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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 348/2013 & CrI.M.A. No.9607/2013

SANDEEP JAIN

..... Petitioner

Through: Mr. Rajesh Kumar and
Mr. Saurabh Kansal, Advocates

versus

C B I

..... Respondent

Through: Ms. Rajdipa Behura, learned
Special Public Prosecutor for CBI

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **04.07.2013**

Petitioner's application under Section 219/220 read with Section 223 of *Cr.P.C.* seeking joint trial of FIR Nos. RC-EOU-I-2010-E-0005 (for short 'RC-05') and RC-0712010(E)0008 (for short 'RC-08') stands rejected by trial court vide impugned order of 25th February, 2013, which is assailed in this petition.

The contention advanced by learned counsel for petitioner is that the two transactions, which are the subject matter of RC-05 and RC-08, are intertwined and are part of larger conspiracy and are within a span of three months' and so, there has to be a joint trial of the aforesaid two RCs. Reliance is placed upon Apex Court's decision in *Amitbhai Anilchandra Shah v. The Central Bureau of Investigation & Anr.* 2013 (5) SCALE 407 to contend that infact, the subject matter of these aforesaid two RCs relates to the same transaction and so, instead of filing a chargesheet in RC No.08, respondent-CBI ought to have filed supplementary chargesheet in RC-05.

To the contrary, is the submission of Ms. Rajdipa Behura, learned Special Public Prosecutor for respondent-CBI, who asserts that in the aforesaid two RCs, there are multiple accused persons and unless all the accused persons come forward, there cannot be any joint trial in these two RCs. It is further asserted by learned Special Public Prosecutor for respondent-CBI, that the ratio of Apex Court's decision in *Amitbhai* (supra) does not apply to the instance case as the two loan transactions, though for the same amount, are entirely different and the principal accused i.e. Rajiv Kumar (A-1) in RC-05 is different from Rajiv Kumar (A-7) in RC-08 and in the instant case, joint trial of petitioner with accused of the aforesaid two RCs would cause prejudice and confusion and would be prejudicial not only to the co-accused of petitioner but it would not be in the interest of justice to have a joint trial for these two cases. Lastly, it is submitted on behalf of respondent-CBI that the prayer for joint trial is premature as the charge in RC-08 has not been framed.

In support of above submission, reliance is placed upon decision in *Allauddin Shah v. State of West Bengal* 1999 LawSuit (Cal) 337 and *Lalu Prasad v. State through C.B.I. (A.H.D.), Ranchi* AIR 2003 SC 3838.

Having heard both the sides at length and on perusal of the impugned order and the copy of chargesheet of the aforesaid two RCs and the decisions cited, I find that petitioner's counsel is not justified in relying upon Section 220 of *Cr.P.C.* as the instant case is of multiple accused persons and the relevant provision, which would apply, is Section 223 of *Cr.P.C.* The proviso to Section 223 of *Cr.P.C.* mandates that where there are number of accused persons, then an application by the accused persons has to be made before the court seeking joint trial

and it has to be seen by the court as to whether the other accused persons are prejudicially affected by joint trial or not and whether it is expedient to try all such accused persons together.

It is a matter of record that apart from petitioner, there are other co-accused persons who have not filed any application seeking joint trial. Apart from it, trial court has rightly observed in the impugned order that joint trial of RC-05 with RC-08 would cause prejudice to the accused persons of RC-08, as some of the accused are not accused in RC-05. Otherwise also, upon perusal of the chargesheets filed in RC-05 and RC-08, I find that even though some of the witnesses in these two RCs may be common but joint trial in these two RCs is not feasible as it will cause unnecessary confusion.

Reliance placed by petitioner's counsel upon Apex Court's decision in *Amitbhai* (supra) is misplaced as the subject matter of the aforesaid two RCs does not relate to the same transaction and so, petitioner cannot be legitimately claim that the chargesheet filed in RC-08 ought to be treated as supplementary challan in RC-05.

In view of the aforesaid, this Court is of considered opinion that there is no illegality or infirmity in the impugned order. As such, finding this petition without substance, I dismiss this petition and the application while making it clear that anything observed in this order shall not be taken as an expression on the merits of this case at trial.

(SUNIL GAUR)
Judge

JULY 04, 2013

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