to the Court that it was brought to the notice of the Court that further investigation was being carried on, though in view of the provisions of sub-section (8) of Section 173 it was neither incumbent upon the investigating agency nor from any angle necessary for the investigating agency to place on record the said fact.

11. The learned Additional Solicitor General, Mr. P.P. Malhotra also placed reliance, in the above context, upon the judgments of the Hon'ble Supreme Court in ***Ram Lal Narang vs. State (Delhi Administration)*** reported in ***(1979) 2 SCC 322, Upkar Singh vs. Ved Prakash and Others*** reported in (***2004) 13 SCC 292, State of Andhra Pradesh vs. A.S. Peter*** reported in ***(2008) 2 SCC 383*** and ***Rama Chaudhary vs. State of Bihar*** reported in ***JT 2009 (5) SC 14***, to which I shall presently advert, but before I do so, a look at the relevant provisions of the Code in my view is necessary to examine the sustainability of the impugned summoning order passed by the learned Special Judge, CBI.

12. The term 'police report' has been defined in clause (r) of Section 2 of the Code as follows:-

> *"Police report means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173."*

13. Sub-section (2) of Section 173 provides that **as soon as investigation under Chapter XII of the Code is completed**, the officer in-charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Sub-section (2) thus envisages the dual process of the completion of the investigation and the forwarding of the police report to the Magistrate for taking cognizance of the offence.

14. A look at Sections 173(1) and 173(2)(i) is warranted at this juncture in view of the emphasis laid by Mr. Sidharth Luthra on the completion of investigation being the *sine qua non* for the forwarding of the report under Section 173, but before doing so, it is proposed to advert to the definition of term "*investigation*" as defined in Section 2(h) of the Code. The said definition reads:-

> *"h. 'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."*

15. Section 173 which is contained in Chapter XII of the Code under the heading **"Information to the police and their power to investigate"** is as follows:-

*"**173. Report of police officer on completion of investigation.–** (1) Every investigation under this Chapter shall be completed without unnecessary delay.*

*(2) (i) **As soon as it is completed,** the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating–*

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(3) .....

(4) .....

(5) .....

(6) .....

(7) .....

*(8) Nothing in this section shall be deemed to preclude **further investigation** in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*

16. It may be noticed at this juncture that there was no provision in the 1898

Code prescribing the procedure to be followed by the police, where, after the submission of the challan under Section 173(2) Cr.P.C. and after the Magistrate had taken cognizance of the same, fresh facts came to light which required further investigation, though, of course, there was no express provision prohibiting the police from launching upon further investigation upon fresh facts coming to light. The Law Commission in its 41st report decided to place matters beyond the pale of controversy by a statutorily affirming the right of the police to launch upon further investigation. Accordingly, in the 1973 Cr.P.C., a new provision by way of Section 173(8) was introduced as reproduced hereinabove, affirming the right of the police to make repeated investigations.

17. It is pertinent also to note at this juncture that the Hon'ble Supreme Court in the case of ***H.N. Rishbud vs. State of Delhi 1955 Crl. L.J. 526*** held that further investigation was not ruled out merely because cognizance of the case had been taken by the Court, and that defective investigation coming to light during the course of a trial may be cured by such further investigation as the circumstances of the individual case may call for.

18. In the case of ***Ram Lal Narang (supra)***, while approving of its earlier decision in ***Rishbud's*** case, the following pertinent observations were made by the Supreme Court:-

> *"21. ..... Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."*

19. The aforesaid decision, in my view, unequivocally upholds the statutory right of the police to further investigate the matter after submission of the report under Section 173(2) and even where the Magistrate has already taken cognizance of the offence. The scheme of the Code thus is that the registration of the FIR in the prescribed form under Section 154 is to be followed by investigation by the police under Section 156 of the Code (which invests the police with the power to investigate into cognizable offences without the order of a Court). The investigation leads to the submission of a report to the Magistrate under sub-section (2) of Section 173 of the Code and, on submission thereof the Magistrate may take cognizance of the offence under Section 190(1)(b) and issue process to the accused under Section 204 of the Code. Thereafter the police on discovery of fresh information may submit a

further report or reports regarding the further investigation in the form prescribed under Section 173(8) of the Code. In other words, the power of the police to conduct further investigation even after laying the final report has been clearly adumbrated and statutorily recognised in the new Code [See also ***Sri B.S.S. V.V.V. Maharaj vs. State of Uttar Pradesh, 1999 Crl. L.J. 3661 (SC)]***.

20. Looked at it from another angle, unless a report is forwarded under Section 173(2) to the Magistrate, sub-section (8) cannot be pressed into service for the purpose of further investigation and submission of further report or reports. When no report is forwarded as required by the Code, there is no question of "a further report or reports".

21. A three-Judge Bench of the Supreme Court in ***Upkar Singh's*** case ***(supra),*** after referring with approval to its earlier decision in ***State of Bihar vs. J.A.C. Saldanha (1980) 1 SCC 554*** wherein it had considered the width of the scope and ambit of Section 173(8) of the Code, held: (SCC, page 299, para 21)

> *".....It is clear that even in regard to a complaint arising out of a complaint on further investigation if it was found that there was a larger conspiracy than the one referred to in the previous complaint, then a further investigation under the court culminating in another complaint is permissible."*

22. In the case of ***A.S. Peter (supra)***, the following important distinction

between further investigation and re-investigation was succinctly laid down by the Supreme Court in paragraph 9 of its judgment, which is apposite:-

> *"9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."*

23. In the aforesaid case, the Supreme Court unequivocally held that it was permissible for the investigating authority to carry out and direct further investigation in the matter even without the prior permission of the Magistrate, and the High Court of Andhra Pradesh had committed a manifest error in taking the view that the investigation in question was a fresh investigation and it was an imperative on the part of the investigating agency to have obtained the express permission of the Magistrate concerned.

24. More recently, in the case of ***Rama Chaudhary vs. State of Bihar JT 2009 (5) SC 14***, the Hon'ble Supreme Court while rejecting the contention of the counsel for the appellant, Rama Chaudhary that as the trial had commenced and 21 witnesses had already been examined, the request of the prosecution for further investigation could not be allowed in relation to the very same offence and in relation to the very same accused, more so, as it would lead to the summoning of eight new witnesses which would prejudice the defence of the

accused in the trial, and relying upon its earlier decisions in ***Hasanbhai Valibhai Qureshi vs. State of Gujarat and Others 2004 (5) SCC 347,*** held that there was no valid ground for interference and dismissed the appeal. In paragraphs 8 to 11, the legal position was summarised as follows:-

> *"**8.** A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed.*
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> ***9.** The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.*
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> ***10.** From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.*
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> ***11.** As observed in **Hasanbhai Valibhai Qureshi v. State***

> ***of Gujarat and Others***, *[JT 2004 (4) SC 305; 2004 (5) SCC 347], the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice."*

25. In view of the aforesaid law reiterated by the Supreme Court time and again, in my opinion, it is not possible for this Court to interfere with the summoning order passed by the learned Special Judge, CBI on the basis that an "incomplete challan" has been filed by the CBI. No basis or justification has been put forth to enable this Court to return the finding that the challan in the instant case is an "incomplete challan". Merely because the investigating agency, in the ultimate paragraph of the challan, has reserved its right to submit a report with respect to further investigation in due course, cannot enable this Court to hold that an incomplete charge-sheet has been filed by the investigating agency. The learned senior counsel for the petitioner has not been able to demonstrate to this Court in what manner or for what reason the charge-sheet can be rejected as "incomplete", and this Court after carefully examining the same is not inclined to hold that an incomplete charge-sheet has been filed by the respondent, nor, in view of the provisions of Section 173(8), in my view, is this Court empowered to shut out further investigation in the

case, which has always been and will continue to be the terrain of the investigating agency. Indeed, it is not discernible as to how fresh inputs received during the pendency of the matter can be brushed aside and ignored by the investigating agency. As far as the present charge-sheet is concerned, therefore, I have no hesitation in opining it to be final and complete in every sense of the word.

26. The reliance placed by the learned senior counsel for the petitioner upon the judgment of this Court rendered in ***Hari Chand & Raj Pal (supra)*** and of a learned Single Judge of the Andhra Pradesh High Court in ***T.V. Sarma (supra),*** is also misplaced. On a careful reading of the decision rendered in ***Hari Chand & Raj Pal (supra)***, it becomes evident that the Court was dealing with the application for grant of bail to the petitioner on the ground that no police report as contemplated in sub-section (2) of Section 173 of the Criminal Procedure had been filed by the officer in-charge of the Police Station and that failure to complete the investigation within sixty days as required under sub-section (2) of Section 167 of the new Code entitled the petitioner to be released on bail. A learned Single Judge of this Court (Hon'ble Mr. Justice F.S. Gill as His Lordship then was) held that in the body of the incomplete challan filed in the Court, it had been clearly indicated that investigation was still continuing, i.e., it had not been completed. Rejecting the contention raised

on behalf of the State that forwarding of the incomplete challan satisfied the requirement of sub-section (2) of Section 173 of the Code and, therefore, the petitioners could not derive any benefit of sub-section (2) of Section 167, the Court held that police report as defined in Section 2(r) of the Code can only be filed "as soon as the investigation is completed" and if it is not complete, no such report can be filed and consequently, no cognizance can be taken by the Magistrate nor sub-section (8) can be set in motion. It was further held that an incomplete report or incomplete challan, with whatever expression it may be called, does not meet the obligatory requirements of law, and to accept the same would tantamount to profaning the express provision engrafted in Section 167(2) of the Code.

27. Likewise, in the case of ***T.V. Sarma (supra)***, (which was relied upon in ***Hari Chand & Raj Pal***), the Andhra Pradesh High Court taking note of the fact that only a "preliminary charge-sheet" had been filed and it had been specifically stated therein that the investigation had not yet been completed, held that the same could not be treated as a "police report" within the meaning of sub-section (2) of Section 173 Cr.P.C. and since no report under sub-section (2) had been forwarded, sub-section (8) did not come into play at all. There was also no question of the Magistrate taking cognizance of the case and for the aforesaid reasons the Magistrate was justified in releasing the accused on

bail after the lapse of the sixty days period of detention under Section 167 sub-section (2), Criminal Procedure Code.

28. Both the aforesaid decisions, in my view, were dealing with the beneficial provision in proviso (a) of sub-section (2) of Section 167 of the New Code, designed to cure the mischief of indefinitely prolonging the investigation unmindful of its effect on the personal liberty of the citizen, and have no application to the facts of the present case where a detailed challan has been filed, after investigations spanning a period of three years, and no haste has been shown by the prosecution to file a challan with a view to short-circuit the right of the accused to bail. At all events, the instant case is not one in which there are poised on opposite sides, the conflicting interests of the right of the investigators to investigate and the right of the accused to personal liberty, in the event of the investigators proceeding with the investigation at a tardy pace or adopting a stance of procrastination.

29. Before parting with the case, I also deem it expedient to record the contention of the learned counsel for the petitioner that the petitioner having filed an application seeking **"Release of un-relied upon documents before the Special Judge, CBI"** and the Special Judge having rejected the same by his order dated 18.09.2008, the CBI is estopped from further investigating the matter on the basis of the aforesaid "un-relied upon documents". This

contention is being noted for the purpose of being rejected. The impugned order taking cognizance of the case was passed on 21st July, 2008 while the application of the petitioner for return of the documents was rejected on 18th September, 2008 and cannot, therefore, form the basis of assailing the earlier order passed on 21st July, 2008. In case the petitioner was aggrieved by the order dated 18th September, 2008, it was open to him to assail the same before the higher court, if warranted, but it is certainly not open to him to circuitously challenge the order dated 21st July, 2008, which was passed prior in point of time.

30. Then again, the ultimate test is: In case the documents which were not relied upon in the challan subsequently become relevant on account of further evidence garnered/received by the investigating agency, can it be said that the said documents cannot form the basis of a supplementary or further challan to be filed by the respondent? The answer must, in my view, be in the negative. Further investigation may unravel further facts about the existential documents (not relied upon by the prosecution so far) or may throw up further documents bearing a linkage to the earlier documents, already relied upon. The shutting out of such evidence may present a distorted or lopsided or blurred picture of the case, and may lead to total travesty of justice even in a case where the true and focussed picture with sharply etched lines can easily be placed before the

Court to enable the Court to do complete justice to the parties. In such a situation, can any estoppel be put on the investigator's right to investigate further, and the Court's right to know the unmitigated truth? The answer must be a clear 'No'.

31. In the light of the aforesaid, the prayer of the petitioner for quashing and setting aside of the order dated July 21, 2008 as well as the further prayer of the petitioner to quash and set aside the report dated 27th / 28th March, 2008 filed by the respondent before the learned Special Judge are declined. The interim orders passed by this Court on 19.08.2008 stand vacated.

CRL.M.C. 2525/2008 and CRL. M.A. 9326/2008 stand disposed of accordingly.

REVA KHETRAPAL, J.

MAY 06, 2009
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