

SUPREME COURT OF INDIA

Common Cause (A Registered Society) & Anr.

Vs.

Union of India

WP(Civil) No.505 of 2015

(Arun Mishra and Amitava Roy,JJ.,)

11.01.2017

ORDER

1. We have heard learned counsel for the parties at length, as to Interlocutory Application Nos. 3 and 4 of 2017 filed in Writ Petition(Civil) No.505 of 2015.

2. The writ petition has been filed by the Common Cause (A registered Society) and others for issuance of appropriate writ for setting aside the appointment made by the Union of India, of Respondent No.2 Mr. K.V. Chaudhary as Central Vigilance Commissioner and Mr. T.M. Bhasin as Vigilance Commissioner on various grounds as enumerated in the petition, pointing out that these persons are not of impeccable integrity.

3. In I.A. No.3/2016 it is averred that, Central Bureau of Investigation (in short ' the C.B.I.') conducted raid on the premises of Aditya Birla group industries in four cities on 15.10.2013, followed by another raid by the Income Tax Department on the very next day. The raid by the C.B.I. reportedly led to recovery of incriminating documents and unaccounted cash amounting to Rs.25 crores. It is submitted that C.B.I. transferred the incriminating documents to the Income Tax Department. The laptop of Mr. Shubhendu Amitabh, Group Executive President was seized during the raid. An E-mail dated 16.11.2012 containing a cryptic entry was also recovered from the said laptop referring to political functionaries. When Mr. Amitabh was questioned about the transactions, he stated that "these were purely personal notes. Not meant for SMS or e-mail transmission. And the first note is only to note for my knowledge and consumption - a business development at Gujarat Alkali Chemicals" it does not relate to any political functionary. During investigation, top officials of the Birla Group admitted that large amounts of cash were routed by the Group through hawala. The Income Tax Department prepared a detailed appraisal report on the Hawala transactions. Some extracts of the report dated 27.2.2014 have been filed as Annexure A-5. A direction has already been issued by this Court to the CBI on 12.10.2015 to enquire into these, even though they might be unrelated to the Coal Block Allocation cases. The CBI has not taken any concrete action. The CBI is trying to protect the influential personalities named

in the documents seized and is shielding powerful corporate entities. It has been alleged that Respondent No.2 has also tried to shield the offenders.

4. With respect to Sahara Group, it is averred that the Income Tax Department raided Sahara India Group offices in Delhi and Noida on 22.11.2014. During the raid, incriminating documents and cash amounting to Rs.135 crores had been seized. Certain documents have been filed in the form of printouts of the Excel sheet showing cash receipt of over Rs.115 crores and cash outflow of over Rs.113 crores during a short period of 10 months. The random log suggests that cash was transferred to several important public figures.

Copies of the random pages have been filed as Annexure A-8. The pages Annexure A-9 and A-10 have been filed which contain the proposal and regarding the actual payments which were made to large number of top political leaders of the country.

5. It is also averred that certain complaints to CBI, CBDT, CVC, SIT, Enforcement Directorate and Settlement Commissioner have been made but without avail. In spite of that, the Income Tax Settlement Commission gave immunity to the Sahara Group of Companies vide its order dated 11.11.2016 which has been filed along with

I.A. No.4.

6. I.A. No.4 has been filed by the petitioner pursuant to the direction given by this Court to substantiate the documents filed along with I.A. No.3. I.A.No.4 contains more or less the same facts. Details have been given as to Birla Group that cash of Rs.25 crores was not accounted for in the regular books of accounts of Aditya-Birla Group or another company and it is also stated that Mr. Anand Saxena told the Income Tax Department that he was responsible for handling the cash transactions and he had received cash from Mr. Jaluram in the range of Rs.50,00,000/- (rupees fifty lacs only). Mr. Jaluram is the Angadia, courier of local Hawala operators. However, it was stated that he was not aware about the payment made to anyone and he could not say to whom the unaccounted money had been paid. E-mails dated 2.1.2013, 7.4.2013 and 3.5.2013 have been placed on record.

7. It is further submitted that during the search operation, it was revealed that the proposed payment of Rs.7.5 crores had been made during the period 9.1.2012 and 2.2.2012 with respect to "Project-J - Environment & Forest", and that 13 projects of the Aditya Birla Group companies had been sanctioned by the Ministry of Environment and Forest between 8.11.2011 and 17.6.2013. The documents - Annexure D is stated to be related to Coal Block of Birla Group of Companies by the Coal Ministry during the aforesaid period. E-mail dated 13.5.2013, relating to MOEF has also been placed on record.

8. It is averred that evidence of certain highly incriminating money transactions was also found in the laptop of Mr. Shubhendu Amitabh. An E-mail dated 16.11.2012 containing a cryptic entry, has been recovered which in fact does not relate to Gujarat Alkali Chemicals but to a political functionary and that this fact ought to have been ascertained.

9. It is further averred in the application that documents of Sahara also make out a case of cognizable offence and the role played by respondent No.2 should be enquired into. The explanation given to the Income Tax Department on behalf of the Sahara Group by Mr. Sachin Pawar, that exercise was done to implicate Mr. Dogra and to get him punished from the Management is unworthy of credence, as was suggested by the Department. However, the stand of department has been ignored and the Settlement Commission accepted the case set up by assessee and absolved Sahara from criminal and civil liability on different grounds, even after receiving a letter from the counsel of the common cause that he was going to file an application before this Court in the instant matter.

10. We have heard learned counsel for the parties at length. It was submitted by Shri Shanti Bhushan and Mr. Prashant Bhushan, learned senior counsel appearing on behalf of the petitioners that it is a fit case for constitution of the SIT for directing investigation into the incriminating material seized in the raids conducted on the Birla and Sahara Group of Companies in question.

11. It was submitted that though at this stage, it cannot be said conclusively that payments have been made, however, a prima facie case has been made out to direct investigation on the basis of the materials recovered in the raids in question. It has been argued that the order passed by the Settlement Commission cannot be said to be in accordance with law and is self contradictory and has been passed in haste. The finding recorded therein cannot be relied upon and it is the bounden duty of this Court to direct investigation as one whosoever high is not above law and this Court being the constitutional Court and the highest Court of the country should direct investigation into the material collected in the raids of two business groups. The investigation by special investigation Team should not be only ordered, but it should be monitored by this Court.

12. Shri Shanti Bhushan, learned senior counsel has also submitted that in the case of *C.B.I. versus V.C. Shukla*¹ this Court has laid down the law as to admissibility of material involved therein after the investigation was over and is of no applicability in this case, at this stage. The allegations which are reflected by the materials collected indicates commission of cognizable offence. Relying upon the decision of this Court in *Lalita Kumari versus State of U.P.*², he urged that it is the bounden duty of the Court to direct investigation and falsity or correctness of the documents has to be seen in course of the investigation.

13. Shri Mukul Rohatgi, learned Attorney General for India and Mr. Tushar Mehta, learned ASG have submitted that the material in question with respect to Sahara Group on the basis of which investigation is sought for, have been found by the Settlement Commission, in proceedings under Section 245D of the Income Tax Act, to be doubtful. The documents which have been filed by the Birla as well as Sahara Group are not in the form of account books maintained in regular course of business. They are random sheets and loose papers and their correctness and authenticity, even for the purpose of income mentioned therein have been found to be un-reliable having no evidentiary value, by the concerned authorities of income tax. The documents of Birla Group are also the same. They are not in the form of

regular books of account and are random and stray materials and thus the case of Birla also stands on the same footing.

14. Placing implicit reliance of the decision of this Court in C.B.I. versus V.C. Shukla (supra), it was submitted that it is open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. There being no further corroborative material with respect to the payment, no case is made out so as to direct an investigation, and that too against large number of persons named in the documents. Such entries have been held to be prima facie not even admissible in V.C. Shukla's case. He urged that in case investigation is ordered on the basis of such documents, it would be very dangerous and no constitutional functionary/ officer can function independently, as per the constitutional imperatives. No case is made out on the basis of material which is not cognizable in law, to direct investigation.

15. Before dilating upon the issue canvassed in the application we make it clear that we have not examined the main writ petitions vis a vis challenge to the appointments of respondent Nos.2 and 3. We are examining only the merit of the I.A. No. 3 supported by I.A. No.4, as to whether a case is made out on the basis of materials which are placed on record, to constitute SIT and direct investigation against the various functionaries/officers which are projected in Annexure A-8, A-9 and A-10 and other entries on loose sheets and further monitor the same.

16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible

17. It has further been laid down in V.C. Shukla (Supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted hereinbelow :-

"14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words:

” An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do so for his future purpose. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. They have been shown in abbreviated form. Only certain ’ letters ’ have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to.”

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17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain we are concerned , fulfill W I " – the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as "book" for they can be easily detached and replaced. In dealing with the word "book" appearing in Section 34 in Mukundram v. Dayaram¹ a decision on which both sides have placed reliance, the Court observed:-

” In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book. ... I think the term ’ book ’ in Section 34 aforesaid may properly be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of Section 34,

and I have no hesitation in holding that unbound sheets of paper, in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of Section 34.”

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and MR 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MRs 72/91 and 73/91).

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20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are "books" within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance "account" means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words "regularly kept" mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept' ."

(Emphasis added by us)

19. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus;

"37. In Beni v. Bisan Dayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent Evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against

another. In *Hira Lal v. Ram Rakha* the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.

21. We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of accounts but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. We find the materials which have been placed on record either in the case of *Birla* or in the case of *Sahara* are not maintained in regular course of business and thus lack in required reliability to be made the foundation of a police investigation.

22. In case of *Sahara*, in addition we have the adjudication by the Income Tax Settlement Commission. The order has been placed on record along with I.A.No.4. The Settlement Commission has observed that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act

and are not admissible evidence. It further observed that the department has no evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries were fabricated, non-genuine was proved. It held as well that the PCIT/DR have not been able to show and substantiate the nature and source of receipts as well as nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The Commission has also observed that Department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents.

23. It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts.

24. Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order dated 11.11.2016 passed in Sahara's case by the Settlement Commission and the documents have not been relied upon by the Commission against assessee, and thus such documents have no evidentiary value against third parties. On the basis of the materials which have been placed on record, we are of the considered opinion that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents A-8, A-9 and A-10 etc. of Sahara.

25. This Court, in the decision of *Lalita Kumari versus Government of Uttar Pradesh and others*³, has laid down that when there is commission of offence apparent from the complaint and a cognizable offence is made out, investigation should normally be ordered and the falsity of the allegations can be ascertained during the course of investigation. In our opinion, the decision of Lalita Kumari (supra) is of no help to the petitioner for seeking direction for an investigation from a Court on the basis of documents which are irrelevant, and per se not cognizable in law as piece of evidence and inadmissible in evidence and thus a roving inquiry cannot be ordered on such legally unsustainable material.

26. In the case of *State of Haryana and Others versus Bhajan Lal and others*⁴, this Court has laid down principles in regard to quashing the F.I.R. The Court can quash FIR also if situation warrant even before investigation takes place in certain circumstances. This Court has laid down thus:

"102. x x x x x

(1) Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

27. Considering the aforesaid principles which have been laid down, we are of the opinion that the materials in question are not good enough to constitute offences to direct the registration of F.I.R. and investigation therein. The materials should qualify the test as per the aforesaid decision. The complaint should not be improbable and must show sufficient ground and commission of offence on the basis of which registration of a case can be ordered. The materials in question are not only irrelevant but are also legally inadmissible under Section 34 of the Evidence Act, more so with respect to third parties and considering the explanation which have been made by the Birla Group and Sahara Group, we are of the opinion that it would not be legally justified, safe, just and proper to direct investigation, keeping in view principles laid down in the cases of Bhajan Lal and V.C. Shukla (supra).

28. In view of the materials which have been placed on record and the peculiar facts and circumstances projected in the case, we find that no case is made out to direct the investigation as prayed for.

29. Thus, we find no merit in Interlocutory Application No. 3 supported by I.A. No. 4. The applications deserve dismissal and are hereby dismissed.

¹(1998) 3 SCC 0410

²(2014) 2 SCC 0001

³(2014) 2 SCC 0001

⁴(1992) Supp. 1 SCC 0335