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

+ **CRL.M.C. 4765/2016**

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Sanjeev Bhandari, SPP with Mr.
Prateek Kumar, Advocate.

versus

SURENDER KAPOOR & ORS Respondents

Through: Respondent no.1 in person.
Ms. Chitra Goswami, Adv. for R-4
& 5.
Mr. Rahul Malik for Mr. Hem C.
Vashisht, Adv. for R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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14.08.2018

CRL.M.A. 30013/2018 (exemption)

Allowed, subject to all just exceptions.

CRL.M.A. 30012/2018 (restoration)

For the reasons set out in the application, the same is allowed.

The petition is restored to its original number and position.

CRL.M.C. 4765/2016

The petitioner Central Bureau of Investigation (CBI) had registered first information report RC No.220/2014/E/0001/CBI/EOU-IV/EO-II/New Delhi. Upon completion of the investigation, report under Section 173 of Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted seeking prosecution of the private party respondents herein for offences punishable

under Sections 120B read with Sections 419/420/467/468/471 of Indian Penal Code, 1860 (IPC). It appears that during the investigation the respondents who were sought to be prosecuted were not arrested on the ground they had joined investigation. The Chief Metropolitan Magistrate before whom the said charge-sheet was presented, however, by order dated 31.08.2016 took exception to this and directed return of the charge-sheet with direction to CBI, *inter alia*, for further investigation of the case on the question as to whether there was a need for arrest of the persons who are accused, the allegations against them being of they having fraudulently caused loss to the extent of Rs.350 lakhs to a nationalised bank.

The CBI, by the present petition has questioned the legality and propriety of the view taken by the Chief Metropolitan Magistrate.

It is pointed out that upon a question of law similar to the one involved here being referred by the same very court of Chief Metropolitan Magistrate, a division bench of this Court in Crl. Ref. No.4/2017, by its decision dated 27.10.2017, has concluded, thus:-

“The aforesaid position has been reiterated by this Court in Udit Raj Poonia Vs. State (Govt. of NCT of Delhi), 2017 SCC Online Del 6997: (2017) 238 DLT 212; as also in Rajesh Dua Vs. State, Bail Application No. 778/2017 decided on 09.08.2017. Thus, the Metropolitan Magistrate cannot examine whether the discretion of the IO to arrest, or not to arrest the accused, has been properly exercised. He is only concerned with the charge-sheet, as filed. He may return the charge-sheet if he finds that the investigation is not complete, or the charge is not borne out from the evidence collected and filed with the charge-sheet. But he cannot return the same merely because the accused has not been arrested and produced in custody at the time of filing the charge-sheet.”

In above view, the impugned order must be vacated. Ordered accordingly. The charge-sheet shall be taken up by the Chief Metropolitan Magistrate for consideration and appropriate orders in accordance with law thereupon to be passed on 6th September, 2018.

With these directions, the petition stands disposed of.

R.K.GAUBA, J

AUGUST 14, 2018

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