

CBI No.99/19
CBI vs Closure Report (Fake CBI Report Case)
CNR No.DLCT12-000853-2019

17.01.2023

Present: Sh. Jai Hind Patel, Ld. PP for the CBI.

Applicant in person.

Put up for orders at 04.00 pm.

(Anjani Mahajan)
CMM/RADC/New Delhi
17.01.2023

At 04.00 PM

Present: None.

1. The matter is listed for order on the protest petition of the applicant Sh. Vishwanath Chaturvedi as well as the untrace report filed in the present case by the CBI.

2. Initially a closure report had been filed by the CBI in the present case. Vide order dated 27.02.2020, Ld. Predecessor Court directed the CBI to take a clean and clear stand as to the nature of the final report as filed directing to file the proforma of charge-sheet duly filled afresh to be forwarded through the DIG/Branch Head concerned.

3. Consequent thereto, the supplementary report containing the same averments as per the initial final report but mentioning the nature of the final report to be the untrace report was filed and subsequently tagged alongwith the present case.

4. As per the averments in the untrace report, vide order dated 01.03.2007, the Hon'ble Supreme Court in Writ

Petition (Civil) No.633/2005 directed the CBI to conduct a preliminary enquiry into the assets/wealth acquired by Sh. Mulayam Singh Yadav and his family members. In compliance thereof, a preliminary enquiry was registered on 05.03.2007 and was concluded on 26.10.2007. A status report based on the evidence collected was prepared and placed in two sealed cover envelopes before the Hon'ble Supreme Court of India. It is further contended that the proceedings were pending for final adjudication before the Hon'ble Apex Court, on 09.02.2009 i.e. just a day before/prior to the scheduled date of hearing, the Times of India, New Delhi published a news article captioned "CBI may admit Mulayam was framed-DIG's internal note says agency had not verified in PIL". It was also aired in the electronic media i.e. Star News and CNN-IBN.

5. The CBI avers in the present final report that being aggrieved with the above, which was not correct, on the basis of complaint made by Sh. S. R. Majumdar, SP/ACU.V/CBI/New Delhi, the present case bearing FIR RC/DST/2009/S0001/New Delhi dated 16.03.2009 was registered for the offences punishable u/s 120-B r/w 469/500/471 IPC and substantive offences thereof, against unknown persons and for preparing fake and fabricated report to tarnish the reputation of CBI. It was alleged in the complaint that these unknown persons during the year 2008-2009 entered into criminal conspiracy and with the intent to commit forgery for purpose of harming the reputation of the CBI and CBI officers, used as genuine, a forged document, printed/aired false and fabricated news in newspapers/on TV

channels knowing the same to be defamatory and in pursuance of said conspiracy, they surreptitiously collected some documents relating to the enquiry conducted by CBI in pursuance of order dated 01.03.2007 passed by the Hon'ble Supreme Court of India on allegations of acquisition of disproportionate assets by Mulayam Singh and his family members.

6. It is contended in the final report that the documents used by the news channel were forged but it could not be established as to who forged the documents as the users of the forged documents did not disclose their source therefore, there is no sufficient material/evidence to prove the criminal conspiracy. Further, complaints regarding defamation cases u/s 499/500 IPC had already been filed against the concerned news channels/newspaper.

7. The applicant has filed the protest petition inter alia submitting that if the final report is accepted the real culprits will go scot free even though they have committed serious offences. It is prayed that the final report be rejected and cognizance of the offences alleged to be taken or alternatively, the matter may be referred for further investigation.

8. Reply to the protest petition was not filed by the CBI, however, the objection as to locus of the applicant for filing the protest petition was raised.

9. Heard the submissions on the protest petition as well as the final untrace report.

10. Coming first to the point of locus of the applicant Sh. Vishwanath Chaturvedi to file the protest petition, as per the

averments in the protest petition, the applicant had filed the Writ Petition (Civil) No.633/2005 seeking direction to the CBI to take appropriate legal action against Mulayam Singh and Others under Prevention of Corruption Act and other offences wherein the Hon'ble Supreme Court of India passed the order dated 01.03.2007. It appears that only on the basis that the applicant had filed the aforesaid Writ Petition, during the course of pendency of which the fabricated 17 page review note ascribed to Smt. Tilotama Varma, DIG, CBI was aired/published in the media, he claims a right to participate in the present proceedings. Concededly, the applicant is neither the complainant/informant nor the victim/aggrieved in the present case which is separate and distinct from the Writ Petition (Civil) No.633/2005 before the Hon'ble Supreme Court of India. In the present case, where the allegations are of forgery of purported official documents of CBI, criminal conspiracy with intent to commit forgery for the purpose of harming the reputation of CBI and CBI officers and using as genuine forged documents, the applicant is indeed a rank outsider and has no locus to file protest petition, hence, the protest petition of the applicant is not maintainable and is dismissed as such.

11. However, the Court has to consider the final untrace report, independent of the averments of the protest petition. It is well settled that the Court is not bound by the opinion of investigating agency and can come to a different conclusion based on the material placed on record by the investigating agency. In appropriate cases, the Court can direct further

investigation suo motu till prior to commencement of trial. Reference in this regard is made to the judgment of the Hon'ble Supreme Court of India in ***Vinubhai Haribhai Malaviya vs State of Gujarat, (2019) 17 SCC 1.***

12. A bare perusal of the untrace report as also the initial final (closure) report shows that the CBI has not chosen to take the investigation to its logical conclusion.

13. Merely because the concerned journalists denied to reveal their respective sources, as stated in the final report, the investigating agency should not have put a halt to the entire investigation. There is no statutory exemption in India to journalists from disclosing their sources to investigating agencies, moreso where such disclosure is necessary for the purpose of aiding and assisting in investigation of a criminal case. The investigating agency can always bring to the notice of the concerned journalists the requirement of disclosure of the source being essential and vital to the investigation proceedings. The investigating agency is fully equipped under the IPC and Cr.P.C. to require the public persons to mandatorily join in an investigation where the investigating agency is of the opinion that such public persons are privy to any facts or circumstances pertaining to the case under investigation and public persons are under a legal duty to so join the investigation.

14. It is stated by the CBI that during investigation, relevant documents were requisitioned from the concerned news channels but they had not given any document on which their news reports were based. It is not clarified as to what was the

mode of seeking requisition of the documents, whether by way of letters or by way of notices etc. In any case, the list of documents does not reflect any document of the CBI pertaining to requisition of record from the concerned news publication/TV channels whether letters or notices u/s 91 Cr.P.C. etc.

15. The CBI is well within its power to direct the concerned journalists/news agencies by way of notices u/s 91 Cr.P.C. etc. to provide the required information and bring to their notice the requisite facts of the case warranting disclosure of the information as per law.

16. It is also pertinent to note that although it is stated in the final report that the concerned journalists Sh. Deepak Chaurasia, Sh. Bhupinder Chaubey and Sh. Manoj Mitta had been examined, however, the copy of statement of only Sh. Bhupinder Chaubey u/s 161 Cr.P.C. is on record and it is only Sh. Bhupinder Chaubey who is mentioned as a witness in the list of witnesses filed by CBI alongwith the initial final report. I may note that in the list of witnesses filed alongwith the supplementary untrace report, the name of Sh. Bhupinder Chaubey as well as names of certain other witnesses mentioned in the original list of witnesses have inexplicably been removed by the CBI which requires a re-look by the CBI. There are no statements u/s 161 Cr.P.C. of Sh. Deepak Chaurasia and Sh. Manoj Mitta on the record nor are they cited as witnesses in either of the lists of the witnesses filed by the CBI.

17. Further enquiry is required to be conducted from the concerned journalists on the aspect of their respective sources

from whom they received the purported impugned forged documents which became the basis of their respective news items. Further, based on such information, additional clues regarding the identities of the culprits who entered into the alleged criminal conspiracy, prepared and fraudulently and knowingly used as genuine the forged document by providing it to the media/ getting it published/aired, could be found and probed. Further investigation on this aspect is thus required to be conducted.

18. Additionally, as per averments in the final report, the two alleged forged status reports dated 30.07.2007 and 20.08.2007 contained several paragraphs lifted from the undated status report of the CBI which was kept in sealed cover for the perusal of the Hon'ble Supreme Court of India. The final report is totally silent on the aspect of investigation, if at all any conducted, as to how the official document i.e. the undated status report of the CBI which was kept in sealed cover got leaked a day before it was to be filed before the Hon'ble Apex Court, from the office of CBI, ultimately reaching the media. Further, as per the opinion of the FSL expert, the signatures of Smt. Tilotama Varma had been lifted from the original note-sheet and compressed and reproduced on the alleged 17 pages review note. The final report does not disclose any investigation done, on the aspect of how the forger could have gained access to the original note-sheet of Smt. Tilotama Varma from which the signatures had been lifted, compressed and reproduced on the alleged forged document as per opinion of the CFSL.

19. Thus, further, investigation is also required to be carried out by the CBI on the modus operandi adopted by the culprits for gaining access to/obtaining the official documents including probing involvement of any insider in the acts alleged and preparing the alleged forged 17 pages review note.

20. Hence, the untrace report is rejected and the CBI is directed to carry out further investigation in the present case.

21. It is made clear that the IO, CBI shall be at liberty to carry out further investigation or any other aspects as deemed fit, however, the aspects highlighted in this order should be covered in the further investigation to be conducted and supplementary report to be filed.

22. **Notice be issued to the IO/HIO for filing the supplementary report for 24.03.2023.**

23. Copy of this order be sent to IO/HIO & SP, CBI for compliance.

(Anjani Mahajan)
CMM/RADC/New Delhi
17.01.2023