

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

+ **CRL.M.C. 1574/2011**

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Reserved on: 1st December, 2011

Decided on: 10th January, 2012

ANANT RAJ INDUSTRIES LTD & ORS

..... Petitioners

Through: Mr. Sudhir Nandrajog, Sr. Adv. With
Mr. Gajinder Kumar, Adv.

versus

STATE & ANR.

..... Respondents

Through: Mr. Narender Mann, Spl. PP with Mr.
Manoj Pant, Adv. for CBI.

+ **CRL.M.C. 1564/2011**

PANKAJ NAKRA

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. With Mr.
Gaurang Kanth, Adv.

versus

STATE & ANR.

..... Respondent

Through: Mr. Narender Mann, Spl. PP with Mr.
Manoj Pant, Adv. for CBI.

+ **CRL.M.C. 1563/2011**

MANOJ PAHWA

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. With Mr.
Gajinder Kumar, Adv.

versus

STATE & ANR.

..... Respondent

Through: Mr. Narender Mann, Spl. PP with Mr.
Manoj Pant, Adv. for CBI.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. These petitions challenge a common order dated 9th March, 2011 directing framing of charge against the Petitioners in all the petitions for

offence under Section 120B read with 420 and 471 IPC and 13(2) read with 13(1)(d) of the Prevention of the Corruption Act, 1988 (in short the P.C. Act) and against Petitioners Manoj Pahwa and Pankaj Nakra for offences under Section 420 and 471 read with 120B IPC.

2. The primary contention raised by the learned counsel for the Petitioners in CRL.M.C. 1574/2011 is that a gross illegality has been committed by the Learned Special Judge by passing the impugned order against the Petitioner No.1 which is a company with Petitioner No.2 its Managing Director and Petitioner Nos. 3 & 4 its Executive Directors. It is contended that for offences under the Indian Penal Code or the Prevention of Corruption Act no vicarious liability can be fastened. The concept of vicarious liability in criminal jurisprudence is unknown until and unless the Statute specifically provides for the same. Reliance is placed on *Hira Lal Hari Lal Bhagwati Vs. CBI* (2003) 5 SCC 257; *Maksud Saiyed Vs. State of Gujarat* (2008) 5 SCC 668; *Maharashtra State Electricity Distribution Co. Ltd. Vs. Datar Switchgear Ltd.* (2010) 10 SCC 479 and *M.A.A. Annamalai Vs. State of Karnataka* (2010) 8 SCC 524. A perusal of the entire charge-sheet, statements of witnesses and the documents relied upon by the prosecution do not make out the requisite allegations against the Petitioners for commission of the offences alleged. It is not even alleged that the Petitioner Nos. 2 to 4 in CRL.M.C. 1574/2011 were in-charge and responsible for the day-to-day management and conduct of the business of Petitioner No.1. It is further the case of the Petitioners that resort to Section 120B IPC to prosecute the Petitioners for substantive offences under Section 420/471 of IPC read with 13(1)(d) and 13(2) of the P.C. Act is wholly

unwarranted, as there is no iota of evidence that the Petitioners along with the co-accused jointly or severally had a meeting of minds. The prosecution has not even remotely stated that the Petitioners either conspired with each other to submit the false or fabricated document to get the completion certificate in favour of the respective companies or to bribe the public servants. Even on the factual matrix it is contended that admittedly the deviations from the sanction plans and other related violations of MCD Laws had been sorted out between the MCD and the Petitioner No.1 by way of compounding and other conditions which fact is evident from the order of the Learned MCD Tribunal. In view of the fact the MCD has validated the said certificate and compounded the additions if any, the continuation of criminal proceeding on the same set of facts is an abuse of the process of law. Reliance is placed on *Radheyshyam Kejriwal Vs. Stae of West Bengal and Anr. (2011) 3 SCC 581*.

3. In addition to the arguments raised on behalf of the Petitioners in CRL.M.C. 1574/2011 on behalf of Petitioners Manoj Pahwa and Pankaj Nakra it is further contended that structural construction was complete in both the motels and thus the notices of completion along with essential documents were submitted before the MCD. It is contended that completion certificates are given on the structural completions. However, even after structural completions in a motel, number of changes and works are required to be taken up, in view of the interior designing of the rooms and halls. The structures were complete and the additional plumbing work etc. which was got done was for the interior designing of the motels. Hence, the notices of completion submitted to the MCD along with the documents were not forged

and fabricated. In the entire charge-sheet there is no allegation or evidence to suggest that there was a conspiracy with the other co-accused. Thus there is no evidence to frame charge under Section 120B IPC. As regards Pankaj Nakra, it is further submitted that there is no role in the fabrication of the documents and the Petitioner has been implicated only because he is a Director and thus actively involved in construction activities of hotels M/s. Grand Meadows and M/s. Papillion Estate Ltd.

4. Learned counsel for the Respondent on the other hand contends that in or about March, 2008 the Petitioners entered into a criminal conspiracy with public servants to cheat MCD by using forged documents and in pursuance to the conspiracy Manoj Pahwa and Pankaj Nakra submitted false notices of completion along with forged documents regarding completion of construction of motels where after O.P. Meena J.E. dishonestly by abusing his official position submitted false NOCs/ inspection reports on 20th March, 2008 and 25th March, 2008. The NOCs were issued though the construction was not yet complete and there was large scale violation of the building plans. The said false NOCs were accepted by G.S. Jindal who forwarded the same to the Superintending Engineer recommending the grant of completion certificates which were issued on 21st April, 2008. The completion certificates were issued in advance without the construction being complete and the constructions also being in violation of sanctioned building plans. As such, the MCD through Superintending Engineer V.K. Gupta was cheated in issuing the completion certificates with the use of forged documents. The statements of witnesses have been recorded during investigation to show that the Petitioners were actively involved in day-to-

day construction work of the motels and it cannot be said that they are being implicated on the basis of vicarious liability. Statements of witnesses recorded reveal that even essential plumbing works were got done in the year 2009. The contract for plumbing work was issued in the year 2009 much after the notices of completion were submitted with forged documents. Further the order of the MCD Appellate Tribunal has not upheld the excess coverage or unauthorized construction but it has only remanded the matter back for re-consideration.

5. I have heard learned counsel for the parties. Briefly the case of the prosecution is that MCD granted sanction of building plans for construction of two motels namely M/s. Grand Meadows and M/s. Papillion Estate Ltd. at village Smalkha and Rajokri, Delhi respectively. These two companies i.e. M/s. Grand Meadows and M/s. Papillion Estate Ltd. amalgamated in M/s. Anant Raj Industries Ltd. in the year 2007. Petitioner Anil Sarin is the Managing Director of M/s. Anant Raj Industries Ltd. and Petitioners Ashim Sarin and Aman Sarin are its Executive Directors. Petitioner Aman Sarin was also the Director of M/s. Papillion Estate Ltd. and M/s. Grand Meadows. Petitioner Manoj Pahwa is the authorized signatory of M/s. Grand Meadows and Petitioner Pankaj Nakra a Director of M/s. Papillion Estate Ltd. and its authorized signatory. As per the case of prosecution it is alleged that Manoj Pahwa and Pankaj Nakra in criminal conspiracy with G.S. Jindal and O.P. Meena who were public servants and other accused persons submitted false notices of completion of the aforesaid two motels on 5th March, 2008 to the MCD. The site was inspected by O.P. Meena who submitted the report of completion on Ground floor, first floor and other floors of M/s. Grand

Meadows Ltd., and basement, ground floor and first floor of M/s. Papillion Estate Ltd. He also recommended issuance of completion certificate though the buildings were still incomplete and there were large scale violations of the sanctioned building plans and rules. It is further alleged that this was done by public servants by corrupt or illegal means or by otherwise abusing their official position, as such public servants in conspiracy with the other accused persons, to obtain pecuniary advantage for themselves and for other accused persons.

6. In the present petition against the order on charge in a trial under the P.C. Act, this Court will not sit as a Court of Appeal and re-appreciate the order passed by the Learned Sessions Judge. The scope of consideration is limited as held by the Division Bench of this Court in *Anur Kumar Jain Vs. CBI 178(2011) DLT 501*. Thus this Court is required to examine whether there is an abuse of the process of the Court and decide the legal issues raised by the learned counsel for the Petitioner.

7. Learned counsel for the Petitioners have strenuously contended that the Petitioners in CRL.M.C. 1574/2011 cannot be held vicariously liable. Reliance in this regard is placed on *Maksud Saiyed and Maharashtra State Electricity Distribution Co. Ltd. (supra)*. It was held that wherever by legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the Statute concerned. There is no dispute to this proposition. In *Maharashtra State Electricity Distribution Co. Ltd.* the only averment was that the Appellant No.1 i.e. MSED was acting under the control of Appellant No.2 along with

the other three accused. In the present case the Petitioners have not been implicated vicariously but because of their being a part of criminal conspiracy, to abuse the official position by filing forged and fabricated documents in support of the claim of completion certificate. Thus, the decisions relied upon by the learned counsel on this count have no application to the facts of the present case.

8. Reliance on the decision in *Hira Lal Hari Lal Bhagwati* (supra) is also misconceived. In the said case the facts did not show the existence of fraudulent or dishonest intention at the time of making promise or representation. The machines were imported therein availing the benefit of exemption notification on the basis of exemption certificate containing necessary conditions required to be complied with after importation, however those conditions could not be complied with and the importer paid the necessary customs duties without taking advantage of the exemption certificate. In the present case the facts of the prosecution are that not only was the structure not complete at that time, there was excess coverage in the two motels. Hence the element of deception was there right at the inception, when notices of completion were submitted.

9. It is trite law that criminal conspiracy is not hatched in open. There is seldom any direct proof thereof. The Court has to infer criminal conspiracy on the basis of evidence on record as to whether the same suggests meeting of minds. In the present case, though Manoj Pahwa and Pankaj Nakra have submitted the notices of completion along with forged documents, the Petitioners in CRL.M.C. 1574/2011 are the direct beneficiaries of the said false documents and abuse of the official position. Further, during evidence

it has come on record that Petitioner Ashim Sarin was visiting the site regularly and was responsible for award of contract of shuttering work of the basement etc. and Anil Sarin being the Managing Director was interacting with the other accused i.e. Aman Sarin and Ashim Sarin. At this stage the Learned Trial Court was not required to see whether there was proof beyond reasonable doubt and all that was required to be seen was whether there was strong suspicion for the offence having been committed which to my mind is available in view of the fact that the Petitioners in CRL.M.C. 1574/2011 are the direct beneficiary of this illegal act. In this regard Respondents have recorded the statements of a number of witnesses i.e. PW-10 Avinash Chander, PW-11 K.K. Nanda, PW-19 Hemant Varshney, PW-15 Inderjeet Majjo who state that the Petitioners in CRL.M.C. 1574/2011 were its Directors and the work was being done under their supervisions and directions. PW-19 Hemant Varshney has also stated that all the documents for the constructions were prepared by Aman Sarin, Ashim Sarin and Anil Sarin, who are the authorized signatories of M/s. Anant Raj Industries Ltd. Further CBI has recorded the statement of PW-13 Vijay Kumar who stated that he never worked as Group Engineer with M/s. Anant Raj Industries Ltd. and his signature purportedly on Appendix 'G' was not put by him. PW-16 Janardhan Singh Chouhan, PW-20 Pushkar Raj, PW-21 Ashok Kumar and PW-23 Dharamvir Singh have stated that the buildings were not complete at the relevant time. .

10. Learned counsel for the Petitioners have strenuously contended that in a motel the plumbing and electricity work continues even after the completion in view of the interiors of the rooms and the halls to be carried

out. There is no dispute about it. However, it may be noted that CBI has recorded the statement of PW-1 B.D. Sharma a civil contractor, PW-2 Vijay Verma and PW-11 K.L. Nanda who have been awarded the contract of shuttering, repair and plastic work in the two motels in February, 2009 and according to them the building was not complete at that time. Statements of number of other witnesses have been recorded who state that the buildings were not complete at the relevant time. Undoubtedly, this would be the defence available to the Petitioners at the time of trial to show that the construction as required was completed and it was only the interior designing which was going on thereafter, however at this stage in view of the statements of the witnesses recorded, it cannot be said that there is no prima facie case against the Petitioners, raising a strong suspicion of having committed the offences alleged.

11. It may be noted that besides the construction not being complete, the other allegation against the Petitioners is of excess coverage. Much emphasis has been laid by learned counsel for the Petitioner on the fact that MCD Tribunal has returned a finding in its favour and all the deviations were held to be compoundable, thus the notices of completion or the completion certificates issued cannot be said to have been procured by cheating the MCD. In this regard one of the allegations of the MCD is that the petitioners had constructed double basements contrary to law. The case of the Petitioners is that the same was required to be constructed in view of the soil density. Statement of one Shri P. Srinivasa Rao working as Consultant of M/s Soil Engineering Consultant has been recorded who has opined that the soil was medium dense as per Standard Practice with SPF

values varying from 10 to 40. Thus, according to the prosecution the contention of the defence that the soil was loose so they had to dig a second basement is incorrect. At this stage it would be appropriate to note that only one finding of the Learned MCD Appellate Tribunal vide its order dated 30th November, 2010 to show that at least as regards one of the deviations an undertaking was given by the Petitioners pursuant where to the matter was remanded for re-consideration. The relevant portion of the order dated 30th November, 2010 reads as under:

“whether there is any second basement in the premises in question and entrances made to that basement are closed and hence, it is a case of double basement as pleaded by the respondent or it is a case of laying a raft foundation at a lower level due to structural requirement as pleaded by the appellant requires serious consideration. Admittedly, the completion certificate in respect of the property in question had been granted on 21.4.2008. The show cause notice under section 345-A of the Act served upon the appellant is dated 12.6.2009. The case of the appellant is that the appellant was only carrying out plastering, repairing work, re-flooring, replacing fallen bricks, stones, replacing the windows. Thus, according to the appellant, the need to carry out or to execute these works had arisen just within a period of 9/10 months from the date of issuance of the completion certificate. Whether the property in question had in fact required the alleged repairs described in the appeal or the appellant has in fact carried out unauthorized construction in the property in question is also a fact which requires serious consideration. Therefore, I am of the view that the concerned Deputy Commissioner/ Executive Engineer (B) of the Najafgarh Zone must be given an opportunity to deal with these contentions/ facts and to record a finding of fact either on the basis of the show cause notice dated 12.6.2009 and reply dated 18.6.2009 thereto or on the basis of a revised show cause notice which may be required to be given in the changed circumstances of the case, if any.”

12. The case was, thus, remanded back with an opportunity to the Petitioners. It may be, thus, noticed that there is no final adjudication by the MCD Tribunal holding that there was no excess coverage or that the buildings were complete as per sanctioned plan. Thus, this being a question of fact wherein the CBI and the MCD allege that it was a case of excess construction and incomplete construction as on the date when completion certificate was issued, this Court cannot dwell into the same and the same will have to be determined during the course of trial. I find no merit in the present petitions.

13. Petitions are dismissed.

(MUKTA GUPTA)
JUDGE

JANJARY 10, 2012
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