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

Decided on : 16th May, 2017

+ CRL.A. 117/2007 and CrI. M.A. 2006/2007

DHARAMBIR KHATTAR Appellant
Through: Mr. Abhijat, Mr. Madhu Sudan
Bhayana, Ms. Jeewan Chandna, Mr. N.
Parikshith, Ms. Madhu Shah, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Nikhil Goel, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appellant is an accused (second accused to be precise) in a criminal case, which is stated to be pending on the file of the Special Judge (Prevention of Corruption Act) on the basis of a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted by the respondent / Central Bureau of Investigation (CBI) on conclusion of investigation into the case registered as RC 25(A)/03/CBI/ACB / New Delhi. By order dated 05.02.2007 on the file of the said criminal case CC No.25/5, the learned Special Judge directed, *inter alia*, a complaint to be made over to the court of the Additional Chief Metropolitan Magistrate (ACMM), New Delhi, against the backdrop of facts which were set out in the said proceedings. The said order being in the nature of an order under Section 340 Cr. PC, on the request of the CBI for such action to be

initiated, the appellant has approached this court by the appeal at hand under Section 341 Cr. PC.

2. Arguments of the learned counsel for the appellant and the respondent have been heard. Record has been perused.

3. The background facts lie in a very narrow compass. The criminal case in which the appellant was an accused was listed before the Special Judge on 26.05.2006. An application for exemption from personal appearance on his behalf came to be moved by his counsel on the grounds that he had been advised rest on account of certain medical condition, this claim being supported, *inter alia*, by copies of medical certificates annexed with the said application, they including OPD slip of Cardiothoracic & Neurosciences Centre of All India Institute of Medical Sciences, New Delhi (AIIMS) purportedly against OPD no.9257 dated 28.02.2006. The copy of the said slip submitted with the application would indicate the first visit of the appellant as a patient in the OPD of AIIMS on 28.02.2006 followed by certain other visits including of 02.03.2006 and 04.05.2006.

4. The learned special Judge by order passed on the said date, *inter alia*, directed the public prosecutor representing the CBI to “verify the physical condition of the accused and submit verification report in terms of annexures of the medical record of the applicant”. The exemption from personal appearance for the said date was, however, allowed.

5. It appears that the CBI approached the hospital administration and, thereafter, submitted a report indicating the document in question

to be forged and fabricated for the reason the OPD records would not show any such visits on the said dates.

6. It is against this backdrop that the CBI moved the application under Section 340 Cr. PC seeking action to be initiated. The relevant portion of the impugned order reads thus :-

“This document had been produced in the court pursuant to the query sent by S.P., CBI on the two prescription slips dated 28.01.06 and 28.02.06 of the AIIMS which had been appended by applicant Dharambir Khattar alongwith his personal exemption application dated 26.05.06.

In view of this prima facie finding which has been given by the Administrative Officer, AIIMS Hospital, in my view, it is expedient in the interest of justice, that an inquiry should be made into the offence prima facie sought to have been committed by the accused Dharambir Khattar by producing false evidence in relation to the proceedings before t his court and he is prima facie liable under the provisions of Section 193 of the IPC. Ordered accordingly.

A copy of this order alongwith the complaint of this court be sent to ld. ACMM, New Delhi to deal with the complaint in accordance with law.

Let the complaint (alongwith list of documents and list of witnesses) be put up before ld. ACMM, New Delhi on 07.02.07 at 2. p.m.”

7. Though in the appeal, certain other contentions were also urged, including by reliance on the view taken by the Supreme Court in *Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr.*, AIR 2005 SC 2119 to the effect that the provision of Section 195 Cr. PC is attracted only if the document is in *custodia legis*, in the opinion of this court, the impugned order cannot be upheld primarily for the

reason that there has been no inquiry held within the meaning of the expression used in Section 340 Cr. PC. As would be seen from the several paragraphs of the impugned order extracted above, “the prima facie finding” referred to by the special judge is of the administrative officer, AIIMS rather than of the court. The learned Special Judge seems to have contradicted herself by saying on one hand that it was expedient in the interest of justice that an enquiry should be made into the offence and immediately thereafter directing a complaint to be made over to the court of the Magistrate for offence under Section 193 IPC.

8. Given the nature of record presented before this court, it is clear that no inquiry worth the name within the meaning of Section 340 Cr. PC was ever held. In this view, the directions in the impugned order for a complaint to be lodged under Section 195 Cr. PC cannot be upheld. The order to that extent is set aside.

9. It is, however, made clear that this result of the appeal will not come in the way of the special court holding a proper inquiry in accordance with law on the application under Section 340 Cr. PC.

10. The appeal and the accompanying application stand disposed of in above terms.

11. The trial court record shall be returned forthwith.

R.K.GAUBA, J.

MAY 16, 2017/yg