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

+ CRL.M.C. 76/2015 and Crl.M.A.359/2015 (Stay)

AMIT BANSAL

..... Petitioner

Through: Mr. Punit K. Bhalla, Advocate with
Ms. Chetna Bhalla & Ms. Jasleen
Budhiraja, Advs.

versus

RISHI ANAND & ANR

..... Respondents

Through: Mr. Shekeel Sarwar Wani, Advocate
with Mr. Himanshu Garg, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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23.07.2018

The respondents had instituted a criminal complaint case (No.189/1/11) alleging offences punishable under Sections 409/420/506/120-B IPC having been committed by thirteen persons, including M/s. ICICI Bank Limited, twelve others being officials or persons connected with the said bank, they including the petitioner Amit Bansal, described in the complaint as the Manager. The array also included one Mr. Amit Roda, Officer (accused No.11). The Magistrate held inquiry under Sections 200-202 Cr.P.C. in which the first complainant (Rishi Anand) and two other witnesses were examined. On the basis of consideration of the said evidence in the pre-summoning inquiry, the Metropolitan Magistrate passed order dated 09.01.2012, the operative part (concluding two paragraphs) whereof would read thus:-

“The witness have deposed in favour of the complaint and specific allegations of misappropriation and threat have been made against the accused ICICI bank Ltd., Branch office, Sector 8, Rohini, Delhi-85 and Amit Roda, as specific and clear allegations have been made, a prime facie case is made out against the accused Amit Roda, officer, ICICI Bank Ltd.

Issue summons to the said accused company through its Manager, Branch Office, Rohini and Amit Roda on filing of PF for 27.03.2012.”

It appears that the concerned court of the Metropolitan Magistrate was subsequently taken over by another judicial officer who, by his order dated 10.04.2013, passed the following order:-

“I have gone through the summoning orders as well as last orders passed by Ld. Predecessor of this court. In terms of summoning order passed by the court complainant is directed to file PF/RC within 15 days from today for summoning all accused persons. Summons be issued against all accused persons once the PF is filed by the complainant.”

The above order dated 10.04.2013 apparently carried directions over and above those issued by earlier order dated 09.01.2012. Since pursuant to the said order dated 10.04.2013, summons stood issued to the petitioner also to appear as accused he challenged the said order in the court of Sessions invoking its revisional jurisdiction by petition (Cr. Revision No.131/14).

The said criminal revision petition, however, was dismissed by order dated 27.11.2014, the Sessions Judge upholding the contentions of the respondent (the complainant) that the petitioner is the manager of the concerned branch which was dealing with the case in question and “had been summoned by the initial order”, she have reaching such conclusions

by referring to affidavits which had been filed on record indicating the status of the petitioner as the manager of ICICI Bank at its branch office which was dealing with the documents of the complainant, which are the bone of contention.

In the considered view of this court, the approach of the revisional court has been wholly misdirected. It has failed to appreciate that the court of Magistrate had no power to review. The first order of summoning is crystal clear. Out of thirteen persons shown in the array of accused in the complaint, only two had been summoned, one being the bank – undoubtedly with direction that the process was to be served through its manager – and the other being the officer named Amit Roda, the Magistrate making it a point to mention that specific allegations had been made against him by the witnesses with regard to misappropriation and threats being extended.

The impugned orders of the magistrate dated 10.04.2013 and of the Court of Sessions dated 27.11.2014 cannot be upheld. They are set aside.

The petition is allowed in above terms.

Pending application also stands disposed of.

R.K.GAUBA, J.

JULY 23, 2018

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