



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

Reserved on : 21st August, 2025
Pronounced on: 03rd November, 2025

+ **CRL.M.C. 2911/2017 & CRL.M.A. 12082/2017 & CRL.M.A.**
9522/2018

ANIL SINGH
 S/o SH. Vasudeo Singh
 R/o E-98/9, Sector-50,
 Noida, U.P.

.....Petitioner

Through: Mr. Amit Khemka, Ms. Himani Singh
 and Ms. Tanvi Agrawal, Advocates

versus

STATE

.....Respondent

Through: Mr. Shoaib Haider, APP for the State.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner, Anil Singh to challenge the Order dated 22.04.2017 and 04.07.2017 whereby Ld. CMM, New Delhi has summoned the Petitioner in a Chargesheet filed in case FIR No.97/2011 under Section 406/420/120B Indian Penal Code, 1860, (*hereinafter referred to as "IPC"*) Police Station EOW, New Delhi.

CRL.M.C. 2911/2017

Page 1 of 16



2. **Brief facts** are that one Ramesh Bhatia had filed a Complaint dated 25.01.2011 alleging that one Suresh Shrimali and Bijender Agarwal along with Anil Singh the Petitioner herein, had conspired against him and cheated him for an amount of Rs.2,00,00,000/-. It was stated that Ramesh Bhatia was an American citizen of Indian origin and was running a Hotel under the name and style of '*Regency Inn & Suites*' at New York, USA. According to the averments made in the Complaint, Suresh Shrimali visited his Hotel in New York in July, 2007 and they became good family friends. Suresh Shrimali advised the Complainant to invest in real estate in India with his good friend Anil Singh, Petitioner herein. Suresh Shrimali in furtherance of conspiracy, called Anil Singh, the Petitioner and introduced him to Mr. Bhatia.

3. In the month of July, 2007 Mr. Bhatia along with his wife visited India and met Suresh Shrimali and the Petitioner, Anil Singh. They both also visited Mr. Bhatia at his Hotel along with Bijender Agarwal and introduced him as the seller. After discussions, an Agreement was executed between Bijender Agarwal as '*Seller*' and Mr. Bhatia and Mr. Anil Singh as '*Joint Buyers*'. It was agreed that a sum of Rs.25,00,000/- would be paid to Bijender Agarwal at the time of signing the Agreement; Rs.50,00,000/- within thirty days and the remaining amount at the time of execution of Sale Deed, which was to be executed within 75 days of the Agreement. Upon the assurances of Suresh Shrimali and Anil Singh, Mr. Bhatia gave Rs.50,00,000/- cash as earnest money to Bijender Agarwal.

4. It was further alleged that Suresh Shrimali advised Mr. Bhatia to enter into an Agreement with the Petitioner as co-buyer as he was a real estate



expert and a local resident. Since Mr. Bhatia was a resident of New York, it would be easier to get all the permissions from the Authorities and complete the formalities. Suresh Shrimali assured the Complainant that if the Petitioner is the co-buyer in the property, then all the formalities would be taken care of and Mr. Bhatia will only have to transfer the money as and when required.

5. The Complainant further submitted that Suresh Shrimali asked the Complainant to sign few papers in the name of the Petitioner so that he can be inducted as a Director in the Company of Petitioner, to facilitate the deal. Mr. Bhatia thus, gave a Power of Attorney to the Petitioner to execute the Sale Deed and to become a Director in his Company and he thereafter, left for New York.

6. The Complaint further stated that after few days, Mr. Bhatia got a call from Suresh Shrimali to give an account number in which the funds may be transferred by him. Between 02.08.2007 to 18.10.2017 the Complainant transferred 592,000 USD on the instructions of Suresh Shrimali and the Petitioner, though no Sale Deed was executed. Thereafter, the Complainant kept on reminding Suresh Shrimali and the Petitioner for execution of Sale Deed which was not executed. Mr. Bhatia visited India in November, 2007 and tried to contact the Petitioner, but was unsuccessful.

7. In early 2008, Suresh Shrimali visited New York and stayed at the Hotel of Mr. Bhatia where he promised that everything would be sorted out and in case anything went wrong, he would personally compensate the Complainant. This conversation took place in the presence of one Mr. Prem Bhandari.



8. The Complainant asserted that these persons had defrauded him for an amount of Rs.2,00,00,000/- and have run away with his money. Upon his Complaint, *FIR No.97/2011 dated 26.05.2011 under Section 406/420/120B IPC* was registered against Suresh Shrimali, Bijender Aggarwal and the Petitioner, with P.S. EOW.

9. The Petitioner states that he presented himself for investigations on numerous occasions. He cooperated during the investigations and also provided all the documents in his power and possession and helped the investigation in arriving at the truth. *The Petitioner himself was never arrested during the investigations.*

10. After the investigation, the Police found that whatever money had been sent by the Complainant to the Petitioner was paid by him to Bijender Aggarwal at the instructions of Complainant and no amount was either retained or used by the Petitioner for himself.

11. After completion of investigations, Chargesheet under Section 406/420/120B IPC was filed against Suresh Shrimali and Bijender Aggarwal, *while Anil Singh, the Petitioner, was kept in Column No.12 as the person not chargesheeted.*

12. *Ld. CMM vide Order dated 19.09.2015 took cognizance and summoned the Accused persons, namely Suresh Shrimali and Bijender Aggarwal who were kept in Column No 11, for 06.01.2016. In due course both the accused persons appeared and applied for Bail before Ld. CMM.*

13. *Subsequently, vide Impugned Order dated 22.04.2017 while granting Bail to Suresh Shrimali and Bijender Aggarwal, Ld. CMM also summoned the Petitioner who had been placed in Column No.12.*



14. The Summoning Order is challenged as being completely illegal and bad in law as it virtually amounted to review/recall of Order of Summoning passed by the Predecessor Court which had duly applied its mind while taking cognizance on the Chargesheet and had only summoned the two accused placed in Column No.11. No new facts have come on the record before the Ld. CMM which has justified the summoning of the Petitioner on a subsequent date. The impugned Order amounts to review/recall of the Order of the Predecessor, which is not permissible under law. Virtually the learned CMM sat in Appeal on the Orders of the Predecessor Court.

15. The petitioner has asserted that in the impugned Summoning Order, there is no observation whatsoever that the Petitioner had retained even a single penny of amount received from the Complainant for use of his own benefit.

16. Pursuant to the Summoning Order, the Petitioner appeared before the learned CMM and applied for Bail which was granted to him vide Order dated 04.07.2017, but onerous condition of depositing FDR/Bank Guarantee in the sum of Rs.20 lakhs was imposed, though this amount was reduced to Rs.7.5 lakhs, in terms of the Order of this Court.

17. The Petitioner further asserts that the MM has failed to comply with the Section 207 Cr.P.C. Because of non-supply of copies in terms of Section 207, the Petitioner had taken the certified copies and thereafter, realized that the Order dated 22.04.2017 of the Ld. CMM is bad in law.

18. The **ground** on which the Impugned Order is challenged is that once the Predecessor Court of Ld. CMM had applied its mind while taking cognizance on the Chargesheet, and summoned only Suresh Shrimali and



Bijender Aggarwal, *no new facts came on record which justify the summoning of the Petitioner by the impugned Order.* In fact, it had not been appreciated that the Complainant himself was involved in the complete deal and all the money given by him to the Petitioner, had been forwarded to Bijender Aggarwal as per his own instructions. The alleged incident is of 2007, while the Complaint was made in 2011 and the Chargesheet had been filed only in 2015, which clearly shows that everything done was in the knowledge of the Complainant. He has failed to file any Civil Suit as he is well aware that no case is made out against the Petitioner.

19. It has not been further appreciated that no financial gain had been occasioned by the Petitioner, as is evident from the Chargesheet itself. The Complainant was to become a Shareholder/Director/Partner in M/s Anilaj Buildcon Pvt. Ltd. and the properties were to be acquired in the name of the Company. The Petitioner has always been ready and willing to transfer the controlling shares in the Company, to the Complainant.

20. It has not been appreciated that the Petitioner had been working on the instructions of Suresh Srimali and the complainant. He never made any representation to the Complainant nor did he make any benefit out of the entire deal. The Petitioner is completely innocent and has not committed any offence, but has been caught in the feud between two big persons. Moreover, the suit is of Civil nature, despite which no Civil Suit has been filed.

21. *It is, therefore, submitted that the Impugned Order dated 22.04.2017 summoning the Petitioner be set aside.*



22. The Order dated 04.07.2017 whereby the Bail was granted to the Petitioner subject to onerous condition of furnishing the Bail Bond and Surety Bond in the sum of Rs.20 lakhs though was challenged in the Petition, but it is stated that the Petitioner is not pursuing this challenge about the amount of Bail imposed in the Order dated 04.07.2017.

23. ***The Status Report has been filed on behalf of the State***, wherein the details of the Chargesheet have been filed. It is stated that the Complainant transferred money into four Accounts, as asked by the Petitioner and Suresh Shrimali under the impression that the payments were being made for purchase of land. Subsequently, he came to know that he had been befooled and no land was purchased in the name of the Complainant, as represented to him. A Bayana Receipt/Agreement to Sell dated 25.07.2007 was executed by Bijender Aggarwal in favour of the Petitioner and the Complainant pertaining to 200 Bigha land, but no particular land i.e. Khasra Number etc were mentioned in it. The deal was finalized @ Rs.205 per sq. yard and the total sale consideration was Rs.4.10 Crore for 200 Bighas. As per the Bayana Receipt dated 25.07.2007, an amount of Rs.50 lakhs was given to Bijender Aggarwal in cash by Anil Singh and the Complainant.

24. Anil Singh, the Applicant, Bijender Aggarwal and witness Sanjay Jain denied having received this payment and stated that Complainant had promised for sending this payment after he reached USA. The Complainant transferred an amount of Rs.1,56,83,620/- from USA, through different bank accounts. Amount of Rs.9,88,500/- was received in the account of the M/s Anilaj Buildcon Pvt. Ltd, an amount of Rs.78,66,070/- in the account of M/s Asgan Marketing Pvt. Ltd. and an amount of Rs.48,55,800/- in the



account of Mr. Ravi Singh Rathore (Driver of Bijender Aggarwal) and Rs.19,73,250/- in the account of Mr. Shivam Singh (an employee of Anil Singh) and this has been confirmed as per the replies obtained from the concerned banks.

25. The Complainant gave a Power of Attorney in favour of Anil Singh authorizing him for making the deal in the name of M/s Anilaj Buildcon Pvt. Ltd. regarding the aforesaid land. The Petitioner had given an amount of Rs.1.77 Crores in cash to Bijender Aggarwal, who issued three Receipts dated 25.07.2007 of Rs.50 lakhs dated 27.07.2007 of Rs.20 lakhs and receipt dated 20.10.2007 of Rs.1.07 crores respectively for receiving the aforesaid amount from Anil Singh on behalf of the Complainant. Manoj, Raghav, Aman Jayee and Ravi Singh Rathore were present and had signed the aforesaid receipts as witnesses. On examination, they confirmed receiving the payment. Bijender Aggarwal also admitted receiving a payment of Rs.1.77 Crore from the Petitioner for the deal/sale-purchase of 200 Bighas of land. Bijender Aggarwal executed several Sale Deeds in favour of M/s Anilaj Buildcon Pvt. Ltd. and Bajrang Lal Gahlot, an employee of Suresh Shrimali. Some land measuring 45 Bighas (approx) existed in the name of Bijender Aggarwal, his daughter M.s Yachna Aggarwal and his driver Ravi Singh Rathore in the revenue records, as per the response of Revenue Department/Tehsildar, Gautam Budh Nagar, (UP). These amounts were subsequently transferred in the name of Petitioner, M/s Anilaj Buildcon Pvt. Ltd. and Bajrang Lal Gahlot. The same land has now been transferred to Haryana State under the Dixit Award.



26. The Complainant had appointed the Petitioner as his representative, on the advise of Suresh Shirmali and had given a Power of Attorney for the registration of agricultural land in village Faleda Khadar, Jewar Tehsil, District Gautam Budh Nagar, U.P and later Complainant had to take over the aforesaid Company. The Complainant applied for an I.T. plot with the Noida Authority in the name of M/s Anilaj Buildcon Pvt. Ltd. mentioning himself as a Director.

27. Bijender Aggarwal had told that he had paid an amount of Rs.20 lakhs in cash to Suresh Shirmali as commission, for the deal out of the payment of Rs.1.7 Crore received from the Complainant through the Petitioner. The amount of Rs.36 lakhs had been paid by the Petitioner to Suresh Shirmali, on the instructions of the Complainant through Bank/Pay Orders. The relevant documents had been obtained from the concerned Banks. The money was received from the Complainant by the following persons:

- a. Shivam Singh – Rs.9,91,000/- on 3.10.07.
- b. Shivam Singh – Rs.9,82,250/- on 19.10.07.
- c. M/s Asgan Marketing Services Pvt. Ltd. – Rs.56,31,558/- on 03.08.07.
- d. M/s Asgan Marketing Services Pvt. Ltd. – Rs.12,24,295/- on 20.08.07.
- e. M/s Asgan Marketing Services Pvt. Ltd. – Rs.10,09,986/- on 17.10.07.
- f. Ravi Singh Rathore – Rs.10,18,000/- on 30.08.07.
- g. Ravi Singh Rathore – Rs.14,94,800/- on 10.09.07.
- h. Ravi Singh Rathore – Rs.23,43,000/- on 10.10.07.
- i. M/s Anilaj Buildcon Pvt. Ltd. – Rs.9,88,500/- on 19.10.07.

28. The Applicant got executed the Sale Deed of 25 Bighas of land from Bijender Aggarwal in the name of the Company and he was the co-buyer, as



per the Agreement to Sell dated 25.07.2007. He received an amount of Rs.1,56,83,620/- from the Complainant and further made payment of Rs.1.77 Crore to Bijender Aggarwal and an amount of Rs.36 lakhs to Suresh Shrimali on behalf of the Complainant.

29. It was concluded that during the investigations, that the Complainant was neither inducted as a Director in the Company M/s Anilaj Buildcon Pvt.Ltd. nor his money has been returned. However, the Petitioner got the Sale Deeds executed in respect of the property in question, in the name of aforesaid Company. It was concluded that *sufficient evidence had not surfaced against the Petitioner to file a Chargesheet against him.*

30. The ***role of the Petitioner*** as has emerged during the investigation, is stated to be that he along with the Complainant, jointly entered into an Agreement to Sell with Bijender Aggarwal pertaining to 200 Bighas of land situated in Tehsil Jewar, Gautam Budh Nagar, U.P.

31. After completion of investigations, accused Suresh Shrimali and Bijender Aggarwal were kept in Column No.11 while the Petitioner was kept in Column No.12 in the Chargesheet.

32. Cognizance was taken *vide* Order dated 22.04.2017 and Suresh Shrimali and Bijender Aggarwal were summoned. Thereafter, they had been granted Bail.

33. The Petitioner pursuant to the cognizance taken against him *vide* impugned Order dated 22.04.2017, appeared and had also been granted Bail in parity with the other two Accused.

Submissions heard and record perused.



34. The factual backdrop in which the present Petition has been filed is that the Chargesheet dated 24.08.2015 under *Section 406/420/120B IPC* was filed before the Ld. Trial Court, wherein the Petitioner Anil Singh was kept in Column No.12 while the two other accused namely Suresh Shrimali and Bijender Aggarwal had been placed in Column No.11.

35. The Ld. CMM took cognizance on 19.09.2015 and summoned the two accused Suresh Shrimali and Bijender Aggarwal who had been placed in Column No.11, but did not summon the Petitioner who had been placed in Column No.12. The summons were repeatedly issued over a period of two years only to the two co-accused and not to the Petitioner. Eventually, while considering the Bail Application of the two accused on 22.04.2017, the Ld. CMM while granting Bail to them, noted that there was a prima facie case disclosed against the Petitioner who had been put in Column No.12 and accordingly, summoned him.

36. It is contended by the Petitioner that impugned Order of summoning the Petitioner, is based on re-appreciation of the averments made in the Chargesheet which was virtually a review of the earlier Order dated 24.08.2015 of the Ld. Predecessor by the Ld. CMM. There is no provision, whatsoever, in the Cr.P.C which permits such review by the same Court on a subsequent date. The very fact that in the Order dated 24.08.2015 there was no averment made for the summoning of the Petitioner who was placed in Column No.12, clearly reflects that the Ld. CMM had summoned only the two co-accused.

37. *The core question which arises is whether once the cognizance has been taken and the accused placed in Column No.12 is not summoned, can*



he be summoned subsequently without there being any additional evidence on record.

38. It is settled law that once the Chargesheet is filed in the Court while taking cognizance, is well within its jurisdiction and competence to appreciate the contents of the Chargesheet and is not bound by the conclusions drawn in the Chargesheet. The MM may summon an accused who is placed in Column No.12, but some cogent reasons must be reflected in the Summoning Order to explain why the learned CMM does not concur with the finding of the I.O in placing an Accused in Column No.12 and the reasons for which it is deemed appropriate the summon the Accused placed in Colum No.12. The Order of summoning must reflect application of mind, and if it is shown that the person has been wrongly placed in Column No.12, then there is nothing which prevents the M.M to summon even those who are placed in Colum No.12 with the only condition that it should reflect some reason and application of mind.

39. Similar facts as in hand wherein the initial Order of Cognizance dated 19.09.2015 was silent in respect of the Petitioner who had been placed in Column No.12, came up for consideration in the case of Anirudh Sen vs. State (NCT of Delhi) 2006 (3) JCC 2018, wherein the Co-ordinate Bench of this Court held that even though there was no explicit statement contained in the Order taking cognizance by the Ld. MM, but by implication it is abundantly clear that the Metropolitan Magistrate consciously did not issue summons against the Petitioner.

40. Similar observations have been made by the Coordinate Bench in the case of SD vs. State of NCT of Delhi, 2024 DHC: 1589. If the Person placed



in Column No.12, is not summoned at the time of taking cognizance, then subsequent summoning by the Successor Court with no additional evidence, tantamount to review of the earlier Order which is bad in law, as has also been held in Adalat Prasad vs. Roop Lal Jindal & Ors. 2004 (3) JCC 1347.

41. Furthermore, Section 319 Cr.P.C. empowers the Court to summon the Accused placed in Column No.12 subsequently, *but the question is at what stage and in what circumstances such power can be exercised.* The Court in exercise of its powers under Section 319 Cr.P.C., would be justified to summon an accused who is placed in Column No.12, only if there is *subsequently some material either by way of subsequent investigations or something emerges in the evidence recorded during the trial.*

42. The Constitution Bench of the Apex Court in the case of Hardeep Singh vs. State of Punjab (2014) 3 SCC 92 while recognizing the design of a person to avoid trial to be strong, and that he may make every effort to get himself absolved at the stage of investigations or enquiry even though he may be connected to the commission of the offence, but it was held that the power under Section 319 Cr.P.C can only be exercised “*on evidence recorded in the Court and not the material gathered at the investigation stage, which has already been tested at the stage of taking cognizance under Section 190 Cr.P.C and the issue of process under 204 Cr.P.C*”.

43. This principle has been reiterated in Bijender Singh vs. State of Rajasthan (2017) 7 SCC 706, wherein it was observed that at the time of taking cognizance the Court has to see whether a prima facie case is made out against the Accused under Section 319 Cr.P.C. The test of prima facie case, though is same, but the degree of satisfaction required is much stricter.



44. Similar observations have been made by the Apex Court in the case of Vikas vs. State of Rajasthan (2014) 3 SCC 321, Ramesh Chander Srivastava vs. State of Uttar Pradesh (2021) 12 SCC 608.

45. This principle has been reiterated in the recent judgment of Omi @ Omkar Rathore vs. State of Madhya Pradesh (2025) SCC OnLine SC 27, wherein after referring to the judgment of the Constitution Bench in Hardeep Singh (supra), the principles were reaffirmed and it was observed that when the person is named in the FIR by the Complainant, but Police after investigation finds no role of that particular person and files the Chargesheet without implicating him, the Court is not powerless and at the stage of summoning the Trial Court summon any person if it finds that “that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition. However, once that stage has gone, the Court is still not powerless by virtue of Section 319 Cr.P.C. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

46. In Omi @Omkar Rathore (supra), it was observed that undoubtedly the Trial Court has the jurisdiction to add any person not being the accused before it, to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. The



Trial Court, however, *can add such accused only on the basis of evidence adduced before it and not on the basis of the material available in the Charge-Sheet or the Case Diary, because such material contained in Charge-Sheet or Diary would not constitute evidence.*

47. From the aforesaid discussion and the judgments, it emerges that the power under Section 319 Cr.P.C is discretionary and exemplary power which must be exercised sparingly and only in those cases where the circumstances of the case so warrant. It cannot be exercised by the Magistrate only because he is of the opinion that some other person may also be guilty of committing the offence. Only when strong and cogent evidence is produced before the Court that such powers can be exercised but not in a cavalier manner.

48. In the present case as well, once the Ld. CMM while taking cognizance on 19.09.2015 did not deem it proper to summon the Petitioner, Anil Singh who was placed in Column No.12, the Ld. CMM subsequently after two years could not have summoned him as the cognizance of a case cannot take place twice, since doing so would tantamount to taking the cognizance twice or the review of earlier Order, which the Law does not recognize.

49. Furthermore, the Chargesheet reflects that after due investigations, it was concluded that there was no sufficient evidence against the Petitioner for which reason he was placed in Column No.12. Once the Ld. CMM has not summoned the Petitioner at the stage of taking cognizance, he is not absolutely powerless and has ample jurisdiction under Section 319 Cr.P.C to



summon the Petitioner, subsequently but only if ***cogent evidence is brought on record, during the evidence.***

50. In the circumstances, this Order of the Ld. CMM dated 22.04.2017 *vide* which the Petitioner has been summoned without there being any other additional material, is in complete disregard of the earlier Order of Cognizance dated 19.09.2015. It is bad in law as it amounts to a review of the earlier Order of Cognizance which is beyond the jurisdiction of the MM.

51. The Impugned Order dated 22.04.2017 against the Petitioner is hereby, set aside. However, it is clarified that this Order does not impinge on the right of the Ld. CMM to summon the Petitioner subsequently in case the sufficient evidence is brought on record by the Prosecution during the trial.

52. The Petition is accordingly, allowed and the Impugned Order dated 22.04.2017 against the Petitioner is set aside.

53. The Petition along with the pending Applications stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 03, 2025

VA