* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Judgment delivered on: 11th April, 2017***

\+ CRL.M.C. 1127/2015 & CRL.M.A.4159/2015

BRAJESH PATHAK ..... Petitioner

Through: Mr.Kirti Uppal, Sr. Adv. with Mr.Sanjiv Nasiar, Mr.Amit Tiwari and Mr.Siddhartha Chopra, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr.Nikhil Goel, Adv. with Mr.Ashutosh Ghade and Mr.Saqib Haroon, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE I.S.MEHTA**

**JUDGMENT**

**I.S. MEHTA, J.**

1. By way of the above captioned petition, the petitioner invokes the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to quash the impugned summoning order dated 20.02.2015 and all the proceedings emanating therefrom in CC No. 01/2015 bearing RC No. 3(A)/2014/CBI/AC-III/N.D. pending before the learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi.

2. The brief facts stated are that, on the basis of source information against Mr. Brajesh Pathak, the petitioner herein, who is a Member

of Parliament, representing the State of Uttar Pradesh and some unknown persons, an FIR No. 3(A)/2014/CBI/AC-III/N.D. was registered by the respondent, i.e. Central Bureau of Investigation (*hereinafter referred to as CBI*) on 12.06.2014 under Sections 120-B, 420, 467, 468, 471 and 474 IPC and under Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988.

3. The allegations alleged against the petitioner was that during the period 2011 to 2013, the petitioner entered into a criminal conspiracy with unknown private persons and claimed wrongly inflated reimbursement for eight companion tickets amounting to Rs.2,19,887/- from the Pay and Accounts Office, Rajya Sabha Secretariat, New Delhi but had only paid an amount of Rs.10,499/- for the said eight companion tickets, thereby he unduly claimed an excess amount of Rs. 2,09,338/- from the Government of India.

4. The respondent CBI filed charge-sheet on 02.01.2015 with the conclusion that <u>investigation revealed commission of offences under Sections 420, 467,468,471 and 474 IPC against Sh. Rajesh Agnihotri, Director of M/s Vandana Air Travels Pvt. Ltd. and that no offence has been committed by the petitioner, who was kept in column 12 therein.</u>

5. Thereafter, an application was moved by respondent CBI through Deputy Superintendent of Police seeking marking of the matter to Magisterial Court of competent jurisdiction.

6. The learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi vide order dated 20.02.2015 <u>rejected the application filed by the respondent CBI and took cognizance against</u>

the petitioner herein for the offences punishable under Sections 120-B, 420, 467, 468, 471 and 474 IPC and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 and issued summons to the petitioner, Rajesh Agnihotri and M/s Vandana Travels Private Limited**.**

7. Aggrieved by the said impugned summoning order dated 20.02.2015 and all the proceedings emanating therefrom, the petitioner has filed the present petition.

8. The learned Senior counsel for the petitioner has submitted that the respondent CBI registered an FIR No. 3(A)/2014/CBI/AC-III/ND against the petitioner and in pursuance of the abovementioned FIR, an investigation was carried out. Thereafter, charge-sheet under Section 173 (2) Cr.P.C. was filed before the concerned Court.

9. The learned Senior counsel for the petitioner has further submitted that the charge-sheet/closure report filed by the respondent was rejected by the concerned Court without giving any logical basis /conclusion and passed the impugned summoning order dated 20.02.2015 against the petitioner without giving any direction for further investigation which is bad in law. It is further submitted that the respondent still stands for their investigation and when there is no evidence qua the petitioner the trial *ipso facto* goes and submits that the aforesaid FIR could lead nowhere and to meet the ends of justice the FIR be quashed. The learned Senior counsel for the petitioner has relied upon the following judgments:-

***(1) CBI v. M/s TDI International Pvt. Ltd., 219 (2015) DLT 387.***

*(2) Girdhir Lal Mohta v. CBI, 2013 (4) JCC 2649.*

10. On the other hand, the learned counsel for the respondent submits that CBI stands for its closure report. The respondent further submitted that they would be accepting whatsoever directions given by this Court.

11. The whole question hinges around whether the learned Special Judge could take cognizance of the offence qua the present petitioner when there is no evidence found by the investigation authority?

12. In the instant petition, the learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi took cognizance qua the petitioner on 20.02.2015 on the basis of material evidence placed on record along with the charge-sheet filed under Section 173 (2) Cr.P.C. In the said charge-sheet the present petitioner is shown to be in column no.12 showing not charge-sheeted.

Meaning thereby, that, during the course of investigation, no evidence was found qua the present petitioner by the investigating officer.

13. The learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi took cognizance against the present petitioner for the offences punishable under Sections 120-B, 420, 467, 468, 471 and 474 IPC and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 on the basis of the existing evidence qua the other accused person.

14. Cognizance is always taken of an offence and not of an offender. In the instant case, the closure report of the respondent CBI qua the present petitioner is to be taken under Section 169 Cr.P.C. which is reproduced hereunder:-

> *"**169. Release of accused when evidence deficient.**- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial."*

15. If the learned Trial Court finds that there is no sufficient evidence qua the present petitioner then the learned Trial Court has the option to exercise its judicious mind under Section 173(8) Cr.P.C. for further investigation and collecting material evidence qua the present petitioner. Sub-section (8) of Section 173 Cr.P.C. is reproduced hereunder:-

> *"**(8)** Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-*

*sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."*

16. In the instant case the learned Trial Court instead of issuing directions for further investigation to the respondent CBI <u>in order to fetch material evidence under Section 173(8) Cr.P.C. finds sufficient material evidence for taking cognizance qua present petitioner when the respondent CBI itself says that there is no evidence found against the petitioner herein.</u>

17. The Hon'ble Supreme Court in the judgment reported as ***Pepsi Foods Ltd.and Anr. vs. Special Judicial Magistrate and Ors., 1998 5 SCC 749***, while dealing with the summoning of an offence in a criminal case has observed that summoning of an accused in a criminal case is a serious matter. The criminal law cannot be set into motion as a matter of course. The relevant paragraph of the judgment is reproduced as under:-

> *"28. Summoning of an accused in a criminal cases 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. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put question to the complainant and his witnesses to elicit answers to 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."*

18. In the instant petition, the charge-sheet filed by the respondent CBI under Section 173 (2) Cr.P.C. shows that Mr. Rajesh Agnihotri was the Director of M/s Vandana Airtravels Private Limited who on behalf of the said Travel Agency sold eight tickets to Mr. Brajesh Pathak, the petitioner herein, for a sum amounting to Rs.2,19,887/- (Rupees Two Lakhs Nineteen Thousand Eight Hundred and Eighty Seven Only). The Travel Allowance claim made by Mr. Brajesh Pathak, the petitioner herein, as per the charge-sheet was prepared by the petitioner's Private Secretary/ Private Assistant and the petitioner had no knowledge regarding submission of forged documents as he had only signed those documents prepared by his Private Secretary/ Private Assistant which were provided by Mr. Rajesh Agnihotri, the Director of M/s Vandana Airtravels Private Limited. The present petitioner thereafter on the basis of aforesaid air tickets travelled to Delhi – Pune on 24th April, 2012.

19. As per the investigation, it has been revealed that the petitioner and his family members had travelled on the questioned eight e-tickets, which have been confirmed by the boarding passes and the check-in-slips and the same were confirmed by the Investigating Officer as per the charge-sheet. The petitioner paid the entire amount

for the said e-tickets to Mr. Rajesh Agnihotri and got the same reimbursed from the Rajya Sabha Secretariat as per rules.

20. Admittedly, there is no dispute of claim by the Travel Agency from the present petitioner in other words, fares printed on the e-tickets have been paid by the present petitioner to the Travel Agency and the same has been reimbursed by the Government to the petitioner after scrutinizing the boarding passes.

21. It is to be noted that travelling of the present petitioner on the basis of questioned e-tickets along with family members is confirmed with boarding passes.

22. So far as the question pertaining to actual fare paid to Air India is concerned:-

1) There are no documents placed on record by the respondent CBI to show that till what date Air India sold the tickets from its counter.
2) It is an admitted fact coming on record that tickets are sold to general public in two ways:
    a) Air India itself through counter.
    b) Air India sells the ticket to Consolidator, who further sells it to Travel Agent and the Travel Agent sells it to the general public.

23. The details of the said 08 questioned e-tickets shown in the impugned order dated 20.02.2015 are reproduced hereunder:-

| *SI. No.* | *Name of the companion* | *Companion Ticket No.* | *Ticket No. & Class of Air India Flight of Main Ticket* | *Fare Claimed for the Compani* | *Actual Fare paid (in Rs.)* | *Sector & Date* |
|---|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | ***on Ticket (in Rs.)*** | | |
| *1* | *Mr. Karthik Pathak* | *0983202226447* | *0982106137864 Business (I)* | *19,742* | *2289/-* | *LKO-Delhi 6.3.2013* |
| *2* | *Ms. Media* | *0983202442286* | *0982106192328 Business (I)* | *19,809/-* | *2370/-* | *Delhi-LKO 13.3.13* |
| *3* | *Mast. Karthik* | *0983202442287* | *0982106192329 Business (I)* | *19,809* | *2370/-* | *Delhi-LKO 13.3.13* |
| *4* | *Brajesh Pathak* | *FFP Free Tkt* | *0982107706552 Business (I)* | *20,384/-* | *466/-* | *LKO-Delhi 26.9.13* |
| *5* | *Mr. Kirat* | *0989424293759* | *0982103379590 Economy (Q)* | *23584/-* | *233/-* | *Pune-Delhi 25.4.2012* |
| *6* | *Mr. Karthik* | *0989425283940* | *0982103759023 Business (Z)* | *35670/-* | *978/-* | *Delhi-Triputi 4.6.12* |
| *7* | *Ms. Sambhavi* | *0989425283931* | *0982103759017 Business (Z)* | *35670/-* | *1564/-* | *Delhi-Triputi-Delhi 4.6.12 5.6.12* |
| *8* | *Mrs. N. Pathak* | *0985345646954* | *0982100981418 Business (Z)* | *45219/-* | *229/-* | *Bhubneshwar-Delhi 6.6.11* |
| | | | ***Total*** | ***219887/-*** | ***10499/-*** | |
| | | | ***Loss*** | ***209388/-*** | | |

24. India is a member of the IATA (International Air Transport Association) and Air India is a member of IATA. IATA is the trade association for the world's airlines, representing around 265 airlines. The aim of the IATA is global development and regional delivery of airlines and to develop global standards, systems and advocacy positions. Air India is a body corporate for making operation for air transport services i.e. sale of tickets and regulation of domestic and the international flights.

25. In the instant petition, the respondent CBI while filing the charge-sheet under Section 173(2) Cr.P.C. has not filed any regulation which restricts the Travel Agency from charging higher price for air tickets from customer.

26. It is a usual practice for Air India to sell tickets to Consolidator and reserves few tickets for counter purposes and at the counter the tickets are sold before the actual date of travelling and the remaining tickets are only left with the Consolidator. The Consolidator further sells those sold tickets to the Travel Agency/Agencies, who sells the same at higher price as per its interests.

27. In the instant case, it is apparent on the face of the record that there is no dispute pertaining to sale of aforesaid electronic air tickets by M/s Vandana Airtravels Private Limited through Mr. Rajesh Agnihotri to the petitioner herein. The petitioner on the basis of the aforesaid air tickets utilizes its claim and travel to its each destination. The same is confirmed by the respondent CBI in its charge-sheet in paragraph 17 (viii), which is reproduced hereunder:-

> *"**17**. The investigation further revealed that....*
>
> *viii) The check-in-slips for the questioned e-tickets from AIR INDIA confirmed that the passenger had travelled on the said CFS."*

28. It is apparent from the charge-sheet filed by the respondent CBI that the petitioner through his Private Secretary/ Private Assistant submitted his e-tickets and boarding passes and on the basis of e-tickets and boarding passes the claim amount was reimbursed by Rajya Sabha Secretariat.

29. Nothing is emerging on the record or investigation made by the respondent CBI that price of air tickets amounting to Rs.2,19,887/- has not been paid by the petitioner to the Travel Agency/ there is no any such complaint pending qua the present petitioner which otherwise means the amount of Rs. 2,19,887/- has been paid by petitioner to the Travel Agency. The petitioner has got reimbursed the aforesaid amount of Rs. 2,19,887/- from the Rajya Sabha Secretariat after depositing the air tickets and the boarding passes.

30. <u>The whole dispute is arising out of the non-matching of the amount of the tickets sold at the counter of Air India and the tickets sold through Travel Agency.</u>

31. There is nothing on the record to show on which date Air India sold the last tickets to its customer for its destination to determine the actual cost of the ticket. It is a general practice which has been noticed that air tickets at counter are not available as the same has been sold to the Consolidator long time back to avoid the risk of loss due to the existing stiff competition among various Airlines. Once, the tickets are sold to the Consolidator and further to the Travel Agency, the Travel Agency further sells the tickets to customer looking into its own business interest until and unless there is a regulation on behalf of Government for restricting the higher price of Travel Agency.

32. There is nothing coming on the record that there is any domestic/Government/Air India regulation restricting the higher price of the Travel Agency.

33. Therefore, in absence of such regulation, even if the prosecution case taken to be gospel truth still do not constitute *prima facie* case qua the present petitioner in absence of any evidence against the petitioner in the charge-sheet filed by the respondent CBI. Reliance is placed on the judgment of the Apex Court in the case ***State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR (1992) SC 604***, which has laid down certain category for quashing of the proceedings, the relevant portion is reproduced hereunder:-

> *"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;"*

34. In the light of aforesaid discussions, the cognizance taken qua the present petitioner without taking recourse under Section 173(8) Cr.P.C. for further investigation is hereby set aside.

35. Consequently, the present petition is allowed and the impugned summoning order dated 20.02.2015 and subsequent proceedings qua against the petitioner in CC No. 01/2015 bearing RC No. 3(A)/2014/CBI/AC-III/N.D. pending before the learned Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi are hereby quashed to the extent of the role of the present petitioner in FIR No. 3(A)/2014/CBI/AC-III/ND.

36. Let one copy of this Judgment be sent to the concerned Court.

37. Trial Court Record be also sent back to the concerned Court forthwith.

38. All the pending applications (if any) are disposed of accordingly.

No order as to costs.

**I.S.MEHTA, J**

**APRIL 11, 2017**