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

Judgment delivered on: 20th July, 2015

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Crl. M.C. No.3560/2014

CENTRAL BUREAU OF INVESTIGATION Petitioner

Represented by: Ms. Sonia Mathur and
Mr. Sushil Dubey, Advocates
with IO N.P. Mishra.

Versus

KULVINDER SINGH & ANR. Respondents

Represented by: Ms. Jasbir Kaur, Additional
Public Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.C. No.3560/2014

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner/Central Bureau of Investigation (CBI) seeks quashing of the orders dated 27.03.2014 and 28.05.2014 passed by the learned Chief Metropolitan Magistrate (CMM), Rohini Courts, Delhi, and the order dated 27.02.1999 passed by the learned Metropolitan Magistrate (MM) in case bearing FIR No.53/1995 registered at Police Station Alipur for the offence punishable under Section 407 of the Indian Penal Code, 1860 (IPC).

2. The aforesaid FIR was registered on the complaint of respondent No.1 alleging that he was a partner of M/s Atwal Bajwa

Road Carrier, having its office at G.T.Karnal Road, Alipur, Delhi 110036. He alleged that on 20.01.1995, he booked a truck for M/s Khusi Ram Biharilal, having its office at 5190, Lahori Gate, Naya Bajar, Delhi-110006, for transporting 100 quintals of rice to Kandla, Gujarat. Accordingly, the goods were loaded from their godown at Alipur, Delhi, which were supposed to reach Kandla within four to five days. However, the goods, did not reach the destination. Since neither any satisfactory reply was given by Jitender Kumar nor anybody found available in his office and thereafter avoided meeting the respondent No.1, thus, he made a complaint to the police. On inquiry it came to know that an accident was taken place and the truck caught fire. Further alleged, there was some foul play as it appeared that merely few rice bags caught fire and rice was spread on the road and rest of the rice bags were probably sold in the market.

3. Accordingly, the aforesaid matter was investigated and finding no evidence against the accused persons, a closure report was filed by the police. However, the learned CMM vide its order dated 27.03.2014 has not accepted the same. It is observed that the police had submitted an untraced report and not being satisfied with the report, the case was referred to the Crime Branch with directions to further investigate the matter.

4. However, no investigation was done on behalf of the CBI. The learned CMM opined that since order dated 27.02.1999 has not been challenged, therefore, till that order is reversed or modified, the same remains in field.

5. Being aggrieved by the aforesaid order, CBI filed the present petition.

6. The learned counsel appearing on behalf of CBI submits that the Supreme Court in the case of ***Central Bureau of Investigation Vs. State of Rajasthan & Anr., (2001) 3 SCC 333***, held that the Magistrate does not have power to direct CBI to conduct investigation.

7. The petitioner has failed to serve the respondent No.2/complainant for the reason, he has shifted from the address given without leaving the subsequent address.

8. Learned counsel for the petitioner submits that even during pendency of the case before the learned Trial Court, the respondent No.2/complainant was not traceable, as is evident from the order dated 10.08.2009 passed by the learned ACMM. The relevant portion thereof is as under:-

“ Complainant Kulvinder Singh absent. Court notice to the complainant received back unserved with the report that the company at the given address was closed since about 10/12 years back and the present address is not known. Issue fresh court notice to the complainant through DCP (Crime). ”

9. I note, as per Section 156(3) Cr.P.C. and as has been held by the Supreme Court in the case of ***Central Bureau of Investigation Vs. State of Rajasthan & Anr., (supra)***, the Magisterial Courts confer power to order an officer in charge of the police station to investigate

the case having its jurisdiction, however, the said power cannot be stretched under said sub-section beyond directing the officer in charge of a police station to conduct the investigation. However, in the case in hand the learned MM vide its order dated 27.02.1999 had directed the CBI to conduct further investigation.

10. Be that as it may, considering the facts and circumstances of the case and the settled position of law, I hereby set aside the orders dated 27.03.2014 and 28.05.2014 passed by the learned CMM and the order dated 27.02.1999 passed by the learned MM in case bearing FIR No.53/1995 registered at Police Station Alipur for the offence punishable under Section 407 IPC alongwith all consequential proceedings emanating therefrom.

11. In view of the above, the present petition is allowed with no order as to costs.

Crl.M.A. No.12267/2014 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT
(JUDGE)**

JULY 20, 2015
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