

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1903 OF 2021

The State of Maharashtra ... Petitioner
Versus
The Central Bureau of Investigation ... Respondent

Mr.Rafique Dada, Sr. Adv. a/w. Mr. Darius Khambata, Sr. Adv., Mr. Deepak Thakare, Chief PP, Mr. Akshay Shinde for the Petitioner.

Mr.S.V.Raju, ASG a/w. Mr.A.C.Singh, ASG, Mr. Sandesh Patil, Mr. Aditya Thakkar, Mr. D.P. Singh i/b.A.A. Ansari for the Respondent.

**CORAM : S.J.KATHAWALLA, &
SURENDRA P. TAVADE, JJ.**

DATE : 26TH MAY, 2021

**(VACATION COURT THROUGH
VIDEO CONFERENCING)**

P.C. :

1. Pursuant to the Order dated 05th April,2021 passed by the Division Bench of the this Court (Coram : Dipankar Datta CJ and G. S. Kulkarni J), the CBI has concluded its Preliminary Inquiry and has filed an FIR dated 21st April, 2021 (Exhibit M at Page 142 of the Petition), wherein unnumbered paragraphs 4 and 5 read thus :

“Enquiry has also revealed that Shri Sachin Vaze, Assistant Police Inspector, Mumbai Police had been reinstated into the police force after being out of the police service for more than 15 years. The enquiry further revealed that Shri Sachin Vaze was entrusted with most of the sensational and important cases of Mumbai City Police and that the then Home Minister was in knowledge of the said fact.

Further, the petition of Shri Param Bir Singh (Annexure - C, 104 Pages) also finds mention of the fact that the then Home Minister of Maharashtra and others exercised undue influence over the transfer and posting of officials and thereby exercising undue influence over the performance of official duties by the officials.”

2. The State of Maharashtra has moved this Court with a grievance that the contents of the said paragraphs show that the CBI has acted beyond the scope of the Order dated 5th April, 2021, which is impermissible in law. Therefore the action of the CBI to that extent is illegal and thus the said two paragraphs be ordered to be deleted from the FIR dated 21st April, 2021.

3. On 19th May, 2021, when the matter was called out very late in the evening, the Learned Advocates for the parties apprised the Court about the matter. At that time, the CBI mentioned before us in passing, that this matter should be heard by the same Bench which had passed the Order dated 5th April, 2021. The parties were asked to give their written notes / submissions by 20th May, 2021. We had received the written note / submissions of the State on 20th May, 2021. In view thereof, after the Learned Advocate for the State made his submission on 21st May, 2021 the Court remarked that they have not had the benefit of going through the written note / submissions on behalf of CBI. The Learned ASG representing the CBI sought time to file the written note / submissions and to commence his arguments today i.e. 26th May, 2021, which was granted. We have thereafter received the written note / submissions on behalf of CBI only yesterday at 06.00 p.m., wherein the CBI has *inter alia*

categorically submitted as follows :

“VII. Matter must be decided by the same Division bench which directed the CBI to Register PE.

1. The issue involved in the present petition pertains to an Order passed by the Division Bench comprising the Hon’ble Chief Justice and Hon’ble Mr. Justice G. S. Kulkarni. It in fact seeks to give a particular interpretation to the said order, which is unwarranted. Such a petition which is seeks to clarify or interpret a particular order of a coordinate bench, should be in the fitness of things be decided by the same Division Bench.”

4. Keeping in mind that the Petitioner too submits that paragraphs 4 and 5 of the FIR shows that the CBI has gone beyond the scope of the Order dated 05th April, 2021, it cannot be disputed that the issue involved would require interpretation of the Order dated 05th April, 2021. We have therefore enquired from Mr. Raju, the Learned ASG, that if time is granted to the CBI to make a request to the Bench that has passed the Order dated 05th April, 2021 to hear the above Writ Petition, whether the CBI would agree not to act for a limited period on the letters at pages 125-126 and 149-150 of the above Petition addressed by it to the State Government, requiring them to produce documents mentioned therein, to which Mr. Raju the Learned ASG has answered in the affirmative. We therefore accept the statement made by Mr. Raju the Learned ASG on behalf of the CBI and we grant liberty to the Advocates for the CBI to seek necessary directions from the Division Bench comprising of the Hon’ble Chief Justice and Hon’ble Mr. Justice G. S. Kulkarni on 08th June, 2021. It is made clear that the statement made by the CBI will continue upto 09th June, 2021. Registry shall after obtaining permission from the Learned Chief Justice place the matter on

08th June, 2021, to enable the Parties to seek necessary directions from the First Court.

5. Learned Advocate Shri Subash Jha representing Advocate Uphadhyay, whose Writ Petition is disposed off by the said Order dated 5th April, 2021, submits that the State should join Advocate Uphadhyay as party Respondent to the above Writ Petition. Advocate Jha may renew his Application on 8th June, 2021.

(SURENDRA P. TAVADE, J.)

(S.J.KATHAWALLA, J.)