

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 9th July, 2010

Date of Order: 15th July, 2010

+ CrI.M.C.No. 1825/2009

%

15.07.2010

Shri Deepak Gupta

... Petitioner

Through: Mr. Jagdeep Kumar, Advocate

Versus

Central Bureau of Investigation

... Respondents

Through: Mr. Harish Gulati, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

This petition under Section 482 Cr.P.C. has been filed by the petitioner with a prayer that the Court should set aside the summoning order dated 20th October, 2008 passed by Chief Metropolitan Magistrate and should quash the charge-sheet filed by the respondent under Section 173 Cr.P.C. after completing the investigation in an FIR registered under Section 420, 471 read with Section 468 IPC .

2. The petition under Section 482 Cr.P.C. for quashing of order taking cognizance and quashing of charge-sheet filed by the respondent is grossly misconceived. FIR in this case was filed in January, 2005 and CBI was directed to do the investigation. CBI after completing investigation filed charge-sheet against the petitioner and some of the accused persons, before the Court of CMM. Court of CMM vide order dated 20th October, 2008 took cognizance of the offence and observed that the investigation conducted in this case disclosed

commission of offence under Section 420/468/471 IPC against the accused and directed for summoning of the accused.

3. Cognizance of the offence is taken by Magistrate under Section 190 Cr.P.C. which falls under Chapter 14 of Code of Criminal Procedure [Conditions Requisite for Initiation of Criminal Proceeding]. A Magistrate, who receives a charge-sheet after completion of investigation from the investigating agency, has a legal duty to scrutinize the charge-sheet and see if a commission of offence was disclosed from the charge-sheet and in case commission of offence was disclosed, the Magistrate is bound to take cognizance of the offence. The expression “cognizance of offence” in its broad sense means taking notice of the offence. Once notice of the offence is taken, the Magistrate has to initiate judicial proceedings against the offender in respect of that offence. At the stage of taking notice of cognizance of the offence, a magistrate is not required to undertake an elaborate inquiry and is not supposed to pass a detailed reasoned order as what was the evidence disclosed in the charge-sheet about commission of offence and what evidence was there in respect of different accused persons. This scrutiny of offence is done by the Magistrate later on after taking cognizance and after summoning of the accused persons. The order passed by the learned Magistrate of taking cognizance cannot be challenged on the ground that there was not sufficient evidence against the accused for his summoning. The accused after summoning is provided with a copy of the charge-sheet and then comes the stage of framing notice or charge and at the time of framing notice/charge, the accused is heard and scrutiny of evidence, as disclosed in the charge-sheet against the accused, is done by the Magistrate and if it is found that there was sufficient material to frame charge against the accused then only charge is framed. Merely because the accused has been summoned after taking

cognizance would not give right to the accused to assail the order of summoning on the ground that there was not sufficient material for summoning of accused disclosed in the charge-sheet. A Writ Petition or a Petition under Section 482 Cr.P.C. would not lie for assailing a summoning order.

4. Similarly, a charge-sheet is result of investigation done by the police or investigating agency. If the police/investigating agency after taking cognizance of the offence had investigated the offence and collected evidence in respect of commission of the offence and filed the same before the Court, there is no provision under Code of Criminal Procedure by which charge-sheet can be quashed. The report of investigation under Section 173 Cr.P.C. nomenclatured as "Charge-sheet" cannot be quashed. It is different thing that the trial Court may charge an accused or discharge the accused after considering the evidence collected by the police and it is different thing to quash the charge-sheet itself. Under Section 482 Cr.P.C. or Article 226 of the Constitution of India, the Court cannot quash the result of investigation i.e. charge-sheet except under exceptional circumstances where investigation is a deliberate and mala fide attempt to shield the accused. Even in such a case Court has to handover investigation to an independent agency requiring proper and fair investigation. However, when an accused is charged by the competent court on the basis of charge-sheet, the accused has a right to assail the order on charge, but accused has no right to come to the Court with a prayer that the charge-sheet itself should be quashed. I find no reason to entertain this petition. The petition is hereby dismissed.

July 15, 2010

vn

SHIV NARAYAN DHINGRA, J.