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

+ **CRL.M.C. 718/2019**

SUBODH GUPTA & ORS

..... Petitioners

Through: Mr. Harsh K. Sharma, Ms. Vaibhavi
Sharma, Mr. Rohit Gaur & Mr. Pulkit
Jain, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr. Sanjeev Bhandari, SPP for CBI
with Mr. Prateek Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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08.02.2019

Crl.M.A. 2959/2019

Allowed, subject to all just exceptions.

CRL.M.C. 718/2019 & Crl.M.A.2958/2019

The petitioners are facing criminal prosecution as accused no. 7 to 9 in the complaint case (CC no. 532242/2016) in the court of Special Judge (Prevention of Corruption Act) registered at the instance of the respondent Central Bureau of Investigation (CBI) on the basis of evidence that was gathered during investigation of RC no. 1 to 3(E)/98-SIU(IX)/CBI/New Delhi. The case is at the stage of defence evidence, the petitioners having already led some evidence in the previous proceedings.

The present petition seeks to assail the order dated 27.11.2018 of the Special Judge, whereby their prayer for summoning of certain additional

defence witnesses was declined. The purpose and import of the said application for additional defence witnesses to be examined was essentially to bring on record and prove through certain letters, they bearing dates 10.06.1998, 18.06.1998 and 23.06.1998. It is the petitioners' case that they had addressed the said letters to the branch office of Punjab National Bank, Kamla Nagar, Agra as well as Punjab National Bank, Zonal Office, Agra in the context of their endeavour to have an amicable resolution of the dispute arising out of the outstanding loan liability.

It is sought to be explained by the counsel for the petitioners that the above referred letters were seized by CBI during investigation of the aforementioned FIRs. He also submitted that an endeavour was earlier made to secure the presence of the *malkhana* incharge of CBI to prove that the said documents were seized from the bank by the investigating agency and later released to the petitioners, on their request. The learned special judge has declined the request for additional evidence to be brought on the basis of the aforesaid documents accepting the objection of CBI on the question of relevancy. The petitioners nonetheless contend that the said documents aid and assist them in proving that their conduct throughout was *bona fide*.

The counsel for the petitioners submitted at the hearing that the documents in question were brought on the record of the special judge with the application requesting for such additional witnesses to be summoned from CBI, and the bank, to prove their authenticity, their seizure and release, as well as the official notings concerning the said communication(s) in the offices of the bank.

But, aside from the other questions that arise, it needs to be examined as to how the documents addressed to CBI by the petitioners could have been released to the petitioners since this *prima facie* renders the possession, custody and control of such material questionable.

The counsel for the petitioners at this stage sought adjournment so that he can bring on record further documents.

Be listed on 8th March, 2019.

R.K.GAUBA, J

FEBRUARY 08, 2019

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