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POWER AND JURISDICTION OF CBI AND STATE POLICE TO INVESTIGATE CASES OF BRIBERY AND CORRUPTION AGAINST CENTRAL GOVERNMENT EMPLOYEES

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INTRODUCTION

The Central Bureau of Investigation (CBI) is a leading investigating agency which was formed to investigate cases of corruption. The role of agency nowadays is not only restricted to bribery and corruption cases by the Government employees but the same is also known to investigate special crimes, high profile cases, economical crimes including other cases of corruptions. The Central Bureau of Investigation initially set up by the Government of India to investigate bribery and corruption in transactions done by the Government officials more particularly the transactions with the Department of War and Supply. Due to the inadequacy of police and inability to properly investigate the cases of corruption involving government officials, it was required to have separate and new agency which would only focus on the cases of corruptions and bribery by the government officials which ultimately lead to set up CBI. The Central Bureau of Investigation (CBI) established the reputation as India's foremost investigative agency with the resources to solve the complicated cases such as murder, kidnapping and terrorism. The Hon'ble Supreme Court and various High Courts in the country also began to assign investigation of various cases on the basis of petitions filed by any party who felt aggrieved with investigation of other investigating agency.

The Delhi Special Police Establishment Act under which CBI is formed was enacted in the year 1946. The scope of this Act was enlarged to cover all departments of government of India. Its jurisdiction was extended to the Union Territories and could be further extended to the states with the consent of concerned state government. The DSPE Act, 1946 acquired its popular name as Central Bureau of Investigation (CBI) through resolution dated 01.04.1963 passed by Ministry of Home, Govt. of India. In 1987, the CBI was divided into following divisions: (a) Anti-corruption division, (b) The special crime divisions, (c) Economic crime division, (d) The policy and international police co-operation division, (e) Administrative division, (f) The directorate of prosecution division, (g) The central forensic division.

Although law and order including investigation of different criminal cases is state subject and generally such matters are being investigated by the state. The relation between the CBI and the state police is supplementary to each other and as per CBI constitution and inter se arrangement between CBI and state police there are several areas where the CBI and the Police require inter-se cooperation and support. As per arrangement the cases of corruption by the central government are being investigated by CBI and the cases of bribery and corruption by state government employees are being investigated by the State Police. CBI also has the power under CBI Constitution to investigate any case of the nature which includes offences against the central government employees, or concerning affairs of the central government and employees of central public-sector undertakings and public-sector banks, cases involving the financial interests of the central government etc.

It would be interesting to find out the effect of constitution of CBI under Delhi Special Police Establishment Act, 1946 and to see whether it is CBI alone who is competent to investigate cases of bribery and corruption against central government employees to the exclusion of state police.

To find out this aspect of the matter the following questions would be relevant to answer before leading to any conclusion;

1. Whether State police is having jurisdiction to investigate cases of bribery and corruption against the Central Government employees.
2. Whether Prevention of Corruption Act, 1988 and Delhi Special Police Establishment Act, 1946 excludes the jurisdiction of state police to investigate cases of bribery and corruption against the Central Government employees.
3. Whether CBI manual can exclude the jurisdiction of state police to investigate the cases of bribery against the Central Government employees.

Jurisdiction of state police to investigate cases of bribery and corruption against the Central Government employees.

The cases of bribery and corruption are cognizable offences and so for as the powers of the state police to investigate the matter of bribery and corruption is concerned, it find its source under the Code of Criminal Procedure, 1973 and the relevant section 156 of the Code of Criminal Procedure reads as under:

"Section156- Police officers power to investigate cognizable case-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquiry into or try under the provisions of chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned."

From section 156(1) of the code it is clear that the state police has the jurisdiction to investigate any cognizable offence within its jurisdiction. The Code of Criminal Procedure, 1973 is a comprehensive piece of legislation which provides complete procedure for administration of justice in criminal cases provided under the Indian Penal Code and other substantive criminal laws. Since the Code is wide-ranging enactment therefore it delivers ample machinery for investigation of crime and grants sufficient powers to the State Police for apprehension of suspected criminals, collection of evidence including determination and punishment of guilt. Section 156 specifically speaks about the powers of State Police to investigate any kind of cognizable offences within its jurisdiction and the bare reading of the section does not make any difference between any person, no matter he may be in the service of state or of the Union Government. In addition to this, if the other provisions of the Code are seen, there is not even a slightest thing which differentiate among offenders with respect to the exclusion of powers of State Police to carry

forward the investigation of any cognizable offence within its jurisdiction. Therefore it can be safely construed that the State Police has jurisdiction to investigate cases against any person falling under its jurisdiction without discrimination between central government employee or state government employee.

Whether Prevention of Corruption Act, 1988 and Delhi Special Police Establishment Act, 1946 excludes the jurisdiction of state police to investigate cases of bribery and corruption against the Central Government employees.

Since the Code Of Criminal Procedure is comprehensive procedural law governing the criminal cases and in other words it can be said that the same is general procedural law prescribing procedure for the administration of justice in criminal cases however it is always open to the legislature to make any special enactment in addition or in repugnant to the general law. It is always open to the legislature to make any provision curtailing anything contained in the general law including exclusion of powers granted under general laws. The prevention of corruption Act, 1988 and Delhi Special Police Establishment Act, 1946 are special kind of legislation and therefore before reaching to any conclusion it would be relevant to see weather Prevention of Corruption Act and Delhi Special Police Establishment Act, 1946 excludes jurisdiction of state police to investigate cases of corruption against the central government employees.

Section 2(b) of the Prevention of Corruption Act, 1988 which is the definition clause where in the word 'Public Duty' has been defined and it does not make any difference between duties having being discharged by state government employee or central government employee rather it is inclusive of both. Further if the definition of word 'Public Servant' as defined in Section 2(c) of the Prevention of Corruption Act, 1988 is seen it clearly suggests that for the purpose of this Act there is no difference between state government employee and central government employee.

Further Section 17 of the Prevention of Corruption Act only speaks about designation of the police officer who will be competent to investigate the cases under this Act and it only specifies certain rank of officers who would be competent to investigate cases under this Act and does not suggest that the power of state police is excluded to investigate cases against central government employees. The entire reading of the provisions of the Act and even an effort to look into the object of the Act itself does not indicate about exclusion of the powers of the state police to investigate cases of bribery and corruption against the central government employee.

Now it would be interesting to see whether Delhi Special Police Establishment Act, 1946, divest power of state police which are conferred by the Code of Criminal Procedure and which are not taken away by the Prevention of Corruption Act, 1946 and therefore it is significant to see the relevant provisions under the Delhi Special Police Establishment Act, 1946.

Section 2 of this Act speaks about the constitution and powers of special establishment i.e. CBI and Section 3 of the Act speaks about the offences to be investigated by the CBI however here also there is nothing to exclude the powers of state police or anything which grants special and exclusive powers to CBI to investigate cases of corruption against Central Government employees.

Powers of CBI to investigate cases is extendable to States

The Delhi Special Police Establishment Act, 1946 provides that the powers of CBI are extendable to different states in the country for investigation of cases as notified under section 3 of the Act. Section 5 of the Act reads as under;

"Section 5 -Extension of powers and jurisdiction of special police establishment to other areas.—(1) The Central Government may by order extend to any area (including Railway areas) a state, not being a Union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station"

However Section 6 of the Act makes it mandatory to have the consent of state government to conduct investigation in the state which reads as under.

"Section 6-Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in 2 [a State, not being a Union territory or railway area], without the consent of the Government of that State."

Although Section 5 of the Act subject to the consent of State Government as required under section 6 of the Act provides that the powers of CBI are extendable to different state to investigate cases of corruption but these provisions also does not divest existing powers of state police to investigate cases of corruption against central government employees working within the jurisdiction of concerned state.

Judicial response

The legal position was firstly clarified by the Apex Court in A C Sharma Vs. Delhi Administration, 1973, 1 SCC 726 while holding that;

"Delhi Special Police Establishment Act, 1946 does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, power and competence to investigate offences under any other competent law."

The High Court of Madhya Pradesh in Ashok Kumar Kirtiwar and another versus State of MP, 2001, Cri. Law Journal 2785 held as under;

" the Act of 1946 does not deprive the state police be it a regular Police Force for this special police establishment of its jurisdiction to investigate the offences of bribery and corruption against the Central Government employees posted in the state of Madhya Pradesh"

The similar issue came up before the High Court of Madhya Pradesh again in case titled as Arvind Jain vs State of Madhya Pradesh, Cr. R. No. 544 of 2016 and the Madhya Pradesh high court has categorically held that neither the Delhi Special Police Establishment Act, 1946 nor Prevention of Corruption Act, 1988 grants exclusive jurisdiction to the CBI to investigate cases of corruption and bribery against the Central Government employees. It was further held that the regular police and any other investigating agency of the state has jurisdiction to investigate the cases of bribery and corruption even against the employee of Central Government within the jurisdiction of its state and such power has been conferred by virtue of section 156 of the Code of Criminal Procedure, 1973.

Whether CBI manual can exclude the jurisdiction of state police to investigate the cases of bribery against the Central Government employees.

Admittedly the legislature is empowered to enact any special legislation having overriding effect over the general law. But neither Prevention of Corruption Act, 1988 nor Delhi Special Police Establishment Act, 1946 in view of discussion hereinabove takes away the powers of State police conferred under general law therefore it is also important to see whether CBI manual can take away such powers from state police when Delhi Special Police Establishment Act, 1946 does not divest State Police from such powers. The bare reading of CBI manual shows that the same has been prepared by the officials of CBI to regulate its investigations and the same cannot be construed as an enactment having any overriding effect over general law. CBI manual cannot take away the powers of state police having powers to investigate against any person including central government employee when it was never contemplated by the legislature.

The High court of Himachal Pradesh in case titled as Sudha Gupta vs.State of HP in Cr.MMO No.307 of 2016 deliberated on the similar issue wherein quashing of FIR has been prayed by the petitioner on the strength of CBI Manual in view of Apex Court pronouncement in Vineet Narains case that the compliance of CBI manual is mandatory and any deviation of CBI manual vitiates the trial and warrants quashing of FIR. It was alleged by the petitioner that she is Central Government employee and therefore it was mandatory that Deputy Superintendent of Police SV and ACB Shimla to inform CBI and to handover the investigation to the CBI. It was further contented on behalf of petitioner that investigation by the state police and further presentation of challan in the court is vitiated as it is mandatory under Central Bureau of Investigation crime manual 2005, in short CBI manual, to inform and consult CBI when case pertains to Central Government employee. The high court of Himachal Pradesh while dealing with the issue pleased to hold as under:

"Providing agency to investigate offences of corruption committed by the Central Government employee, or by an employee of institution of Central Government by establishing Special Police Force/CBI, does not confer exclusive jurisdiction upon such agency to exclusion of State Police, which has been conferred power and jurisdiction to investigate any cognizable case under Section 156 Cr.P.C. In none of the provisions either of DSPE Act or P.C. Act, power under Section 156 Cr.P.C. has been circumvented expressly or impliedly, therefore, State Police as well as CBI are having concurrent power and jurisdiction to investigate such cases.

15. In order to avoid any conflict and duplication of efforts, keeping in view concurrent or coextensive powers of DSPE/CBI and State Police, an administrative arrangement arrived at by CBI with the State Police Forces has been incorporated in Clause 1.10 to 1.15 of Chapter-I of CBI Manual, wherein it is provided that cases, substantially or essentially against Central Government employees or concerning affairs of Central Government, shall be investigated by DPSE/CBI irrespective of the fact that certain employees of the State Government may also be involved therein and in such eventuality, State Police or State Anti -corruption Bureau/Vigilance set-up of the State, on information of such cases, will render necessary assistance to the CBI during investigation and prosecution therein; and cases which are essentially or substantially against the State Government employees or are in respect of the matter of the State Government, shall be investigated by the State Police irrespective of the involvement of certain Central Government employees therein as co-accused and in such cases DSPE/CBI, on information, will assist the State Police or State Anti-Corruption / Vigilance set-up, if necessary, in completing investigation."

While concluding His Lordship Justice Vivek Singh Thakur held that:

" In view of discussions here in above, it is concluded that state police/ state vigilance set-up having concurrent and coextensive power and jurisdiction to investigate the cases of bribery and corruption against Central Government employees and P.C. Act, 1988 does not exclude, rather include power and jurisdiction of Police Officers competent to investigate as provided under section 17 of the P.C. Act to investigate such offences committed by Central Government employees, within their state and DSPE Act, 1946 read with CBI Manual also does not exclude the power and jurisdiction of the State Police to investigate against Central Government employees in cases of P.C. Act and CBI Manual regulates procedure to be adopted by the State Police and CBI to investigate offences where in both Agencies have power and jurisdiction to investigate."

CONCLUSION :

In view of the above discussed legal position it can be concluded that the state police or any other agency including State Vigilance are having jurisdiction to register and investigate the cases of corruption and bribery against the Central Government employees within the jurisdiction of the concerned state on which State Police is having jurisdiction. The state police has been provided such powers under section 156 of the Code of Criminal Procedure, 1973 and neither the Prevention of Corruption Act, 1988 nor the Delhi special Police Establishment Act, 1946 divest the powers of state police to investigate the cases of bribery and corruption against the Central Government employees. The powers of state police to investigate the cases of bribery against the Central Government employees and of CBI in such matters are concurrent and coextensive. The purpose of CBI manual is to regulate the investigation of CBI and it is an administrative arrangement where in it is provided that the cases substantially or essentially against Central Government employees or concerning affairs of Central Government shall be investigated by CBI and the state police or state anti corruption Bureau Vigilance setup of the state on information of such cases will render assistant to the CBI during investigation and prosecution there in. But on the strength of CBI manual it cannot be said that any investigation conducted by the state police in case of bribery and corruption against the central government employee is vitiated for want of information to the CBI when the State Police whether it be the regular police or special police agency of the state is having concurrent and co-extensive powers to investigate.

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