

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 298 OF 2018**

Nitin Shahi	.. Applicant
Vs.	
Central Bureau of Investigation & Anr.	.. Respondents

**WITH
CRIMINAL REVISION APPLICATION NO. 299 OF 2018**

Hemant Bhatt s/o. Dhayalal Bhatt	.. Applicant
Vs.	
Central Bureau of Investigation & Anr.	.. Respondents

**WITH
CRIMINAL WRIT PETITION NO. 2714 OF 2018**

Vipul Chitalia	.. Petitioner
Vs.	
Central Bureau of Investigation & Anr.	.. Respondents

Mr. Rahul Agarwal I/b. Mr. Yashwardhan Tiwari, Advocate for the Applicant in Revn. No.298 and 299 of 2018.
Mr. S.R. Shinde, APP for the Respondent – State in Revn. No.298 and 299 of 2018.
Mr. Rahul S. Agarwal, Advocate for the Petitioner in W.P. No.2714 of 2018.
Mr. A.R. Patil, AGP for Respondent – State in W.P.2714 of 2018.

CORAM : PRAKASH D. NAIK, J.

DATE : 30 JULY 2018.

P.C:-

. The revision applicant in Criminal Revision Application No.298 of 2018 and the Petitioner in Criminal Writ Petition No.2714 of 2018 have challenged the order dated 22.05.2018 passed by Criminal

Court of Additional Sessions Judge/Special Judge, Mumbai in CBI Special Case No.38/18 arising out of RC02(E)/2018/CBI/BS&FC/MUM dated 15.02.2018. Whereas the revision applicant in Criminal Revision Application No. 299 of 2018 have challenged the impugned order dated 21.05.2018 passed by the Additional Sessions Judge/Special Judge Mumbai in CBI Special case No.37/18 arising out of RC01(E)/2018/CBI/BS&FC/MUM dated 31.01.2018.

2. Learned Advocate for the applicant/petitioner submitted that the trial Court has shown non application of mind while passing impugned orders. The learned Judge has resorted to Section 204 of Cr.P.C. and erroneously bypassed compliance of Section 190. The summoning order is an en masse summoning order wherein individual role of the accused was not considered and thus the order has been passed without application of judicial mind. The learned Judge also summoned company though it cannot be prosecuted for offences involving mens rea. The non application of mind from the impugned orders can be seen from the fact that the order does not spell out as from what record a particular offence has been committed by which of the summoned accused. So it is casual summoning by the trial Court without assigning the role and the Sections under which the accused have been summoned. The charge sheet involves offences under the IPC

as well as Prevention of Corruption Act. The order doesn't spell out for which offences the summoned accused are being prosecuted. No reasons are assigned. Section 204 of Cr.P.C. relates to issue of process which is covered under chapter XVI dealing with commencement of proceeding before the magistrates. The Court by summoning had taken recourse to Section 204, but there is failure to adhere Section 190 of Cr.P.C.

3. Learned Counsel for the applicant/petitioners placed reliance on following decisions of the Apex Court to contend that the impugned order reflects total non application of mind by the trial Court. Reliance is placed on the following decisions :-

- i) **Devendra and Ors. Vs. State of Uttar Pradesh and Anr.**¹
- ii) **Sunil Bharti Mittal Vs. Central Bureau of Investigation**²
- iii) **Shri Ram Lal and Ors. vs. Shri Parvinder Singh and Ors.**³
- iv) **Bhagwant Singh Vs. Commissioner of Police and Anr.**⁴
- v) **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda & Anr.**⁵
- vi) **State of Punjab Vs. Bhag Singh**⁶

4. In the case of **Devendra and Ors. (Supra)**, it is observed that while passing order taking cognizance the Court has to apply its

1 (2009) 7 SCC 495
 2 (2015) 4 SCC 609
 3 1986 (10) DRJ 188
 4 1985 (2) SCC 537
 5 2015 (2) JCC 1337
 6 (2004) 1 SCC 547

mind. The said decision relates to criminal proceedings initiated under Sections 420, 467, 468 and 469 IPC. Parties have also filed civil suit. First Information Report was lodged at the instance of the complainant. Application was preferred for quashing FIR by the accused which was dismissed with direction to the investigation authority to conclude the investigation within three months. Subsequently, investigation was completed and charge sheet was filed. Learned Magistrate took cognizance of the charge sheet. No reasons were assigned in support thereof. Thereafter, application under Section 482 of Cr.P.C. was preferred before the High Court. It was contended that the dispute is of civil nature. The High Court refused to quash the proceedings. The Hon'ble Supreme Court observed that in the case of this nature where no case has been made out for taking cognizance of an offence under Section 420 of IPC, it was obligatory on the part of the Court to apply its mind to the contents of the charge sheet which should have been reflected in the order.

5. In the case of **Sunil Mittal (Supra)**, it is observed that “sufficient grounds for proceeding” appearing in the Section 204 Cr.P.C. are of immense importance. The order is liable to set aside if no reason is given therein by coming to the conclusion that prima facie case

against the accused though the order need not contain detailed reasons. It was observed that cognizance of an offence and prosecution of an offender are two different things. Section 190 of Code empowers taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may be transpired during investigation or afterwards. Section 204 deals with the issue of process wherein the opinion of the magistrate taking cognizance of an offence there is sufficient ground for proceeding. The discretion must be judicially exercised. A person ought not to be dragged into Court merely because complaint has been filed. If a prima facie case has been made out, the magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in conviction. However, Section 204 requires application of mind. The order can be set aside for non application of mind. In case of **Bhagwant Singh (Supra)**, it is observed that the order under Section 204 is discretionary as the word used in Section is 'MAY'. However, the discretion has to be exercised in judicious manner. In the case of **Mehmood Ul Rehman (Supra)**, the Hon'ble Supreme Court has referred to the case of **Pepsi Foods and Anr. Vs. Special Judicial Magistrate**⁷ and various other decisions of the Apex Court and observed that cognizance of an offence

⁷ (1998) 5 SCC 749

on complaint is taken out for the purpose of the accused since its process of taking judicial notice of certain facts which constitutes offence. There has to be application of mind as to whether the allegation in the complaint when considered along with statements recorded or enquiry conducted thereon would constitute violation of law so as to call a person to appear before the Criminal Court. It is not mechanical process or matter of course. In the case of **State of Punjab Vs. Bhag Singh (Supra)**, it was observed that failure to give reasons amounts to denial of justice.

6. Learned Counsel for the respondents submitted that there is no illegality in the order passed by the trial Court. It is submitted that taking cognizance is still at intermediate stage. Taking cognizance does not amount to commencement of trial. The Court has taken judicial note of cognizance. The report charge sheet of the investigating agency discloses involvement of the accused. Learned Counsel also drew my attention to Section 461 and 465 of Cr.P.C. which relates to irregularities which vitiate proceedings and also with regards to no finding sentence or order passed by the Court of competent jurisdiction shall be reversed or altered by the Court of appeal, confirmation or revision on account of any error, omission or irregularity. In the

complaint, summons, warrant , proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code or any error or irregularity in any sanction for the prosecution. Unless in the opinion of that Code a failure of justice has in fact been occasioned thereby. It is submitted that by petitioner's Counsel that warrant is issued in form 2 of Cr.P.C.

7. Learned Counsel for the respondents relied upon following decisions :-

- i) **Nupur Talwar Vs. Central Bureau of Investigation**⁸
- ii) **Hardeep Singh Vs. State of Punjab.**⁹
- iii) **Dy. Chief Controller of Imports & Exports Vs. Roshanlal Agarwal and Ors.**¹⁰

8. In the case of **Nupur Talwar (Supra)**, it was observed that whether an order passed by magistrate issuing process requires to give reasons came to be examined by the Court. In **Dy. Chief Controller of Imports and Exports Vs. Roshanlal Agarwal (Supra)** and in the case of **Bhushan Kumar Vs. State (NCT) of Delhi**¹¹. The Court referred to the observations made in the said decisions by the Apex Court. It was observed that time and again it has been stated by this Court that

8 (2012) 11 SCC 465

9 (2014) 3 SCC 92

10 (2003) 4 SCC 139

11 2012 (5) SCC 424

summoning order under Section 204 requires no explicit reasons to be stated because it is imperative that the magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith. Reference was also made to Section 461 of Cr.P.C. by stating that in the list of irregularities indicated in Section 461 of Cr.P.C. orders passed under Section 204 do not find mention. Section 465 (1) of Cr.P.C. protects orders from errors, omissions or irregularities unless failure of justice has been occasioned thereby. Most certainly, an order delineating the reasons cannot be faulted on the ground that it has occasioned failure of justice. In the case of **Dy. Chief Controller of Imports and Exports (Supra)**, it was observed that in determining the question, whether any process is to be issued or not, what the magistrate has to be satisfied. Whether there is sufficient ground for proceeding and not. Whether there is sufficient ground for conviction. Whether evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. At the stage of issuing process to the accused, the magistrate is not required to record reason. In the case of **Hardeep Singh (Supra)**, the Court dealt with the provisions of Section 319 of Cr.P.C. and what is the nature of satisfaction required to invoke the power under Section 319 of Cr.P.C. and whether the powers can be exercised only if the

Court is satisfied that the accused will be summoned in all likelihood and be convicted.

9. In the proceedings which is subject matter of Criminal Revision Application No. 298 of 2018 and Writ Petition No. 2714 of 2018, the trial Court had passed order on 22.05.2018 which is under challenge. The order indicates that the Court has perused charge sheet and papers and heard learned Special Public Prosecutor.

10. Accused Nos. 7, 8 and 10 were represented by Advocate. The Court directed issuance of production warrant against accused No.1, accused No.10, accused No.17 (revision applicant in Cri. Revision Application No. 298 of 2018), accused No.18 and accused No.19 (petitioner in Cri. W.P. No. 2714 of 2018). The Court also issued notices to accused Nos. 3 and 5 through their representatives. The Court also issued Non bailable warrant against absconding accused. The advocate for the accused representing accused No.19 (petitioner in W.P. No. 2714 of 2018) also preferred an application seeking permission to supply copy of charge sheet which was taken on record and allowed. In the proceedings which are subject matter of Cri. Revision Application No.299 of 2018, the trial Court had passed the impugned order on

21.05.2018. The order indicates that the Court has perused the charge sheet and papers and heard learned Special Public Prosecutor, advocate for accused Nos. 5, 10, 11, 15 and 16 was present. Production warrant was issued against accused No. 3, accused No.5 (revision applicant), accused No.9, accused No.10, accused No.14, accused No.15, accused No.16, accused No.17. Notice was issued to accused No.11. Non bailable warrant was issued against absconding accused.

11. The CBI Special Case No.38/2018 relates to the offences under Section 13(2) read with 13(1) (c) (d) of P.C. Act, 1988 and Section 120-B IPC read with 409, 420 IPC. The prosecution case is that the accused-bank officials in connivance with the accused companies represented by its directors and unknown persons defrauded Punjab National Bank to the tune of Rs.4886.72 Crores. In the matter of issuance of unauthorized and fraudulent Letters of Undertaking (LOU) used in favour of foreign branches of different Indian based banks and purported foreign letters of credits in favour of foreign suppliers of the accused companies. In pursuant to registration of FIR, some of the accused were arrested. On completing the investigation, charge sheet was filed before the trial Court. While filing charge sheet, it was stated therein that the Court be pleased to put the said accused for commission

of offences punishable under Section 120-B IPC read with 409, 420 IPC and Section 13 (2) read with 13 (1) (c) and (d) of P.C. Act, 1988 and substantive offences of trial in accordance with law.

12. CBI Special Case No.37 of 2018 relates to offences under Section 120-B read with 420, 409 IPC and under Section 13 (2) read with 13 (1) (c) (d) of P.C. Act, 1988. It is the case of the prosecution that case was registered on 31.01.2018 on the basis of complaint dated 29.01.2018 lodged by Punjab National Bank against the accused. It was alleged that the accused were maintaining current accounts in Punjab National Bank and they were not sanctioned any facility for issuance of letter of undertaking for raising bias credit by the three firms from Overseas Banks. In the charge sheet, it was stated that in view of the facts and circumstances of the case and in the oral and documentary evidence that the Court be pleased to put the accused on trial for the offences punishable under Section 120-B IPC read with 420, 409 IPC and Section 13(2) and 13(1) (c) and (d) of P.C. Act, 1988 and substantive offences thereof. The order passed by the trial Court indicates that the Court has perused the charge sheet and the documents.

13. In the case of **Kanti Bhadra Shah and Anr. Vs. State of West Bengal**¹², the Hon'ble Supreme Court has taken a view that it is quite unnecessary to write detailed orders at the stage of issuing process. In the case of **U.P. Pollution Control Board Vs. M/s. Mohan Meakins Ltd. And Ors.**¹³, the position therefore further clarified that it was not necessary to pass the speaking order. In the case of **Dy. Chief Controller of Imports and Exports (Supra)**, the Supreme Court has considered the situation where the order passed by the magistrate which read as cognizance taken, registered the case and issued summons to accused. It was held that at the stage of issuing process, magistrate is not required to record reasons. The Court had referred to case of **Kanti Bhadra Shah (Supra)** and **U.P. Pollution Control Board (Supra)**. In the case of **Bhushan Kumar Vs. State (NCT) of Delhi (Supra)**, that the summons is a process by issue calling upon pursuant to the magistrate. It is for the purpose of notifying an individual/legal obligation. Section 204 of Code does not mandate the magistrate to expeditiously state the reasons for issuance of summons. The Apex Court in the case of **Nupur Talwar (Supra)** has referred to hereinabove has taken into consideration the provisions of Section 461 and 465(1) of Cr.P.C. Thus, assuming that there is any irregularity, the said order would not vitiate.

12 2001 JCC (SC) 100

13 2000 (2) JCC (SC) 627

The impugned orders indicate that the trial Court has perused the charge sheet and the papers. It is not possible to enter into the subjective satisfaction of the trial Court. Thus, it cannot be said that there is non application of mind on the part of the Court while passing an impugned order. Section 461 refers to irregularities which vitiate proceedings and has observed by the Apex Court in the above cases. The list doesn't indicates order passed under Section 204 of Cr.P.C. Section 465 (1) of the Code protect orders from omission, errors and irregularities unless a failure of justice has been occasioned thereby and most certainly order delineating reasons cannot be faulted on the ground that it has occasioned failure of justice. There is no reason to accept the contention that the Court has bypassed the provisions of Section 190 of Cr.P.C. The charge sheet indicates the role played by the accused and it was prayed that accused be put to trial. In the light of the aforesaid circumstances, no case is made out for setting aside the impugned orders. Hence, I pass the following order :

:: ORDER ::

- (i) Criminal Revision Application Nos.298, 299 of 2018 and Writ Petition No.2714 of 2018, stands dismissed.

(PRAKASH D. NAIK, J.)