

**30.05.2019 CRR 1308 of 2019**

Sd./ad Ct. 37.

**Rajeev Kumar**

**vs.**

**Central Bureau of Investigation (CBI) & Anr.**

Mr. Sudipto Moitra  
Mr. Gopal Chandra Halder  
Mr. Navanil De  
Mr. Rudradipta Nandy  
Mr. Rajeev Kumar Jha

..For the petitioner.

Mr. Y. Dastoor  
Mr. Anirban Mitra  
Mr. Samrat Goswami

..For the CBI.

I have heard Mr. Moitra, learned Senior Advocate for the petitioner in respect of the application for quashing of the proceedings.

Even though no notice was served I had desired that in a case of this magnitude where records going upto the Hon'ble Supreme Court have to be considered a notice be given to the Investigating Agency. I was informed that there is no **retainer** of the Investigating Agency available in the High Court. When the matter was taken up at a quarter of 4 this afternoon, the learned Additional Solicitor General office was represented by Mr. Dastoor, learned Senior Advocate assisted by Mr. Anirban Mitra and Samrat Goswami.

They frankly submitted that they are at a disadvantage today because no copy of the application was served on them and they have been taken by surprise. He also fairly submitted that since the matter is at a motion stage normally no notice is served without an order of the Court. Yet, because of desire of the Court he has appeared today and has made submissions.

This case covers several years and has generated a lot more records that can be briefly summarized in the course of an order passed at the interim stage. Suffice it to say that in respect of the allegations of a Ponzi scheme misnamed as a chit fund certain complaints were made against, inter alia, the Saradha Group of Companies, a Special Investigation Team was formulated initially under the aegis of the State of West Bengal after orders were passed by the Calcutta High Court. But thereafter, the duty of the investigation was shifted to that of the Central Bureau of Investigation.

It is the case of the C.B.I. that the special investigation team formed by the State of West Bengal of which the present petitioner was a member and in-charge of the day to day functioning, made several seizures of relevant documents including documents showing payments to elected representatives of the public. However, it is the further case that such documents allegedly seized by the special investigation team did not find place in the records of the criminal case which is being complied by them and was not handed over to the C.B.I. by the special investigation team.

There are other issues where the action of the petitioner has been impeached by the investigation agency. The petitioner has made out a case that he was merely a member of the special investigation team and was under the overall supervision of his superior officer, being the D.G and the I.G., as mentioned in the Government notification.

The petitioner has made out a three fold case; first before the C.B.I. he has taken a plea of respondeat superior to all questions. He has also made out the

case that the notices issued to him right from 2017 till 2019 were in respect of what was essentially under Section 160 of the Cr.P.C have a different connotation than that of custodial interrogation. For the sake of convenience, Section 160 of the said Code is reproduced hereinbelow.

**“ 160. Police officer’s power to require attendance of witnesses. – (1)** *Any police officer making an investigating under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:*

*Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides.*

*(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.”*

Therefore, secondly the petitioner submits that he can only be asked to attend the investigation so as to answer truly all questions in terms of Section 161(1) read with Section 161(2) of the Cr.P.C. Whether the answer is true or not, cannot be decided by the investigating agency at this stage without any court having adjudicated the matter.

Thirdly, the Hon’ble Supreme Court has recorded in so many words that in the contempt application where it withdrew the protection given to the petitioner by an order dated 5<sup>th</sup> February, 2019 passed in M.A. No. 302 of 2019, it had no jurisdiction to decide the question as to whether the member of the special investigation team should be arrested by the C.B.I. for custodial interrogation. Nonetheless, by the Order dated May 17, 2019 in the contempt proceedings and the interlocutory application made therein, it had withdrawn the protection of the

petitioner from coercive process including arrest, which had been granted by the order dated 5th February, 2019.

Mr. Moitra further submits that where the only thing which even the Hon'ble Supreme Court has recorded can incriminate the petitioner under Sections 201/202 of the Indian Penal Code, if no F.I.R. has been registered even today as against the petitioner under those sections, and if in the charge-sheet already filed along with seven supplementary charge-sheets, the petitioner has neither been cited as a witness nor named as an accused and if no attempt has been made to approach this Court on the part of the investigating agency complaining of suppression of evidence by the petitioner, no coercive process may be allowed to continue against the petitioner. The statements contained in the contempt application/interlocutory application in the contempt application that the C.B.I. requires the petitioner for custodial interrogation is not in accordance with the procedure established by the law. In support of his submission that the C.B.I. has not been given a mandate to become a law unto itself, Mr. Moitra has relied upon the operative part of the order of the Hon'ble Supreme Court dated May 17, 2019. For the sake of convenience the same is extracted hereinbelow:

*“Therefore, in the given facts, we would withdraw the protection given to Mr. Rajeev Kumar, former Commissioner of Police, Kolkata, vide our order dated February 05, 2019 restraining the CBI from arresting him and thereby, leave it open to the CBI to act in accordance with the law. At the same time, we direct that the interim order dated February 05, 2019 would continue for a period of seven days from the date of pronouncement of this order to enable Mr. Rajeev Kumar to approach competent Court for relief, if so advised. The aforesaid directions would be in consonance with the decision in A.R. Antulay v. R.S. Nayak and Another, (1988) 2 SCC 602, which mandates that the procedure established in law should be strictly complied with and should not be departed from to the disadvantage or detriment of any person.*

*We clarify that we have not made any comments on the merits of the contentions and the reasons recorded in the present order would not be a ground to accept or reject the request of custodial interrogation or grant of protection, if any such application/petition is moved.”*

On the other hand Mr. Dastoor even though ill prepared today no fault of his own, on a pure question of law asked me to envisage whether in terms of section 173 of the Code of Criminal Procedure, it can be expected that an investigating agency would file its charge sheet before completing the investigation in such a serious matter as this. He further submitted that before any First Information Report was registered against the petitioner the investigating agency must have reasonable basis to suspect of him committing an offence under Sections 201/202 of the Indian Penal Code. That is why his client is attempting to ask the petitioner questions the answers to which, the petitioner is avoiding. He submits that the neutrality of the investigating agency is clear from the fact that it is giving the petitioner every opportunity to clear doubts before registering any First Information Report against him. He also submitted that this Court should look at the entirety of the circumstances and where the allegation is made against the defender of the law and order of being unable to satisfy the investigating agency as to what happened to the seized materials which were seized during the continuance of the petitioner on the special investigation team as the man in day to day charge of its functioning. He submits that at interrogation on all the occasions when the petitioner appeared before the C.B.I. ultimately the only answer he could give was that he was a mere post office. Mr. Dastoor has shown that his client could not have acted mala fide since

they gave him time even on May 26, 2019 to appear when three days' was sought by Mr. Moitra's client and even today Mr. Moitra's client has not been arrested. So his apprehension was misplaced.

Mr. Mitra replies reiterating his principal submissions and also for the urgency of the interim relief stating that if no arrest or coercive action was planned or about to be taken, then there was no reason for the C.B.I. to issue a Look-Out notice.

In such view of the matter, it appears to me that the only question is to be determined is whether in the absence of any allegation of an offence under Sections 201/202 of the Indian Penal Code for questioning in connection with another matter as a witness who has not been cited, such course of treatment as meted out to the petitioner is, in accordance with law and due process as mandated by the Hon'ble Supreme Court.

This would require further arguments and also the complete assistance of Mr. Dastoor who should not be taken by surprise as he was today. Accordingly, Mr. Moitra's learned advocate-on-record shall cause service notice of the present petition on the learned Additional Solicitor General and request Mr. Dastoor to appear on behalf of the investigating agency. Learned Senior Government Advocate/Joint Secretary, Branch Secretariat of the Ministry of Law and Justice and Legal Affairs and/or the Additional Solicitor General shall regularize the appointment of the junior of his choice along with Mr. Dastoor.

The application for contempt or the interlocutory application therein, relied upon by the petitioner to the prejudice of the investigating agency is not a part of

the records. I grant leave to the petitioner to affirm and file a Supplementary Affidavit, to bring on record the interlocutory application in contempt application and the contempt application. It shall be affirmed within June 4, 2019 and shall be served on the said offices of the investigating agency and the office of the Joint Secretary within two days thereafter; while it will be open to the opposite parties to use an affidavit in opposition if they so choose, since a question of law involved, not using the said affidavits shall not preclude the investigating agency from opposing this petition.

The petition shall appear before the regular Bench on June 12, 2019 subject to its convenience but it is expected that His Lordship will be pleased to give some preference to this matter considering the gravity.

For a period of one month from the date of reopening or until further order, whichever is earlier, the petitioner shall not be subjected to coercive process or be arrested on the following conditions :

1. He shall deposit his passport with the investigating agency within 24 hours from the passing of this order.
2. The petitioner shall intimate the investigating agency through the office of the Joint Secretary, Branch Secretariat, as aforesaid, his present residential address and he shall remain in such address, unless for medical emergency he is removed to a hospital or nursing home until the disposal of this matter.

3. Attendance of the said petitioner shall be recorded at his own residence in the presence of any competent superior officer of the C.B.I. at 4 O' Clock duly authorized to record his attendance, in the afternoon every day.  
The C.B.I. officers thus authorized, shall not be hindered in any manner by any person whatsoever in discharging his duty.
4. The petitioner shall co-operate in the fullest manner with the investigation and strictly in terms of Section 161(2) read with sub-section (1) of the Cr.P.C. answering the questions put to him. It is needless to mention that he will not be forced to incriminate himself as mentioned in Section 162 of the Cr.P.C. read with Article 20 of the Constitution.
5. When the petitioner is called to meet the officers of the investigating agency, he will be entitled to be accompanied by his staff until the doorway in the room where he may be interrogated. There shall be no representative, apart from the petitioner on his behalf.
6. The petitioner shall be entitled to take assistance of the mobile phone provided that the number where he is calling, is disclosed to the investigating agency.
7. The requirement of the Petitioner to stay at home as aforesaid in Kolkata shall stand regardless of any order posting him or assigning him to any duty outside jurisdiction of the Kolkata Police Commissionerate. I make it clear that the State of West Bengal shall not be entitled to send the Petitioner out of Kolkata even on official duties and if necessary he shall be permitted to work from his official residence.

This shall not prevent the C.B.I. for applying to this Court for cancellation of this order or for modification or alteration of the conditions as mentioned hereinabove.

Before parting with this matter at the interim stage, I shall put on record my view that while custodial interrogation is not the norm for high officials who have credible roots in society and who are reliable and whose absconding shall not be apprehended lightly, in the instant case, an attempt was made by both the sides to bring to my notice certain other allegations which, in my humble opinion have no place in judiciary. All that the Court considers is whether the investigating agency has a statutory right or discretion to act as it does and whether it has done so reasonably, fairly and conscionably. Other allegations to incite passions have no place in this Court.

The petitioner is granted liberty to apply for extension of this order on the self-same application. It is recorded that an application for anticipatory bail moved by the petitioner, was dismissed as not maintainable.

Photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court) shall be made available to the parties upon observing necessary formalities.

**( Protik Prakash Banerjee, J. )**