

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment Reserved on: December 18, 2013
Judgment Pronounced on: January 15, 2014

(i) + **CRL.M.C. 1089/2012**

SATISH KUMAR MODI Petitioner
Through: Mr. Aman Lekhi, Senior Advocate
with Ms. Nisha Rohtagi, Mr. Mohit
Mathur, Mr. Rishi Aggarwala,
Ms. Nisha Rohtagi , Mr. Vinod
Gupta & Mr. Rohit Gupta,
Advocates

versus

STATE Respondent
Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent –
State

(ii) + **CRL.M.C. 1090/2012**

SATISH KUMAR MODI Petitioner
Through: Mr. Vijay Aggarwal, Mr. Chaitali
Jain, Ms Gousia Shah &
Mr. Mohd. Adnan, Advocates

versus

STATE Respondent
Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent –
State with SI Rajneesh

(iii) + **CRL.M.C. 1132/2012 & Crl. M.A. Nos. 3978 & 80/2012**

ROYAL AIRWAYS LTD & ORS. Petitioners

Through: Mr. Sanjay Jain, Senior Advocate
with Mr. Sunil Sethi,
Ms. Prabhsahay Kaur, Mr. Sarfraz
Ahmad & Mr Yash Srivastava,
Advocates

versus

NCT OF DELHI & ORS. Respondents

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent –
State with SI Rajneesh
Mr. Jayant Bhushan, Senior
Advocate, with Mr. Diwkar
Maheshwari & Mr. Vinam Gupta,
Advocates for Malapur Steel-
respondent No.2

(iv) + **CRL.M.C. 1760/2012 & Crl. M.A. Nos.6163/2012 &
16237/2013**

SATISH KUMAR MODI & ORS. Petitioners

Through: Mr. Aman Lekhi, Senior Advocate
with Ms. Nisha Rohtagi, Mr. Mohit
Mathur, Mr. Rishi Aggarwala,
Ms. Nisha Rohtagi, Mr. Vinod
Gupta & Mr. Rohit Gupta,
Advocates

versus

STATE Respondent

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for respondent –
State with SI Rajneesh

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT

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1. A common thread, which runs through the above-captioned four petitions, is that these petitions spring out of proceedings in FIR No. 31/2005 for the offences under Sections 406/409/418/420/120B of IPC, registered at police station Palam Airport, Delhi. Since the facts in the above captioned four petitions are so intertwined, therefore, these petitions were heard together and are being disposed of by one common order.

2. In the above captioned first petition [Crl. M.C. No.1089/2012], an application under Section 340 of Cr.P.C. filed by petitioner has been dismissed by trial Court and learned Revisional Court vide impugned order of 14th March, 2012 has maintained trial court's order dismissing petitioner's aforesaid application.

3. Challenge to the aforesaid impugned order is on the ground that by concealing and suppressing material facts, complainant/first-informant has managed to get FIR No. 31/1005 registered against petitioner and so, petitioner's application under Section 340 of Cr.P.C. could not be outrightly rejected, as at the stage of consideration of this application, it is only to be seen as to whether an enquiry should be made. At the hearing it was submitted by petitioner-S.K.Modi that courts below have gravely erred in brushing aside petitioner's application under Section 340 of Cr.P.C. by treating it to be petitioner's defence which is to be considered at the appropriate stage. To assail the impugned order, reliance was

placed upon decisions in *M.S. Sheriff & Anr. Vs. State of Madras & ors.* AIR 1954 SC 397; *Suo Moto Proceedings against Mr. R. Karuppan, Advocate* (2001) 5 SCC 289 & *Upkar Singh Vs. Ved Prakash & Ors.* AIR 2004 SC 4320 and a decision of this Court in Test Case No. 19/2004 *Sanjeev Kumar Mittal Vs. The State* rendered on 18th November, 2010. Thus, quashing of impugned order is sought with a prayer that petitioner's application under Section 340 of the Cr.P.C. deserves to be enquired into.

4. On behalf of complainant/first-informant-*Milanpur Steel Ltd.* of FIR No. 31/2005 reliance was placed upon Apex Court's decision in *Subhash Chandra Vs. State of U.P. & ors.* (2000) 9 SCC 356 & *P T Rajan Vs. State by Inspector of Life Insurance Corporation* 1997 Law Suit (Mad) 549 by learned senior counsel to support the impugned order and to contend that even upon taking petitioner's application / complaint as it is, it cannot be said that suppression amount to perjury. Thus, dismissal of above captioned first petition is sought.

5. The finding returned in the impugned order of 14th March, 2012 is that petitioner's application under Section 340 of Cr.P.C. constitutes his defence and allowing petitioner's application would tantamount to holding that whole case of complainant is false, which has been investigated into and a charge-sheet has been filed.

6. The aforesaid finding in the impugned order rests upon the following reasoning:-

"Having given my anxious consideration to the facts and circumstances of the instant case as also the detailed submissions made by the Ld. Counsel for the appellant, I am of

the opinion that it cannot be said with certainty that the complainant has made any false and misleading statement in its complaint. True that the complainant has nowhere referred in its complaint to the previous court proceedings between the parties and the orders passed therein, however, at the same time, the allegations contained in the complaint were found well founded during police investigation, which has culminated in filing of the Charge Sheet against the appellant herein and the other accused. Even otherwise also, the arguments on Charge are yet to be heard by the Ld. ACMM and Charges are yet to be decided. Any order directing enquiry against the complainant u/S 340 (1) Cr.P.C. would seriously prejudice the case of prosecution before the Trial Court and hence, it would not be expedient in the interest of justice so to do."

7. In the above captioned second petition [Crl. M.C. No. 1090/2012], quashing of impugned order of 14th March, 2012 refusing to recall summoning order in FIR No. 31/2005 and order allowing complainant's application under Section 156 (3) of Cr.P.C. is sought on merits while relying upon decisions in *Hamza Hazi Vs. State of Kerala & Anr.* (2006) 7 SCC 416; *P. Satyanarayana Vs. Land Reforms Tribunal* AIR 1980 AP 149; *MCD Vs. State of Delhi & Anr.* (2005) 4 SCC 605.

8. In the above captioned third petition [Crl. M.C. No. 1132/2012], quashing of FIR No. 31/2005 for the offences under Sections 406/409/418/420/120B of IPC, registered at police station Palam Airport, Delhi and order of 20th October, 2008 vide which cognizance of the aforesaid offences were taken against petitioners and their co-accused and order of 25th April, 2009 vide which petitioners -S.K. Modi, Shalini and

Dimple Modi shown in Column No.4 of the charge-sheet filed in this FIR case, have been summoned as accused, is sought on merits while relying upon decisions in *Inder Mohan Goswami & Anr. Vs. State of Uttranchal & Ors.* (2007) 12 SCC 1 and decision of a Coordinate Bench of this Court in *S.V. Amrumugam Vs. State & Anr.* 2011 (184) DLT 107.

9. In the above captioned fourth petition [Crl. M.C. No. 1760/2012], petitioners- *S.K. Modi & Ors.* seek quashing of FIR No. 31/2005 for the offences under Sections 406/409/418/420/120B of IPC, registered at police station Palam Airport, Delhi and order of 1st August, 2009 vide which petitioner's revision petition against order of 20th October, 2008 taking cognizance of the offences in the above said FIR case against petitioners has been decided on merits in the absence of petitioners. Quashing of aforesaid FIR case is sought on merits while relying upon Apex Court's decision in Criminal Appeal No 1680/2013, *Surya Baksh Singh Vs. State of Uttar Pradesh*, rendered on 7th October, 2013.

10. At the hearing, learned counsel for petitioners - *S.K. Modi & Anr.* had confined the prayer made in the above captioned fourth petition to afford an opportunity of hearing in the revision petition and had not sought quashing of above said FIR on merits.

11. At the hearing of the above captioned four petitions, extensive submissions were addressed by both the sides and reliance was placed upon numerous decisions to seek quashing of the FIR in question and the impugned orders on merits.

12. In the above captioned first petition [Crl. M.C. No. 1089/2012], the

reasoning in the impugned order as noted above, persuades this Court to hold that dismissal of petitioner - *S.K. Modi's* application under Section 340 of the Cr.P.C. was uncalled for, as this application deserves to be considered by the trial Court at the charge stage if the FIR case in question proceeds on trial. It is so said because averments in application under Section 340 of Cr.P.C. is the stand taken on behalf of applicant/petitioner and cannot be labelled as defence of applicant/petitioner. In this view of the matter, above captioned first petition is allowed and petitioner- *S.K. Modi's* application under Section 340 of Cr.P.C. is restored for being considered by the trial court at the charge stage.

13. Exercise of inherent jurisdiction under Section 482 of Cr.P.C. to quash criminal proceedings has to be exercised sparingly and with great caution, to prevent abuse of process of the Court or to otherwise secure the ends of justice. Where the facts are hazy and require evidence to be produced, High Courts normally refrain from giving a *prima facie* decision particularly when it cannot be said that the ingredients of the offence alleged in the FIR are lacking.

14. The factual matrix emerging from the orders impugned is as under:-

"Brief facts, necessary for the disposal of this revision petition, are that the complainant M/S Malanpur Steel Ltd. (formerly known as M.S Hindustan Development Corporation Ltd.) instituted a complaint case u/s 200 Cr.P.C. alleging commission of offences punishable u/s. 406/409/418/420/120B IPC. The complaint was filed against ten accused persons and

the name of the appellant herein was shown as accused no.1 It was alleged in the complaint that the complainant had in the year 1995, provided a loan of Rs. Five Crores by way of inter corporate deposit in the year 1995 to accused No.8 which was represented by accused nos. 1, 2 & 3. Three companies of the petitioner had executed letters of guarantee in favour of the complainant and also placed 55,60,000/- shares, held by them in accused no.8 with the complainant alongwith duly executed transfer of deeds as security for the loan. It was represented to the complainant that the shares were fully paid up. Accused no.8 failed to repay the loan and when the complainant sold the pledged shares to two companies, the shares were illegally held by the accused nos. 6, 7 and 10 (accused no.6 being Chairman and accused no.7 being the Senior Manager of accused no.10, the Registrar and Transfer Agents of accused no.8), in conspiracy with the accused no.1 (appellant herein), 2 and 3 on behalf of accused no.8 on the ground that the transfer documents were not valid as the person whose signatures appear thereon was no more in the services of accused no.8 company."

15. Upon hearing both the sides and on bare perusal of the material on record, it transpires that proceedings in this FIR case are at the stage of hearing on the point of charge. Since petitioners have an alternate and efficacious remedy to urge the pleas taken herein at the hearing on the point of charge, therefore, this Court is not inclined to entertain the above captioned second, third and fourth petitions [Crl. M.C. Nos. 1090/2012; 1132/2012 & 1760/2012] by invoking inherent jurisdiction of this Court under Section 482 of the Cr.P.C. Such a course is being adopted in view

of dictum of Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors. (2011) 12 SCC 437*, which is as under: -

"It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S.Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specifically when the applicant may not have availed of that remedy."

16. Applying the dictum of the Apex Court in *Padal Venkata Rama Reddy (supra)* as referred to hereinabove, these three petitions [Crl. M.C. Nos. 1090/2012; 1132/2012 & 1760/2012] are disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. Till the hearing on the point of framing of charge is concluded, personal appearance of petitioners be not insisted upon by the trial court, provided petitioners are duly represented through counsel, who does not seek adjournment. However, it is made clear that if petitioners delay the proceedings before trial court, then petitioners shall not have the benefit of exemption from personal appearance extended by this Court. If the trial court finds that no case is made out against petitioners, then this

order will not stand in the way of trial court to discharge petitioners and if trial court chooses to proceed against petitioners, then trial court shall obtain the presence of petitioners. Needless to say, if trial court chooses to frame charges against petitioners, then petitioners shall be at liberty to avail of the remedy as available in law, if so advised.

17. The above captioned petitions and applications are disposed of in aforesaid terms while refraining to comment upon merits, lest it may prejudice either side before the trial Court.

(SUNIL GAUR)
JUDGE

JANUARY 15, 2014

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