

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

Reserved on: 09th October, 2014
Date of Decision: 18th November, 2014

+ CRL. M.C. 2580/2013

SURINDER KAUR Petitioner
Through: Mr. K.K. Manan & Mr. Suraj Prakash,
Advocates.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Navin Sharma, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') the petitioner has assailed the order dated 31.05.2013 passed by learned Additional Sessions Judge, New Delhi whereby the revision petition filed by the petitioner was dismissed.

2. The factual matrix of the case is that the petitioner Smt. Surinder Kaur and co-accused Shri Tejwant Singh being Directors of the accused company namely M/s. Skipper Towers Pvt. Ltd. fraudulently and dishonestly induced various investors/ public persons to invest their money for the purpose of allotting flats in Skipper Bhawan and extorted huge sums of money from various investors. Thereafter, they

dishonestly sold the said flats twice or thrice to different persons. During investigation it was revealed that flat No.702 was sold thrice and 8th and 9th floor of Skipper Bhawan were sold to M/s. Jain Sudh Vanaspati Ltd. and also to the other buyers. The Directors of the accused company have pledged to the bank various areas in 22, Barakhamba Road which originally belonged to M/s. Jain Shudh Vanaspati Ltd. which include: (a) Flat Nos.1 to 11 on the 8th floor; (b) 1 to 11 on 9th floor; (c) 3 to 8 on 10th floor; (d) 1 & 2, 6 & 7 and 9 to 11 on the 5th floor; (e) show room No.11 on ground floor. Even though there was no space available for re-sale, the builder in spite of that sold more than 15 to 20 flats on each one of these floors i.e. 8th and 9th floors to various individuals. As a result of this, on 14.05.1991, on the basis of complaint dated 12.04.1991 filed by Skipper Bhawan (22, Barakhamba Road) Flat Buyers Association (Regd.) an FIR No.363/1991 under Sections 403/406/420 IPC was registered at P.S. Connaught Place, New Delhi.

3. On completion of investigation charge-sheet was filed against the petitioner Smt. Surinder Kaur, Shri Tejwant Singh, Shri H.S. Sarna, Shri M.S. Sabharwal and M/s. Skipper Towers (P) Ltd.

4. Vide order dated 11.02.2013, learned Additional Chief Metropolitan Magistrate passed an order for framing of charge for the offence under Section 420 IPC and accordingly charge was framed on 01.04.2013 against M/s. Skipper Towers (P) Ltd., Shri Tejwant Singh and Smt. Surinder Kaur and Shri M.S. Sabharwal. However, accused

Shri H.S. Sarna was discharged. Thereafter, the accused Shri M.S. Sabharwal expired.

5. The petitioner challenged the said order by filing Criminal Revision Petition No.52/2013, which was dismissed by learned Additional Sessions Judge, vide impugned order dated 31.05.2013.

6. Feeling aggrieved by the said order, the petitioner has preferred the present petition.

7. Learned counsel for the petitioner contended that the ingredients of Section 420 IPC are not satisfied, there was no representation or inducement by the petitioner inasmuch as no material was collected by the investigating officer to implicate the petitioner. There is no allegation that the petitioner made any false representation to the complainant/ flat buyers. Merely because the petitioner was one of the Directors of the accused company will not make her *ipso facto* liable for the offence under Section 420 IPC.

8. Learned counsel for the petitioner also submitted that the petitioner was not in-charge and responsible for day-to-day affairs of the accused company and is not responsible for the offence under Section 420 IPC. The petitioner cannot be fastened with the criminal liability on the basis of vicarious liability and there is no material to connect the petitioner with the offence.

9. *Per contra* learned APP for the state submitted that the record of Registrar of Companies shows that Mrs. Surinder Kaur was Director of M/s. Skipper Towers (P) Ltd. since 27.01.1977 as well as Director of

M/s. Skipper Sales Pvt. Ltd. since 26.10.1982. The petitioner is involved in various other cases bearing FIR No.230/1991 under Sections 403/406/420 IPC; FIR No. 363/1991 under Sections 403/406/420 IPC; FIR No.454/1991 under Section 420 IPC; FIR No.255/1994 under Section 420 IPC; FIR No.739/1999 under Section 420/120B IPC and FIR No.1199/1999 under Section 420/120B IPC all registered at P.S. Connaught Place, New Delhi. On application the Apex Court prima facie found that some funds have been diverted and observed that it was necessary to estimate the extent of such diversion of funds and Justice Bahari Commission was appointed.

10. Learned APP for the State also pointed out that in SLP (C) No.21000/1993 titled 'Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. & Anr.' by way of an I.A. No.90/2001 Skipper Bhawan Flat Buyers Association became party and on their request Justice Bahari Commission was appointed to verify the diversion of funds of M/s. Skipper Towers (P) Ltd. to other group of companies under the same management.

11. I have carefully considered the submissions made by learned counsel for the petitioner and learned APP for the State and also gone through the material on record.

12. It is a settled rule of law that this Court should interfere only when it is satisfied that non-quashing of charges would amount to abuse of process of court or that interest of justice otherwise calls for quashing for charges. The Apex Court in '**Dhanalakshmi v. R. Prasanna Kumar**', (1990) Supp. SCC 686, it was observed as under: -

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when

the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.”

13. Further, in ‘**State of Bihar vs. Murad Ali Khan**’, (1988) 4 SCC 655, the Apex Court observed as under: -

“It is trite that jurisdiction under Section 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.”

14. In view of the dictum of the Apex Court in the aforesaid judgment, it is evident that unless this Court feels that the inherent jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

15. At the stage of consideration on the point of charge, the court is required to form a *prima facie* view and to point out if there appears a strong suspicion of the guilt of the accused and the court is not required to enter into meticulous examination of the evidence and material place before it at the time of charge. If there is strong suspicion, which leaves the court to think that there is a ground for presuming that the accused has committed an offence then it is not open to the court to see that there is no sufficient ground for proceeding against the accused.

16. In the instant case, learned trial court after consideration of oral and documentary evidence formed an opinion that a *prima facie* case for the offence under Section 420 IPC is made out. Considering the above legal propositions, it can be said that once prima facie case is made out, court cannot delve into the merits of the case for framing of charges. Thus, there is no illegality and infirmity in the impugned order passed by the learned trial court. Accordingly, the petition is dismissed.

17. The trial court record be sent back forthwith.

Crl. M.A. No.9961/2013

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

NOVEMBER 18th, 2014
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