

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A NO. _____ OF 2018

IN
WRIT PETITION (C) NO. 1309 OF 2018

IN THE MATTER OF:

ALOK KUMAR VERMA ...Petitioner

Versus

UNION OF INDIA & ANR. ...Respondents

AND IN THE MATTER OF:

SHRI AJAY KUMAR BASSI

DSP, CBI, AC III, New Delhi

CBI, Anti Corruption Branch-III,

9th Floor, Plot No. 5B, Lodhi Road,

New Delhi-11003

...Applicant/ Intervener

**APPLICATION FOR DIRECTIONS ON BEHALF OF THE
APPLICANT/INTERVENER**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF

THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE INTERVENER ABOVE NAMED

MOST RESPECTFULLY SHOWETH

1. This Hon'ble Court is *in seisin* of instant writ petition wherein vide order dated 26.10.2018, this Hon'ble Court

was pleased to pass the certain directions and list the matter on 12.11.2018.

2. The writ petitioner was appointed as the Director, CBI and in the instant writ petition has sought to challenge the decisions taken by CVC/ Union of India dated 23.10.2018, divesting the Petitioner of his role as Director CBI and appointing another individual- Shri M Nageshwar Rao to carry on the duties and functions of the Director CBI.
3. The instant Application is preferred by Shri Ajay Kumar Bassi, DSP CBI, Anti-Corruption-III, New Delhi, currently transferred to Anti-Corruption Branch, CBI, Port Blair, Andaman and Nicobar Islands (“**Applicant**”), aggrieved by the Transfer Order bearing Office Order No. 1704/18, dated 24.10.2018, issued by Shri NM Singh, Joint Director (Admin) CBI, Head Office, New Delhi (“**Transfer Order**”), as a corollary to the order dated 23.10.2018 passed in the case of the Writ Petition.
4. The said Transfer Order is vitiated by malafide, and interference in the fair and impartial investigation of pending case(s) and intended to penalise and victimise an officer for his honesty and integrity. The Applicant is also aggrieved by the actions taken after his Transfer Order, whereby not only the course of the investigation of a highly

sensitive case, investigated by the Applicant herein is sought to be influenced. The Applicant bears a reasonable apprehension that he and his team members and senior officers, would be implicated in the same.

5. Briefly stated are facts relevant for the purposes of the instant application:

5.1. The Applicant joined the Intelligence Bureau (“**IB**”) on 26.11.1986 and worked till September 1999. In that assignment, the Applicant dealt with sensitive matters dealing with militancy in the State of Jammu & Kashmir, VIP security, top-secret enquiries and worked with the Counter-Intelligence branch of the IB. He discharged his duties with utmost efficiency, integrity and honesty.

5.2. The Applicant joined CBI on 01.10.1999, as Inspector of Police, on deputation from IB and was permanently absorbed in the CBI in the year 2006 and has remained in the CBI since then. During this period the Applicant was entrusted with several sensitive and important cases like the ‘Pradyuman Thakur Ryan International School case’, ‘Telgi Fake Stamp Paper case’, ‘Sariska Tiger Poaching Case’, ‘Foreign Tourist Kidnapping case registered on the basis of the Complaint received from Scotland Yard London’, ‘Sansar Chand Wildlife Case’, ‘Ghaziabad Wildlife

Case', 'Arms and Ammunition case in which Seizure of 23 Kgs of RDX in Delhi was made', 'Investigation in several narcotics cases' etc.

5.3. On 4.10.2018, Shri Sathish Babu Sana approached CBI with a request to get his statement under Section 164 Cr.P.C recorded, making certain grave allegations, in Moin Qureshi case, already under investigation of the SIT headed by Shri Rakesh Asthana. In pursuance thereto, his statement under Section 164 CrPC, was recorded under due and proper procedure by a Ld. Metropolitan Magistrate, Saket Court, New Delhi. A certified copy of the said statement was obtained by the Applicant herein.

5.4. The gist of the aforesaid statement is that Shri Sathish Babu Sana was that he harassed during the investigation of Moin Qureshi case and had paid illegal gratification in lieu of relief from the SIT probing Moin Qureshi's case, headed by Shri Rakesh Asthana. He had specifically mentioned that the illegal gratification to the tune of crores of rupees, was taken by Manoj Prasad & Somesh Prasad, in the name of Shri Rakesh Asthana.

5.5. On 15.10.2018, the Supdt. CBI registered R.C No. 13(A)/2018/AC-III/New Delhi, based on the complaint received from Shri Sathish Babu Sana, against (i) Shri

Rakesh Asthana, Spl Director CBI, (ii) Shri Devender Kumar, DSP, CBI, SIT, New Delhi, (iii) Shri Manoj Prasad and (iv) Shri Somesh Prasad - both private persons and other unknown persons, disclosing offences punishable under Section 120B IPC (criminal conspiracy) and Section 7 (illegal gratification), 13(2) read with 13(1)(d) (criminal misconduct by public servant) of the Prevention of Corruption Act 1988 ("**PC Act**") and Section 7A of the PC Act [as amended in 2018] (taking undue advantage to influence public servant by corrupt or illegal means). Subsequently offences under Section 384 (extortion), 388 (extortion by threat of accusation of offence punishable with death or imprisonment for life), 389 (putting person in fear of accusation of offence to commit extortion), 468 (forgery for purpose of cheating) and 471 (using as genuine a forged document) of IPC were added in the FIR.

5.6. This FIR was entrusted to the Applicant herein for investigation. Consequently, the Applicant took the following major steps in lawful discharge of his duties as the Investigating Officer ("**IO**") of the said FIR, namely:-

(i) The Accused Shri Manoj Prasad was arrested on 17.10.2018 at 00:50 hours and he is presently in Police Custody.

- (ii) Statement of complainant Shri Sathish Babu Sana under Section 161 Cr. P.C. was recorded on 20.10.2018 at CBI Office New Delhi.
- (iii) Statement of complainant Shri Sathish Babu Sana under section 164 Cr. P.C. was recorded on 20.10.2018 by the Hon'ble Court of Ms. Sheetal Chaudhary Pradhan, Metropolitan Magistrate, South East, Saket Court, New Delhi.
- (iv) Another accused, DSP Shri Devender Kumar was arrested on 22.10.2018 and he is also presently in Police Custody.

5.7. The statement of Shri Sathish Babu Sana aforesaid reveals shocking details of alleged corruption and illegal gratification by Shri Rakesh Asthana, the then Special Director CBI, in collusion and conspiracy with other co-accused person namely, Shri Somesh Prasad and Shri Manoj Prasad and other unknown accused persons. The said statement also reveals payment of huge amount to the tune of crores of rupees towards illegal gratification. The statement clearly implicates Shri Rakesh Asthana and Shri Devender Kumar, both officers of the CBI.

6. The investigation conducted by the Applicant herein revealed that the act of demand and acceptance of illegal gratification primarily pertains to two distinct periods of

December 2017 and October 2018. There are two instances of acceptance of bribe in Dec 2017 totalling to Rs. 2.95 crores and three instances of acceptance of bribe in Oct 2018 totalling to around Rs. 36 Lacs.

7. All these five acceptances of illegal gratification were in the name of the same public servant namely – Shri Rakesh Asthana through the Prasad brothers.
8. Investigation further revealed role of another high ranking bureaucrat by the name of Shri Samanta Goel, who is presently Spl Secretary of R&AW (Research and Analysis Wing).
9. Investigation revealed that there is a certain link between the summons issued to the Complainant, illegal gratification obtained by the above named public servant and relief provided to Shri Sathish Babu Sana. This is explained in the following table:-

Repeat Summons on dates mentioned	12.10.2017, 23.10.2017, 01.11.2017 and 30.11.2017	This leads to an agreement for payment of Rs.5 Crores to avoid further harassment.
Illegal gratification amounted to Rs.3	10 th and 13 th December	Summons stops. However, there is

Crores is given on	2017	pressure to pay remaining Rs.2 Crores. This is evidenced in the Whatsapp Messages.
Notice is received again on 19.02.2018. However, Mr. Sana went to Dubai to meet Mr. Manoj Prasad		
Repeat summons again on 01.10.2018, 03.10.2018 and 09.10.2018. Mr. Sana contacts Mr. Manoj Prasad once again and seeks relief against further summons for payment of Rs.2 Crores. Rs.25 lacs is paid on 10.10.2018 and there were no further summons till date.		
Shri Manoj Prasad comes to India to take the remaining payment.		

10. The above table is based on the notices issued by the then IO and the Whatsapp messages seized from the mobile handsets of Shri Manoj Prasad.

11. It is submitted that Shri Manoj Prasad had not deleted many of the Whatsapp messages from his mobile handset since March 2017. Some of the many Whatsapp messages relevant to the present case are as follows:-
 - (i) On 06.12.2017, Shri Somesh asked Manoj to take payment so that he can confirm to them that he has received 10.

- (ii) On 03.01.2018, Shri Somesh is asking Manoj to put pressure on Sathish as he can't take panga with them.... too powerful people .
 - (iii) On 05.01.2018, there is a message from an unidentified person who says that he was in meeting with boss and that the boss is not happy with the present situation and that much relief was given then what he expected.
 - (iv) Again on 24.01.2018, there is message for Somesh that even after lapse of two months, money is not yet received.
 - (v) There are many messages of October 2018 in between Manoj and Somesh including the photo of notice issued by the IO under Section 160 Cr. P.C. for appearance on 09.10.2018 with the request to get relief till 25.10.2018.
 - (vi) Again there are messages from Somesh seeking to know what happened to the delivery.
 - (vii) On 09.10.2018 Somesh had sent a photo of One Rupee Note with Mobile No. of a recipient.
12. All the above Whatsapp messages are available in the mobile handsets seized from the accused Manoj Prasad. During the investigation technical surveillance was also done and CDRs were also studied. Investigation revealed that immediately after the news broke out on arrest of

Manoj Prasad in the late night on 16.10.2018, Somesh made immediate calls to Samant Goel, who made calls to Shri Rakesh Asthana. A brief detail is as follows:-

'00971506305282' SOMESH	'9971101826' SAMANT GOEL	16-Oct- 18	22:09:05	454 sec	IN
'9971101826' SAMANT GOEL	'00971506305282' SOMESH	16-Oct- 18	22:45:56	206 sec	OUT
'9971101826' SAMANT GOEL	'9205134168' RAKESH ASTHANA	17-Oct- 18	06:37:16	171	OUT
'9971101826' SAMANT GOEL	'9205134168' RAKESH ASTHANA	17-Oct- 18	06:47:03	44	OUT
'9971101826' SAMANT GOEL	'00971504408932' NEHA SOMESH WIFE	17-Oct- 18	06:51:16	1	OUT
'00971506305282' SOMESH	'9971101826' SAMANT GOEL	17-Oct- 18	06:51:30	125	IN
'9205134168' RAKESH ASTHANA	'9971101826' SAMANT GOEL	17-Oct- 18	07:04:30	52	IN
'9205134168' RAKESH ASTHANA	'9971101826' SAMANT GOEL	17-Oct- 18	12:39:25	40	IN

'9818818314'	'9971101826'	17-Oct-	13:09:06	99	IN
DINESHWAR	SAMANT GOEL	18			
PRASAD					

13. During the investigation the mobile phones of Shri Somesh Prasad was kept in surveillance. There are certain calls between Somesh and Shri Samant Goel and between Shri Somesh and his father in law Sunil Mittal some of the excerpts are as follows:-

- (i) Somesh tells to Sunil Mittal:
 - a. Asthana to Apna Admi Hai.
 - b. Manoj has met Asthana 3 to 4 times.
 - c. Samant bhai met Asthana after registration of the case.
 - d. Samant bhai is very close to Asthana.
- (ii) Samant Goel tell Somesh.
 - a. Do not come to India at any cost

14. These transcripts are available with the CBI but there is a strong chance that they may not place the same on record.

15. Investigation revealed that Shri Devender Kumar the then IO of Moin Qureshi case, had purportedly recorded Section 161 Cr. P.C. statement of Shri Sathish Babu Sana on 26.09.2018, making insinuations on one Shri C.M. Ramesh, Rajya Sabha Member and the Director CBI.

Investigation revealed that the Shri Sathish Babu Sana was in Hyderabad on 26.09.2018 and he did not visit Delhi on that day. The concerned steno was examined which revealed that Section 161 Cr. P.C. statement of Sathish Babu Sana was not typed by her. Examination of Shri Devender Kumar by the Supervising SP revealed that the statement was mostly typed in the computer of Joint Director Shri Sai Manohar / Shri Rakesh Asthana by Devender Kumar himself.

16. In this regard, it is submitted that Shri Sai Manohar was a handpicked officer of Rakesh Asthana. As soon he became interim chief of CBI in December 2016, he handed over the Policy Division to the Junior Joint Director Shri Sai Manohar. Shri Asthana is the main reason why extension was given to Shri Sai Manohar inspite of objections from Director CBI. Now Sai Manohar is advising and driving the investigation of this case and trying to frame the entire investigation team for doing their job honestly and sincerely.
17. The Applicant humbly states that his investigation was based on evidence which are available with the CBI. However, the manner of transfer indicates malafide intent and shows vindictiveness because the fact that the name of Shri Rakesh Asthana and Shri Sai Manohar were

cropping up in the false statement recorded under Section 161 Cr. P.C. of Shri Sathish Babu Sana purportedly written on 26.09.2018 by DSP Devendra Kumar. The Applicant herein is being subjected to intimidation and veiled threats by the present Investigating Officer.

18. The Applicant humbly submits that having been left with no alternative, he is constrained to submit to the kind perusal of this Hon'ble Court, the details of the case against Shri Rakesh Asthana. The Applicant herein is proud to be part of such a distinguished force such as the CBI. He has been a part of the CBI since last three decades and has always served with pride and honour. But the all pervasive manipulations and machinations to save some select officers from their misdeeds and penalise officers like the Applicant for conscientiously carrying out their duties, have forced the Applicant herein to knock the doors of this Hon'ble Court, and seek justice.

19. The Applicant's life liberty and dignity is under threat of vindictive and vicious officials against whom my investigation was proceeding in a fair and just manner. All the evidences mentioned above are in the custody of the Central Bureau of Investigation and there is a suspicion that the same may be tampered with or destroyed. It is unfortunate to note that the present Investigating Officer

has concentrated his efforts not on the allegations of the FIR, but has started roving and fishing enquiry in the investigation made by the Applicant, and that too against the Applicant.

20. As this Hon'ble Court is aware, the Govt. of India passed an order dated 23.10.2018 sending Shri Rakesh Asthana, Spl. Director CBI and Shri Alok Kumar Verma, Director CBI, on leave. The Govt. of India also took the following measures on 23.10.2018 i.e. issued the aforesaid Transfer Order of the Applicant herein and further:-

- (i) Transferred Shri S.S. Guram, SP, CBI, AC-III, New Delhi to Jabalpur.
- (ii) Transferred Shri Manish K. Sinha, IPS, Head of Branch / DIG, CBI, AC-III, New Delhi to Nagpur.
- (iii) Transferred Shri A.K. Sharma, IPS, Additional Director, CBI, to MDMA.

21. It is instructive to note that all the Officers who were a part of the investigation of the aforementioned FIR against Shri Rakesh Asthana and Shri Devender Kumar were summarily transferred without any valid or cogent reason.

22. After the transfer of the Applicant herein and other Senior Officers as stated hereinabove, the investigation of the aforementioned FIR has been entrusted to Shri Sathish

Dagar, SP, CBI. The Applicant herein duly transferred the record of the instant FIR and all other relevant evidence and documents to the said Shri Sathish Dagar on 24.10.2018. Additionally, the Applicant herein also entrusted to the custody of Shri Sathish Dagar, the mobile phones of accused-Shri Manoj Prasad and Complainant-Shri Sathish Babu Sana which contained incriminating evidence and Whatsapp messages between the accused persons and the Complainant which clearly prima-facie establishes commission of the offence.

23. The following actions of Shri Sathish Dagar, since taking charge from the Applicant herein has created a reasonable apprehension in the mind of the Applicant herein that Shri Sathish Dagar has been instructed to ensure that Shri Rakesh Asthana is ultimately provided the clean chit and that Officers like the Applicant herein are implicated for performing their duties with honesty and integrity. Shri Sathish Dagar accused the Applicant herein of falsely implicating Shri Rakesh Asthana in the aforesaid FIR.

24. The aforesaid facts would clearly reveal that the Applicant herein has always performed his duties with sincerity and honesty and complied with the lawful directions issued by his superiors. The Applicant has no connection whatsoever

with the Complainant Shri Sathish Babu Sana. The Applicant was posted in the said unit of the CBI on 28.09.2018 and had barely spent three weeks in his presence assignment. He was not privy to any of the facts that culminated in the lodging of the complaint by Shri Sathish Babu Sana and the consequent registration of the FIR against Shri Rakesh Asthana.

25. The Applicant most humbly believes that he will be made a scapegoat and victimised for discharging his duties in the FIR pertaining to Shri Rakesh Asthana. This application is bonafide and deserves to be allowed in the interest of justice. Grave and irreparable harm and injury shall befall the Applicant herein if the instant application is not allowed. The Applicant herein has not approached any other Court or Authority with the reliefs sought in the Instant Application. Hence, the Applicant is constrained to approach this Hon'ble Court vide the instant application.

PRAYERS

IN THE PREMISES STATED ABOVE, IT IS, THEREFORE, RESPECTFULLY PRAYED, THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- (A) Quash/Set aside/Modify, the said Transfer Order dated 24.10.2018 qua the Applicant herein;

- (B) Grant ad-interim ex-parte stay of the said Transfer Order dated 24.10.2018 *pendente lite*;
- (C) Direct the CBI to place all evidence collected by the Applicant and others, including the transcripts of the technical surveillance, to be placed before this Hon'ble Court, in a sealed cover, for the perusal of this Hon'ble Court;
- (D) Direct a Special Investigative Team (“**SIT**”) to be constituted which would conduct an impartial investigation into the aforesaid FIR bearing RC No.13(A)/2018/AC-III/New Delhi, under the overall supervision and control of this Hon'ble Court and
- (E) Pass any other Order / Direction as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE INTERVENER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY

(SUNIL FERNANDES)

Advocate for Applicant/Intervener

NEW DELHI

DATED: