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

% **Date of decision: 04th February, 2025**

+ **W.P.(CRL) 853/2021**

CENTRAL BUREAU OF INVESTIGATION

ACB Branch

CBI Headquarters, New Delhi- 110003Petitioner

Through: Mr. Anupam S.Sharma, SPP, CBI
with Ms. Harpreet Kalsi, Mr. Prakash
Airan, Mr. Ripudaman Sharma, Mr.
Vashisht Rao & Mr. Syamantar
Modgil, Advocates.

versus

MOHIT GARG

S/o ShriJagminder

Asstt. General Manager,

State Bank Of India, RBO-10, AO-1

11 Parliament Street, New DelhiRespondent

Through: Mr. Apoorv Sarvaria & Ms. Yashika
Sarvaria, Advocates.

+ **W.P.(CRL) 1171/2021 & CRL.M.As. 9763/2021 & 12743/2021**

CENTRAL BUREAU OF INVESTIGATION

Banking Securities Fraud Branch

5-B, 5th Floor, CBI Headquarters Building,

CGO Complex, Lodi Road,

New Delhi-110003

.....Petitioner

Through: Mr. Anupam S. Sharma, SPP, CBI
with Ms. Harpreet Kalsi, Mr. Prakash
Airan, Mr. Ripudaman Sharma, Mr.
Vashisht Rao & Mr. Syamantar



Modgil, Advocates.

versus

MUKESH KUMAR DHINGRA

S/o Shri Bhim Sain Dhingra
Deputy General Manager, State Bank of India,
SAMB-II, 11th Floor, STC Building,
1, Tolstoy Marg, Janpath,
New Delhi-110001

.....Respondent

Through: Mr. Apoorv Sarvaria & Ms. Yashika
Sarvaria, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The aforesaid two Writ Petitions are being decided together as they involve common question of law.
2. The *Writ Petition W.P.(CRL) 853/2021 and Writ Petition W.P.(CRL) 1171/2021* under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the Petitioner to challenge the impugned Orders dated 18.12.2020 and 21.01.2021, whereby the Ld. Special Judge has denied investigation in FIRs and also dismissed Application under S.93 Cr.P.C. by observing that there was no justification for incorporation of Section 7 or Section 13(1)(d) of PC Act, 1988 against *unknown public servants* without complying with the mandate of Section 17A of PC Act, 1988..
3. *Aggrieved by the impugned Orders, the present Petitions have been*



filed.

4. The grounds of challenge are that Section 17A of PC Act, 1988 has been inserted only to provide protection to the public servant regarding any enquiry or investigation into an offence allegedly committed by him in discharge of his official duty. Apparently, for the applicability of Section 17A of PC Act, 1988, the identity of public servant has to be established since the approval for enquiry or investigation against a particular public servant, cannot be a general approval without specifying the person to be enquired against.

5. Learned counsel for the Petitioner/CBI has placed reliance on the decision in REV.P. 43/2020 titled Satish Pandey vs. UOI & Ors., decided by the Division Bench of this Court wherein it was observed that the stage of Application to Section 17 A of PC Act, 1988 has not yet commenced because the employee, who could eventually be charged for committing the offence, is not yet known. This provision would be attracted only when the act is found to be relatable to any recommendation made or decision taken by the public servant in discharge of his official functions or duties.

6. The FIRs/RCs have been registered on the Written Complaint of SBI, wherein the instances of improper and dishonest performance of public duty and due diligence regarding commission of offence under Section 7 of PC Act, 1988 pursuant to a criminal conspiracy on the party of Bank Officials, was mentioned.

7. It is submitted that the details mentioned *prima facie* reflect the involvement of unknown Bank Officials in commission of cognizable offence



under IPC, 1860 and PC Act, 1988. The identity and the involvement of the Bank Officials can be established only during the course of investigations. It is manifest from the contents of the Complaint that *prima facie* cognizable offence under Section 7 of PC Act, 1988 is disclosed.

8. The Petitioner-CBI has no other option but to enter the substance of the Complaint and register the FIR/RC. Reliance has been placed on the decision in State of Haryana & Ors vs. Ch. Bhajan Lal & Ors, 1992 Cri LJ 327, wherein it was held that wherever a Complaint discloses a cognizable offence, there is a mandatory obligation on the Police to register the FIR.

9. Similar observations were made in Superintendent of Police, C.B.I. & Ors. vs. Tapan Kr. Singh, 2003 AIR SCW 2133 and Lalita Kumari vs. Govt. of Uttar Pradesh, 2013 AIR SCW 6386.

10. It is submitted that the learned Special Judge has erred in holding that the Investigating Agency cannot investigate into the commission of offence under Section 7 of PC Act, 1988 in the present matter without complying with the mandate of Section 17 of PC Act, 1988. It has been wrongly observed by the learned Special Judge that there were no allegations of diversion of funds or falsification of documents in furtherance of criminal conspiracy against the public persons or that the allegations were limited only to the Debtor-Company and Guarantors who were the private persons. If the impugned Order is to be accepted, then it would lead to a situation wherein the public servants are named either in person or by their office, causing irreparable damage to the reputation till the conclusion of investigation which is to establish whether the public servant is actually involved or not.



11. Section 17A of PC Act, 1988 has been enacted with the Legislative Intent to protect the public servants in *bona fide* discharge of their official functions or duties when the acts of public servants is *ex facie* criminal or constitute an offence, prior approval of Government would not be necessary, as has been observed in Devender Kumar vs. CBI, AIR Online 2019 Del 42.

12. In the present case, the names of public servants involved in the crime are yet known and the Investigating Agency which is only carrying out the investigations, relatable to the recommendations or the decisions taken by the public servants in discharge of their official functions. When the identity of public servant is not apparent, it would be perverse to allege that an unknown public servants has taken a decision, for which approval under Section 17A of PC Act, 1988 is required.

13. It is, therefore, submitted that the Application under Section 93 of Cr.P.C., 1973 filed on behalf of the Petitioner-CBI has been wrongly rejected and the impugned Order is liable to be set aside.

14. For the same reasons, refusing investigations in the FIR for Offence under S.13(1)(d)PC Act, is not tenable under law.

15. **Submissions heard and record perused.**

16. The question for consideration arising from both the Petitions is “*whether investigation can be undertaken by the CBI into offences under PC Act against unknown public officials without taking authorisation under Section 17A PC Act ?*”

17. A bare perusal of the FIRs out of which both the present Petitions arise would indicate serious allegations of offences under PC Act against *unknown*



public officials.

18. As noted above in both the FIRs/RCs bearing No. RC0032020A0040 and RC0742020E0014, offences under IPC as well as PC Act have been incorporated against various named individuals as noted above and also unknown public servants and private persons. The allegations pertain to diversion of funds and falsification of documents, causing wrongful loss to the tune of Rs. 21.85 crores and Rs. 3269.42 Crores, respectively in the two FIRs, to the SBI.

19. The serious allegations have been made which require detailed investigations as to whether there is any public servant involved in the commission of alleged offences. It cannot be said at this stage that there is no legal justification to incorporate Section 7 or S.13(1)(d) of PC Act, 1988 in the FIR/RCs respectively. It is only after the investigations that the identity of the public persons can be established, after which only the question of invoking Section 17A of PC Act, 1988 would arise.

20. In this regard reference can be made to the judgment of Satish Pandey Vs Union of India in Revision Petition 43/2020, wherein the High Court of Chhattisgarh observed as under: -

“In so far as arguments based on Section 17A of the PC Act is concerned, suffice it would be to observe that the officers or employees who would eventually be charged of committing the offence is not yet known, therefore, the stage of application of Section 17A is not yet commenced. Even otherwise, the said provision would be attracted only when their act is found to be relatable to any recommendation made or decision taken by a



public servant in discharge of his official functions or duties.”

21. Furthermore, various judgments of Coordinate Bench of this Court, with respect to registration of FIR without prior approval under Section 17A of the PC Act, can be referred. The orders in Central Bureau of Investigation v. Shyam Sunder Narang, (Order dated 22.02.2023 in W.P. (CRL.) 847/2021), Central Bureau of Investigation v. State Bank Through Rajinder Kumar Dhingra, 2022/DHC/005288 and Central Bureau of Investigation v. Union Bank of India Through Sh. Sanjay Manocha or Succeeding Officer, Union Bank of India (Order dated 24.08.2022 in W.P. (CRL.) 1909/2022) wherein the learned Special Judge had refused to issue search order under Section 93 of the CrPC as there was no prior sanction under Section 17A of the PC Act. In the aforesaid orders, it was observed that since the concerned public servant was not identified, even if the approval in terms of Section 17A of the PC Act is not taken, the investigation under the provisions of the PC Act would continue for the purposes of identification of the concerned public servant. The requirement for approval or sanction under Section 17A of the PC Act would only arise once a public servant was identified and thus, there was no bar on an investigation qua offences under the PC Act in general.

22. *In view of the aforesaid discussion, the present Petitions are allowed.*

23. The impugned Orders dated 15.12.2020 and 18.12.2020 denying issuance of Search Warrants under S.93 Cr. P.C. by the learned Special Judge being erroneous, are hereby set aside.

24. The impugned Order dated 21.01.2021, of the Ld. Special Judge holding



that there was no legal justification to incorporate Section 13(1)(d) of PC Act and thus, staying investigation into the offences under PC Act without compliance of Section 17A, is hereby set aside.

25. Accordingly, the cases are remanded back to the learned Special Judge with the directions to issue Search Warrants on the Application of Petitioner-CBI as per Rule and to permit further investigations and collect the relevant material evidence against the proposed unknown Public servants/accused persons.

26. Once the officers are identified the permission under Section 17A shall be sought and the due process will be followed in accordance with Section 17A of the PC Act.

27. Accordingly, the Petitions are disposed of in the above terms.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 4, 2025

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