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IN THE COURT OF O. P SAINI: SPL. JUDGE, CBI (04)
(2G SPECTRUM CASES), NEW DELHI.

CBI Vs. A. Raja and others

03.12.2011

Present: Applicant S. K. Srivastava in person with Sh. H. P
Singh Advocate.

ORDER

This order shall dispose of an application dated 24.11.2011 under Section 319 read with 311 CrPC and three applications dated today filed by applicant S. K. Srivastava, IRS, Commissioner of Income Tax (OSD), Delhi.

2. I have heard the applicant and his counsel in detail at the bar and have carefully gone through the file.

3. It is submitted by the applicant in person that NDTV Limited and some other persons are required to be tried in the 2G Spectrum Case bearing CC No. 01/11, titled CBI Vs. A. Raja and others, pending before this Court, as they received illegal money in excess of Rs. 2000 crore out of the case and laundered the same. It is submitted by him that he has enough evidence in his possession to substantiate his allegations made in the application, running into 31 pages. He had read out the various paragraphs of the application on the last date, that is, on 24.11.2011, when the application was filed. However, the allegations, contained in the application, were not supported by any documentary proof. Accordingly, on his prayer the matter was listed for today as he sought time for placing documentary proof on record. Today also, he has submitted that he has

enough evidence in his possession to substantiate the allegations of illegal receipt of money out of the 2G Spectrum Case and has submitted that he may be summoned as a witness in the case.

He has also filed three more applications, one is under Section 173 (8) CrPC, for directing the IO to submit a report about the laundering of aforesaid amount of Rs. 2000 crore. Another application is under Contempt of Court Act as NDTV Limited has obstructed the process of administration of justice by unlawfully obtaining copy of record from this Court. Another application is under Section 340 CrPC for prosecution of NDTV and others for unlawfully obtaining the record of the case. The prayer of the applicant is that he may be summoned as a witness in the case and the IO may be directed to file a report about the laundering of the aforesaid amount of Rs. 2000 crore and for the prosecution of the NDTV and others and for proceedings under Contempt of Court Act as stated above.

5. I have carefully considered the submissions made at the bar in the light of material on record.

6. The applicant has made serious allegations against the third parties in his application, some of them are quite well placed in public life. There is no documentary or oral evidence on record that the alleged amount of Rs. 2000 crore is in anyway connected with the 2G Spectrum Case. The allegations, as such, are unsubstantiated, unwarranted and malicious, if I may say so. I had specifically asked the applicant on the last date of hearing if he was in possession of any document to show

that the alleged amount of Rs. 2000 crore form part of illegal money obtained out of the 2G Spectrum case and he had conceded that he had no evidence in this regard, but sought time to bring such documents and he has failed to do so today also. As such, by no stretch of imagination it can be said that the applicant would help the prosecution of 2G Spectrum Case in any manner, if he is summoned as a witness.

Furthermore, the applicant is not connected with the case in any manner. He is neither informant nor victim nor a UASL Applicant or licencee. He is a rank outsider to the case. As such, even otherwise such a rank outsider, who is not in a possession of any material, what to talk of relevant material, connected with the case, cannot be examined as a witness in a criminal case by the prosecution, accused and even the Court. In this regard, it is relevant to quote an authority reported as Karam Chand Mukhi Vs. Santosh Pradha, 2004 CrLJ4380, wherein dealing with almost a similar situation, it was observed in paragraph 13 as under:

"The above position of law does not authorise either the prosecution, the informant/complainant or the Court to add to the list of witnesses as and when they like in the absence of a convincing reason to invoke the provision in Section 311 of the Code. Whether it is applied to be invoked by the prosecution, informant/complainant or the Courts

suo motu, it must be supported by materials available on record to qualify to the term employed in Section 311 that "his evidence appears to it to be essential to the just decision of the case."

Thus, this Court finds that contention of the learned Standing Counsel in seeking for invoking the provision in Section 311 by the trial Court is not incorrect on principle. Beyond that there is a big vacuum inasmuch as no evidence or materials available in the trial Court's record has been put forth before this Court to show or suggest that the examination of these three petitioners or any of them is necessary in the above context."

8. Even otherwise, I have already gone through the entire record of 2G Spectrum Case and in view of the material on record and the submissions made by the applicant, I am of the opinion that the applicant would be of no help in the prosecution of the 2G case in any manner, if he is summoned as a witness.

As stated above, the applicant has also filed three more applications today in which also he has levelled unsubstantiated and unwarranted allegations against third parties, some of them are quite well placed in public life and

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such allegations are not required to be made at all before this Court as they cannot, in any manner, help in prosecution of the 2G Case. I had asked the applicant on the last date of hearing itself to delete these allegations from the application but instead of deleting the same he has reiterated the same in one of his applications filed today. He was also brazen enough to allege in the open Court that copy of his application was supplied to NDTV Limited either by this Court or its staff, though his Counsel Sh. H. P Singh admitted in the open Court that it was he who had supplied the copy of the application on 24.11.2011 itself to Sh. Veer Inder Pal Singh Sandhu, Advocate for Reliance Telecom Limited, an accused in the 2G Case, and Sh. Veer Inder Pal Singh Sandhu, Advocate, admitted this fact in the open Court itself in the presence of applicant and his counsel Sh. H. P Singh. Even otherwise the matter was listed for hearing at 10 AM, but the applicant appeared before the Court quite late at about 2:40 PM despite repeated calls since morning. In view of the aforesaid reasons and to prevent recurrence of such frivolous and mischievous applications, all the four applications deserve to be dismissed with exemplary cost. However, as far as cost is concerned, I am inclined to take a little lenient view. Accordingly, all four applications are dismissed, subject to the cost of Rs. 10,000/- to be deposited within seven days from today, failing a warrant of attachment shall issue.

Announced in open Court,
today on December 03, 2011. (O. P. SAINT)
Spl. Judge/ CBI(04) (2G Spectrum Cases)/ND