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

+ **CRL.M.C. 2633/2013**

Date of Decision : 17.09.2015

AMIT RAI SOOD & ANR.

..... Petitioners

Through

Mr.Arvind Nigam, Sr. Adv. with
Ms.Malini Sud, Adv., Ms.Shagun,
Adv. & Mr.Yanish, Adv.

versus

C.B.I. & ANR.

..... Respondents

Through

Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. & Ms.Utkarsha
Kohli, Adv. for CBI.
Mr.Shubhendu Kumar, Adv. for R-2.

WITH

+ **CRL.M.C. 2634/2013**

NEHRU PLACE HOTELS LTD.

..... Petitioner

Through

Mr.Arvind Nigam, Sr. Adv. with
Ms.Malini Sud, Adv., Ms.Shagun,
Adv. & Mr.Yanish, Adv.

versus

C.B.I. & ANR.

..... Respondents

Through

Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. & Ms.Utkarsha
Kohli, Adv. for CBI.
Mr.Shubhendu Kumar, Adv. for R-2.

AND

+ **CRL.M.C. 4590/2013**

ROHIT KUMAR Petitioner
Through Mr.Rajiv Tuli, Adv. with Mr.A.
Mishra, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION & ANR. ...Respondent
Through Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. & Ms.Utkarsha
Kohli, Adv. for CBI.

AND

+ **CRL.M.C. 5382/2013**

SHEELA AHUJA Petitioner
Through Mr.Gurpreet Singh, Adv.

versus

CBI Respondent
Through Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. & Ms.Utkarsha
Kohli, Adv. for CBI.

AND

+ **CRL.M.C. 5388/2013**

DEVENDER KUMAR BAJAJ Petitioner
Through Mr.Gurpreet Singh, Adv.

versus

CBI Respondent
Through Mr.Narender Mann, Spl.P.P. with
Mr.Manoj Pant, Adv. & Ms.Utkarsha
Kohli, Adv. for CBI.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S. TEJI, J (ORAL)

Aggrieved by the order dated 9th April, 2013 passed by the learned CMM on the basis of the order dated 12th March, 2013 of learned Special Judge, CBI, the present petitions under Section 482 & 483 of Code of Criminal Procedure, 1973 have been filed for quashing of the above mentioned both the orders. As all the petitions mentioned above are against the same order, so are being taken together.

The factual matrix is that the petitioners (hereinafter referred to as “accused persons”) in the present cases were proceeded in pursuance of the FIR bearing RC No.1(S)/2010/CBI/SC-III/ND under Sections 420, 120-B read with Section 420 Indian Penal Code, 1860 (IPC) and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) and thereafter, the investigation proceeded. On the completion of the investigation, the investigating agency i.e. CBI filed a charge sheet under Sections 420, 120-B read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, before the learned Judge, designated Court under the Prevention of Corruption Act,

despite refusal of the competent authority to accord sanction under Section 19 of the P.C. Act, essential for taking cognizance under the PC Act.

Since no sanction for prosecution of the petitioners namely Devender Kumar Bajaj and Sheela Ahuja along with one Ashok Kumar was accorded, the learned Special Judge vide order dated 12th March, 2013 sent the matter to the learned Chief Metropolitan Magistrate while observing that prima facie case under Section 120-B read with Section 420 of the IPC is made out against the accused persons. The learned CMM vide order dated 9th April, 2013 took cognizance of the offence under Sections 420, 120-B IPC and summoned the accused persons.

The matter came up for hearing before the learned Special Judge, CBI and while passing the detailed order dated 12th March, 2013, the Court was of the view as under:-

“64. I am, therefore, of the opinion that prima facie case under Section 120-B read with Section 420 IPC is made out against all the accused persons i.e. accused no.1 M/s.Nehru Place Hotels Limited, accused no.2 Amit Rai Sood, accused no.3 Yoginder Dhawan, accused no.4 Rohit Kumar, accused no.5 Devender Kumar Bajaj, accused no.6 Sheela Ahuja and accused no.7 Ashok Kumar. However, no culpability of the Office of Minister of Transport and Power, NCT, Delhi could be made out, since in the fancy number allotment slip itself, it was mentioned that the said

allotment is meant only for non transport/non commercial category and not for commercial vehicles.

65. Since this Court is a Special Court to deal with cases pertaining to Prevention of Corruption Act, let the file be sent to the Court of Ld. CMM, New Delhi along with all the documents for proceeding further as per law.”

The learned Special Judge, CBI sent the matter to the Court of learned CMM. The learned CMM on receipt of the matter, proceeded with the mater and passed the order dated 9th April, 2013 which reads as under:-

“Heard and perused.

Vide the order dated 12.03.2013 Ms.Swaran Kanta Sharma, Id. Special Judge, CBI-05, PHC, New Delhi has held that there is a prima facie case under Section 120-B read with Section 420 IPC against all the accused persons.

In view of the record and the above said order, cognizance of the offences u/s 420/120-B IPC is taken.

Ld. SPP for CBI has stated that the accused persons were not arrested during investigation. The accused persons be summoned through IO Inspector Shehnaz Khan and put up for report on 17.07.2013.”

The grievance of the petitioner is of two fold. Firstly, the learned Special Judge, CBI committed error while holding that there was prima facie case under Section 120B read with Section 420 IPC against the accused persons and also sending the matter to the learned CMM for further proceedings instead of returning the charge-sheet to the CBI to

present it to the Court having competent jurisdiction.

Per contra, the arguments advanced by learned counsel for CBI that finding prima facie case under Section 120-B read with Section 420 IPC against the accused persons was just view of the learned Special Judge, CBI and it could not be treated as finding or holding the accused persons prima facie guilty of the offence. The learned Special Judge was competent and has discretion either to return the charge sheet to the investigating agency or send it to the competent court to deal with the matter, in view of Section 228 of the Cr.P.C.

I have heard learned counsel for the parties at length.

From the arguments advanced by the parties and the perusal of the order, it is apparent that there was a detailed lengthy order discussing all the facts and circumstances and while reaching to the conclusion, the view taken by the learned Special Judge, CBI that prima facie, the offence is made out, was not meant for taking cognizance or summoning the accused or for framing the charge as in the preceding para, it has been categorically held that the Court of the Special Judge, CBI was a Special Court to deal with the case pertaining to the Prevention of Corruption Act and the file was sent to the Court of the learned CMM, New Delhi along with the documents to proceed in accordance with law. Apparently, the

learned CMM has not proceeded with the matter and it was just opinion of the learned Special Judge, CBI that offence under Section 120 B read with Section 420 of the IPC is made out against the accused persons.

This court is further of the opinion that by returning the file to the investigating officer or to submit before the Court of CMM having jurisdiction or directing to send the file, was purely discretion of the court and it does not cause any prejudice to the accused persons in the present matter.

The second fold of the arguments advanced by Mr.Arvind Nigam, learned senior counsel for the petitioners is that the learned CMM while passing the order dated 9th April, 2013 has acted in a mechanical manner and moreover, passed the order based upon the order of learned Special Judge, CBI treating it as superior court equivalent to the Court of Session and without expressing any reason, took the cognizance and summoned the accused person based upon the observations made vide order dated 12th March, 2013 by the learned Special Judge, CBI. He further vehemently argued that the learned CMM has passed the order as he had been communicating the order of learned Special Judge, CBI and proceeded to treat the order of the learned Special Judge as direction.

He has referred to various judgments in *Pepsi Foods Ltd. and*

Anr. v. Special Judicial Magistrate and Ors. 1998 CriLJ 1; Maksud Saiyed v. State of Gujarat & Ors. (2008) 5 SCC 668 & Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609.

The learned Special PP for CBI has opposed the contentions made by the learned counsel for the petitioners.

A meticulous perusal of the order passed by the learned CMM shows that the learned CMM has not demonstrated the material for taking the cognizance of the offence and reason for summoning the accused persons. This Court has gone through the judgment in the case of ***Pepsi Foods Ltd.*** (supra). The view of the Apex Court in that case is as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to

elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In Mahmood Ul Rehman & Ors. v. Khazir Mohammad Tunda &

Ors., AIR2015SC2195, the Hon’ble Apex Court held thus:-

“21. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Limited* (supra), to set in motion the process of criminal law against a person is a serious matter.”

In view of the law laid down by the Apex Court and the material available on this file, this Court is of the considered opinion that the learned CMM is required to pass the specific detailed order for taking cognizance based upon the material available before him and specify the same and only thereafter, the accused could have been summoned. Admittedly, the accused persons appeared before the learned CMM and this Court exempted their personal appearance. This Court is of the

considered opinion that the learned CMM ought to have specified the material for taking cognizance and summoning the accused after due application of mind independently without influenced by the order passed by the learned Special Judge, CBI which has not been demonstrated in the present case. The order passed by the learned CMM is in mechanical manner without dealing with the material relied upon and is not sustainable in view of the judgments referred above.

The Court may not pass a lengthy order but it must demonstrate that there should be gauge on the order showing application of mind. In the case in hand, the order passed by the learned CMM not only a non-speaking order but shows lack of application of mind and passed in a mechanical manner.

Consequently, as per the discussion made above, this Court is of the considered opinion that no ground is made out to set aside the order dated 12th March, 2013 of the learned Special Judge, CBI. However, the order passed by the learned CMM is not sustainable in the eyes of law and deserves to be set aside.

The order dated 9th April, 2013 passed by the learned CMM is hereby set aside and it is directed that the learned CMM shall examine and after due application of mind independently, without being

influenced by the order dated 12th March, 2013 of learned Special Judge, CBI, shall pass the order afresh for taking cognizance and issuance of the summons to the accused persons, as per the observations made above.

With the above observations, the petitions are disposed of accordingly.

(P.S.TEJI)
JUDGE

SEPTEMBER 17, 2015/aa/dd