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

+ CRL.M.C. 1275/2013

RAJNISH B.BHATIA

..... Petitioner

Represented by: Mr.Vikas Pahwa, Sr. Advocate
instructed by Mr.B.Badrinath, Ms.Kinnori Ghosh,
Mr.Aditya Dogra, and Mr.Tushar Sharma, Advs.

versus

CBI & ORS.

..... Respondents

Represented by: Mr.Narender Mann, Spl.PP with
Mr.Manoj Pant, Adv. for CBI
Mr.Sumit Choudhary, Adv. for R-2 and R-5
Mr.Bharat Gupta, Proxy Counsel for
Ms.Vagheesha Kochar, Adv. for R-3 & R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

ORDER

% 08.09.2016

1. Challenge in Crl.M.C. No.1275/2013 is to an order dated March 22, 2013 passed by the learned Special Judge, CBI dismissing application filed by the petitioner invoking Section 190 Cr.P.C. read with Section 204 thereof seeking arraignment of other persons named as witnesses by the CBI.
2. The cryptic order notes that since the charge-sheet has been filed against only four accused persons and cognizance against them has been taken by the Court in the opinion of the Court though the application was

maintainable but the Court could summon any other person as accused at any stage of trial if there emanates any incriminating evidence.

3. The application filed by the petitioner, copy enclosed as Annexure P-6 to the instant petition, would evince that the case of the petitioner was that from a perusal of the charge-sheet it would be apparent that the case of the prosecution against him was that he, along with one H.S.Malhotra and Lalit Jain conspired to leak and circulate question papers pertaining to two examinations conducted under the auspices of DGCA, thereby benefitting certain students. It is the further case of the petitioner that the case of the prosecution was that investigation revealed that H.S.Malhotra was assigned to set and vet the question papers on the subject 'Air Navigation and Technical General Paper'. That H.S.Malhotra asked Rajnish Baldevraj Bhatia, a pilot of Indigo Airlines to arrange some aspirants to whom question papers could be leaked. Rajnish Baldevraj Bhatia knew Lalit Jain who worked as a tout in DGCA's office. For the purpose of leaking the questions papers, Rajnish Baldevraj Bhatia contacted Lalit Jain who arranged one Dheeraj Grover and his friends Arvind Bairwa and Abhishek Chouhan to read the leaked question paper. It is the further case of the petitioner that as per the prosecution on August 25, 2011, Dheeraj Grover and Arvind Bairwa were taken by Lalit Jain to read the leaked question paper at a house which was in occupation of the father-in-law of H.S.Malhotra. He introduced Rajnish Baldevraj Bhatia and dropped them to the said house. On the second day, i.e. August 26, 2011, again Dheeraj Grover, Arvind Bairwa and Abhishek Chauhan went to the same house and read the question paper of Technical General. As per the charge-sheet, the

house was arranged by H.S.Malhotra at the instance of Lalit Jain. At the house, the leaked question papers were shown to the above-noted persons. They read the questions and subsequently wrote the same and provided the same to Ravi Sankar through Rahul Kheriwal at Kolkata. It is the further case of the prosecution that hand written question papers were sent to Ravi Sankar through e-mail of Dheeraj Grover. The further case is that Rahul Kheriwal handed over hard copies of hand written question papers to Ravi Sankar for a consideration of ₹ 3 lakhs. In the application it was pointed out that names of Arvind Kumar Bairwa, Dheeraj Grover, Abhishek Chouhan and Ravi Sankar found a mention in the list of witnesses.

4. Concededly, the issue at hand which arises is squarely covered by the decision of the Supreme Court in 2015 (1) SCC 48 R.N.Aggarwal vs. R.C.Bansal & Ors.

5. Suffice it to state that if the case of the prosecution is as laid bare in the application filed by the petitioner, the sufficiency of the evidence being of an incriminating nature had to be considered by the learned Special Judge, CBI and the issue could not to be postponed for the further stage. I emphasize once again. If in an application an accused points out that the existing material placed along with the charge-sheet and the case of the prosecution as set out in the charge-sheet prima facie shows involvement of other persons, it is the duty of the learned Judge, CBI to pass appropriate orders and not defer consideration. This would be in the interest of justice for the reason at the very inception of the trial all accused would be before the Court. It is trite that if a person is named as an accused at a subsequent stage of the trial, akin to the game of snakes and ladder the stage of the trial

falls back to the starting point; witnesses have to be recalled and tendered for cross-examination by the newly impleaded accused.

6. Disposing of Crl.M.C. No.1275/2013, I quash the impugned order dated March 22, 2013 and direct the learned Special Judge, CBI to decide the application filed by the petitioner afresh.

PRADEEP NANDRAJOG, J.

SEPTEMBER 08, 2016 //dkb