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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 07.04.2022

Order delivered on: 12.04.2022

+ **W.P.(CRL) 752/2022**

KV SAGAR

..... Petitioner

Through: Dr.Sushil Balbada and Mr.Rocky
Khan, Advocates.

versus

GOVERNMENT OF NCT & ANR.

..... Respondents

Through: Mr.Rajesh Mahajan, ASC for the State
with SI Mohit Asiwal, P.S.: Karol
Bagh.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

1. This writ petition has been filed on behalf of the petitioner under Article 226 read with Article 227 of the Constitution of India, seeking transfer of investigation of FIR No.531/2020 dated 05.12.2020 from Police Station: Karol Bagh, Delhi to C.B.I., New Delhi.

2. At the outset, it may be observed that a similar W.P. (CRL.) No.601/2022 with identical prayer was dismissed as withdrawn vide order dated 22.03.2022.

3. In brief, the case of the petitioner is that on 16.01.2019, he purchased a pair of shoes from Woodland. Since the shoes were found to be defective, an online complaint was made. After lot of communications, the pair of shoes was taken back for repairs. The petitioner did not receive any

response from the shoe company and, as such, a complaint was filed before the SHO, Police Station: Karol Bagh, New Delhi but FIR was not registered.

4. Subsequently, in 2019, the petitioner made a complaint to the DCP but there was no response. Further, he filed an application under Section 156(3) of Cr.P.C., which was dismissed by Ld.M.M. Thereafter, in compliance of the order passed by Ld.A.S.J. in 2020, FIR No.531/2020 under Sections 406/34 of I.P.C. was registered at Police Station: Karol Bagh on 05.12.2020.

5. Learned counsel for the petitioner submits that since there was inordinate delay in investigation and recovery has not been effected, the prayer has been made for investigation by CBI. He further submits that there has been violation of Article 21 of the Constitution.

6. It has been vehemently submitted by the learned APP for the State that since the petition had been earlier withdrawn, it acts as a *res judicata* and the present petition is not maintainable, claiming the same relief before this Court. It is also contended that there is absolutely no fresh cause of action and filing of the present petition is merely an abuse of the process of the court.

It is also pointed out that the chargesheet upon investigation shall be filed in accordance with law and at this stage, for such a petty matter, it cannot be judicially envisaged to refer the matter to CBI as prayed by the petitioner.

Reliance is also placed on (2010) 3 SCC 571 titled as '*State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others*', wherein it has been observed that the extra-ordinary power under Article 32, 226 of the Constitution of India must be exercised

sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigation or where the incident may have national and international interest ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights, on being satisfied that the material discloses a prima facie case calling for investigation by CBI.

7. Unfortunately, a writ petition has been again filed by the petitioner on similar grounds seeking the same relief despite withdrawal of earlier writ petition, which this Court was inclined to dismiss.

After hearing the parties, I am of the considered view that filing of the present writ petition seeking the same relief of investigation by CBI may or may not amount to *res judicata* but re-agitation of the same issue is nothing but a gross abuse of the process of the court as there is no change of circumstances after withdrawal of earlier writ petition. The petitioner, who himself claims to be an Advocate having a practice of 31 years, has resorted to re-filing of the petition despite withdrawal of earlier writ petition for a petty dispute which is being investigated by the State in accordance with law.

Learned counsel for the petitioner appears to be unaware even of the situations in which the extra-ordinary power must be exercised for investigation by CBI.

This Court even on the earlier occasion, while permitting the withdrawal of the writ petition desisted from imposing the costs. However, without any change of circumstances, the resort by the petitioner for re-filing the present writ petition is nothing but a gross abuse of the process of the

court. The court in such circumstances has a power to stop such proceedings summarily and prevent the time of public and court from being wasted.

In the facts and circumstances, the petition is accordingly dismissed with a cost of Rs.10,000/- (Rupees Ten Thousand Only) to be deposited by the petitioner with the Delhi High Court Legal Services Committee within a period of two weeks.

(ANOOP KUMAR MENDIRATTA)

JUDGE

April 12, 2022/R

