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**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:24313-DB

Reserved on:12.02.2024

Delivered on:20.03.2024

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 909 of 2024

Petitioner :- Mukta Srivastava And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Others

Counsel for Petitioner :- Rajesh Chandra Mishra

Counsel for Respondent :- G.A.,Pranjal Krishna

Hon'ble Rajan Roy,J.

Hon'ble Narendra Kumar Johari,J.

(Per : Rajan Roy, J.)

Shri S. C. Mishra, learned Senior Counsel along with Shri Rajesh Chandra Mishra, learned counsel for the petitioners, Shri Jaideep Narian Mathur, learned Senior Counsel along with Shri Pranjal Krishna, Shri Manan Batra, Ms. Aishvarya Mathur and Shri Suhaib Ashraf, learned counsel for the opposite party no. 4- informant and Shri S.P. Singh, learned A.G.A. for the State.

By means of this writ petition the petitioners have challenged F.I.R. dated 26.01.2024 bearing Case Crime No. 0034 of 2024 under Sections 381, 409, 419, 420, 467, 468, 471, 506 IPC, Police Station- Sarojni Nagar, District- Lucknow and they have also sought a writ of

mandamus that they may not be arrested in connection of the aforesaid F.I.R.

The informant has filed short counter affidavit which was taken on record when the hearing was concluded and the learned counsel for the petitioners did not propose to file any response as is mentioned in the order by which orders were reserved.

On a reading of the impugned F.I.R. we find that it has been lodged by the opposite party no. 4 against eight accused including the petitioners. The petitioner no. 2 is a Director of Radiant Buildcon Private Ltd. (hereinafter referred as to 'the Company') having its registered Office at Chandigarh. The opposite party no. 4- the informant is also one of the Directors. In fact, the informant is also a major share holder along with his family members in the said Company. The parent holding company is Avadh Rail Infra Ltd. in which both petitioner no. 1 and the informant are Directors along with other Directors. In fact, the said holding company has as many as six subsidiary companies, details of which are given in Para 10 of the writ petition. The petitioners are not share holders in any of the companies, though, the petitioner no. 2 is a Director in most of them.

The Company has a housing project on 1.75 acres of land i.e. Marina Heights at SAS Nagar, Punjab. Four Towers have been built comprising of 18 Flats each i.e. total 72 Flats. 21 Flats were sold during 2014-21, as claimed, with sale consideration 33 lacs to 35 lacs per Flats. Since 1996, the petitioner no. 2- Rohit Srivastava was working in the holding company Avadh Rail Infra Ltd. whose registered headquarter is at Lucknow. He was inducted as a Director in the Company. As the aforesaid housing project had not been registered with RERA, therefore, Flats were not to be sold and status quo was to be maintained. The Company was not in a position to sell the same.

For these reasons the informant and his father who is also a Director in the Company, namely, Subhash Sarraf did not pay much attention to the activities of the aforesaid Company. Taking advantage of this the accused, especially, Petitioner no. 2 and accused no. 2 in the F.I.R. who is an Accountant in the Company, forged and fabricated a Board Resolution dated 01.10.2022 by which it was claimed that petitioner no. 2 had been authorized to sell the Flats on behalf of the Company and based on the aforesaid forged and fabricated Resolution 11 sale deeds were executed by petitioner no. 2 after 01.10.2022.

At this stage, it may be mentioned that during the course of argument Shri Jaideep Narain Mathur, learned Senior Counsel appearing for the informant submitted that initially they were aware about 11 sale deeds only, but, now, it appears that there are many more sale deeds which have been fraudulently executed by the petitioner no. 2 based on the aforesaid Resolution of the Board of Directors dated 01.10.2022.

It is also alleged in the F.I.R. that the informant and his father was not even present at SAS Nagar, Punjab when the Resolution is said to have been passed at the said place which will prove that the petitioner no. 2 has resorted to forgery, fabrication/manipulation of documents and based thereon has fraudulently executed sale deeds in respect of Flats owned by the Company to the purchasers in connivance with some of them and in this process he has misappropriated substantial part of the sale consideration, as, it has come to knowledge of the informant, on inquiry made subsequently, that only part of sale consideration was deposited in the account of the Company. The remaining sale consideration was deposited in the account of petitioner no. 2 or his wife petitioner no. 1 either by online transaction or cash and this ill gotten money i.e. proceeds of crime, was deposited by the petitioner no. 1 and 2 in their accounts at

Lucknow, thereby, giving part cause of action at Lucknow where the F.I.R. has been lodged. Details of the accounts in name of the petitioners at Lucknow have been mentioned in the F.I.R. with the allegation that substantial part of the sale consideration received on the basis of fraudulent sale transaction based on the forged Board Resolution dated 01.10.2022, have been deposited by the petitioners in their personal accounts at Lucknow and not that of the Company. It is said that the informant and his father could not come to know about the illegal transactions because status quo was to be maintained with regard to the housing project on account of absence of registration with RERA. Theft of sale deeds from the Office of Avadh Rail Infra Ltd. at Lucknow by the petitioner no. 2 is also alleged. It is alleged that the accused have conspired to commit breach of trust and the offence as has been mentioned in the F.I.R.

Challenging the said F.I.R. it was contended by Shri S.C. Mishra, learned Senior Counsel appearing for the petitioners that first and foremost the Police Station- Sarojni Nagar under Lucknow Commissionerate lacked territorial jurisdiction in the matter, therefore, lodging of the F.I.R. and the investigation in respect thereof is without jurisdiction. He referred to Sections 177, 178, 179, 181 Cr.P.C. in this regard. He also submitted that the F.I.R. had been deliberately lodged at Lucknow as, the petitioner no. 2 was a Member of the Aam Aadmi Party in Punjab, as such, there is a political malice also behind lodging of the F.I.R. at Lucknow so that the informant may, with the help of the powers that be, victimize and harass the petitioners. He also submitted that wife of the petitioner no. 2, who has nothing to do with the running of the Company, has also been made an accused which itself goes to show malafide. His next submission was that there is concealment of the facts by the informant. Various proceedings were going on between the parties but they have not been disclosed in the first information report which is evidence of their malice. In this regard

he referred to proceedings initiated by the informant before the NCLT at Kolkata on 26.09.2023 in respect of Tirupati Polysacks Pvt. Ltd. wherein petitioner no. 2 as also the informant and his father are Directors as dispute had arisen between them and the petitioner no. 2 was being pressurized to sell off his 50% shares in the said company and as the informant and his father were indulging in other nefarious activities relating to the said Company. He also referred to a Suit filed by the petitioner no. 2 at Chennai. He referred to a Suit for permanent injunction filed by the petitioner no. 2 at Chandigarh against the informant on 11.01.2024. He also referred to proceedings initiated by the petitioner no. 2 under Section 241 of the Companies Act before the NCLT, Chandigarh against his proposed removal as a Director as also revocation of authority given to him for various activities relating to the Company i.e. Radiant Buildcon Pvt. Ltd. He submitted that had these facts been disclosed in the F.I.R., Police would have got to know that it is purely a civil/commercial dispute between Directors of the Company which has been given a colour of criminality so as to harass and victimize the petitioners. He submitted that the dispute was essentially of a civil/commercial nature and there was no criminality involved therein. In this context he referred to decisions of Hon'ble Supreme Court rendered in the case of ***Mithilesh Kumar J. Sha Vs. State of Karnataka and Ors.*** reported in (2022) 14 SCC 572, ***Criminal Appeal No. 932 of 2021; Randheer Singh Vs. State of U.P. and Ors., Criminal Appeal No. 5866 of 2022; Usha Chakraborty and Anr. Vs. State of West Bengal and Anr.*** reported in 2323 LiveLaw (SC)67, ***Criminal Appeal No. 2024 arising out of SLP (Crl.) No. 3337 of 2023*** and ***Sachin Garg Vs. State of U.P. and Anr. arising out of SLP (Crl.) No. 4415 of 2023.***

He also invited the Court's attention to a complaint dated 09.01.2024 filed by the petitioner no. 2 at Chandigarh alleging that the father of the informant along with several musclemen entered the

office of the Company and took away all relevant documents including the authorization letter/ Board Resolution dated 01.10.2022 and thereafter, lodged the impugned F.I.R. alleging that the Resolution was forged and fabricated. He also submitted that the petitioner no. 2 has sold as many as 33 Flats but the objection is being raised only with regard to 11 Flats. All this was within the knowledge of the informant and his father and no objection was raised at any point of time but only when a dispute arose in September, 2023 between them, a story has been cooked up with ulterior motives. He also submitted that the petitioner no. 2 has not received any remuneration for the services rendered by him and the understanding was that once the Flats at Marina Heights were sold out he would be given profit therefrom. He submitted that the deposit made by one of the purchasers of Flats Shri Gurjant Singh Dhillon who is also an accused in the F.I.R., in the account of the petitioner no. 2, is in fact, a loan of Rs.25 lacs extended to the petitioner by the former, therefore, there is no truth in the allegations in this regard. The allegation of theft having taken place the registered Headquarters of Avadh Rail Infra Ltd. at Lucknow is also a concocted one because the allegation is of theft of original sale deeds, whereas, the original sale deeds would be in the possession of purchasers and not Avadh Rail Infra Ltd. There was no occasion to keep the said sale deeds at the registered Headquarters of Avadh Rail Infra Ltd. at Lucknow, as, they pertained to the activities of the subsidiary Company i.e. Radiant Buildcon Private Ltd. This has been done only to make out the jurisdiction at Lucknow for lodging of the F.I.R. and harassing the petitioners. The assertion in the F.I.R. that the informant and his father were not aware about these activities is also incorrect, as, the purchasers of Flats had been arrayed as accused in the F.I.R. For all these reasons, according to him, the F.I.R. was liable to be quashed, as, essentially it was a civil/commercial dispute. Lack of jurisdiction in this regard was also emphasized by him.

Shri Jaideep Narian Mathur, learned Senior Counsel appearing for the opposite party no. 4- informant submitted that part cause of action had arisen within the territorial jurisdiction of the Police Station- Sarojni Nagar, District- Lucknow and legal position is settled that it being so the F.I.R. could be lodged in such a police station. He referred to the provisions of Section 156(2), Chapter 13, 177, 179, 181(3) and 181(4) Cr.P.C. to drive home his point. He invited our attention to the allegations in the F.I.R., according to which, a theft had taken place at Lucknow in which the petitioner no. 2 was involved, therefore, in view of Section 181(3) Cr.P.C. and other provisions referred herein the cause of action for the same occurred at Lucknow as the crime was committed at Lucknow. Secondly, based on the forged Board Resolution dated 01.10.2022 sale deeds were executed in favour of the purchasers fraudulently and the proceeds of sale were substantially deposited in the bank account of petitioners no. 1 and 2 at Lucknow, therefore, in view of Section 181(4) Cr.P.C. also F.I.R. could be lodged at Lucknow. As regards concealment of facts he submitted that whatever was relevant has been stated in the F.I.R. and proceedings which are said to be pending between the parties have nothing to do with the fabrication of the Board Resolution dated 01.10.2022 and misappropriation of money of the Company by the petitioners and other accused as also the criminal breach of trust and conspiracy in this regard. This is not a case where the dispute is purely of civil/ commercial nature which can be settled by resort to mediation, arbitration or civil remedies. There is an element of criminality involved as Board Resolution of the Company has been forged and fabricated. Based thereon fraudulent sale transactions have taken place and the Company has been deprived of its money by siphoning of substantial amount of the sale consideration to personal accounts of the petitioners. The allegations contained in the F.I.R. clearly spell out the criminality involved as also the guilt of the petitioners. The

petitioner no. 1 the wife of the petitioner no. 2 has been made an accused because some of the sale proceeds from the crime committed have been deposited in her account at Lucknow. It is not a case where ingredients of Sections in which the F.I.R. has been lodged were not made out. Neither there is lack of jurisdiction nor any valid ground for interference under Article 226 of the Constitution of India.

He submitted that based on the aforesaid Resolution dated 01.10.2022 fraudulent sale transactions were done from May, 2023 to November, 2023. The informant and his father came to know about 11 such fraudulent sale transactions and registeries on 01.01.2024, however, by then, they were not aware about the forging and fabrication of Board Resolution dated 01.10.2022. Accordingly, on 04.01.2024 a public notice was published to the effect that the petitioners were not authorized to sell the Flats of Marina Heights. On 08.01.2024 a Whatsapp message was received from one of the brokers about the Board Resolution dated 01.10.2022 in favour of the petitioner no. 2. Once, the petitioner no. 2 came to know that fraud committed by him had been revealed, in order to save himself, he gave a complaint to the Police at Chandigarh on 09.01.2024 alleging that the father of the informant, who is 78 years old, along with musclemen went to the office and took away relevant papers including the authorization letter i.e. Board Resolution. This complaint was lodged by petitioner no. 2 only to enable him to take the plea that he did not have the Board Resolution so that the forgery may not be established but, even after this complaint at least one sale deed was executed by petitioner no. 2 on 11.01.2024 which could not have been done without showing the Registrar the Board Resolution referred above. The aforesaid complaint is nothing but an attempt to cover up the forgery. This sale deed dated 11.01.2024 is mentioned at serial no. 32 in the list of deeds annexed by the petitioners as page 159 but, conveniently, while mentioning the same, date of the deed has been omitted for

obvious reasons as mentioned hereinabove. He submitted that in some of the sale deeds entire consideration had been received at Lucknow in the accounts of the petitioners. He invited attention of the Court to Annexure No. SA-2 to the short counter affidavit filed in the matter. Shri Mathur has also submitted that custodial interrogation was necessary for recovery of the Board Resolution regarding which a false story has been set up in the complaint dated 09.01.2024. He also invited our attention to the copy of the Board Resolution filed by the petitioners as Annexure No. 9 to the writ petition for a perusal of the same which is alleged to contain the signatures of the father of the informant and informant. He then invited our attention to see the signatures of the informant at Page 161 and that of his father at Page 165. He submitted that on a bare perusal from naked eyes the difference in the signatures is apparent and it does not require an expert opinion to arrive at a conclusion that the signatures on the alleged Board Resolution dated 01.10.2022 are forged and fabricated. He also asserted that in fact presence of the informant at Chandigarh on 01.10.2022 has falsely been shown as they were in Kolkata. The story set up by the petitioners that amount of Rs.25 lacs deposited by the other purchasers and accused Dhillon in the account of the petitioners was loan, is unacceptable and is nothing but an after thought, once this fact was mentioned by him during hearing. In support of his contentions he referred to decisions of Hon'ble the Supreme Court reported in *(2012) 3 SCC 132; Lee Kun Hee, President, Samsung Corporation, South Korea and Ors. Vs. State of Uttar Pradesh and Ors.(Paragraph 32 -42)*, *(2010) 1 SCC1; Rasiklal Dalpatram Thakkar Vs. State of Gujarat and Ors. (Paragraph 24-29)*, *(2011) 12 SCC 434; Kushal Kumar Gupta and Anr. Vs. Mala Gupta (Paragraph 5-7)*, *(2007) 5 SCC 786; Asit Bhattacharjee Vs. Hanuman Prasad Ojha and Ors. (Paragraph 19-22)*.

As regards requirement of custodial interrogation he referred two judgments reported in *(2019) 9 SCC 24; P. Chidambaram Vs. Directorate of Enforcement, 2017 SCC OnLine Del 9265; Prakash Gupta Vs. State of Delhi* and *(2023) 6 SCC 49; Central Bureau of Investigation Vs. Vikash Mishra @ Vikash Mishra*.

Shri S.P. Singh, learned A.G.A. appearing for the State submitted that prima facie, on a bare reading of the F.I.R. it can not be said that cognizable offence is not made out. Theft of documents has taken place at Lucknow and the petitioners are alleged to have committed the same. Proceeds of crime have been deposited at Lucknow which has not been denied in the writ petition at all. He has referred to Section 179, 180, 181(4) Cr.P.C. to drive home the point that the F.I.R. could be lodged at Police Station- Sarojni Nagar, Lucknow. The petitioner no. 2 has a criminal history of three cases including the case at hand, whereas, the petitioner no. 1 has a criminal history of two cases which has not been disclosed. He also informed the Court that he has instructions from the Economic Offences Wing of the police department which was investigating the matter that custodial interrogation was necessary for investigating the crime.

So far as the first contention of Sri S.C. Mishra, learned Senior Counsel for the petitioners regarding lack of jurisdiction for lodging of the FIR impugned herein and for investigation, Section 156(1) Cr.P.C. provides that - any officer in-charge of a Police Station may, without the order of Magistrate, investigate any cognizable case, which a Court having jurisdiction over the local area within the limits of said station would have power to inquire into or try under the provisions of Chapter- XIII. Sub Section-2 thereof provides that no proceeding of a police officer in any such case, shall, at any stage, be called into question, on the ground that the case was one in which such officer was not empowered under this Section to investigate. We may in this

context refer to Section 177 Cr.P.C. which is part of Chapter-XIII referred in Section 156(1) Cr.P.C., as, the jurisdiction of the Investigating Officer to investigate any cognizable case is interlinked with the jurisdiction of the Court to inquire into or try such cases. Section 177 Cr.P.C. provides that - every offence shall ordinarily be inquired into and tried by Court within whose local jurisdiction it was committed. Thus, it is the commission of the offence which gives jurisdiction to the Courts and correspondingly to the Investigating Officer to investigate it. In this context Section 178 Cr.P.C. is relevant which provides- a) when it is uncertain in which of several local areas an offence was committed, or b) where an offence is committed partly in one local area and partly in another, or c) where an offence is a continuing one, and continues to be committed in more local areas than one, or d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

We may in this very context refer to Section 179 Cr.P.C., according to which, when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. Thus, consequence ensuing from the commission of an offence can also give territorial jurisdiction to a Court to inquire or try an offence. Section 181 (4) Cr.P.C. is relevant in the context of any offence of criminal mis-appropriation or criminal breach of trust as is alleged herein and according to said provisions such an offence may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is subject to the offence was received or retained, or was required to be returned or accounted for by the accused persons.

Keeping in mind the aforesaid provisions when we go through the contents of the FIR, as territorial jurisdiction in the context of Section 156 Cr.P.C. read with provisions of Chapter- XIII is to be determined on a reading of the FIR itself and this Court cannot, at this stage, when the FIR has been lodged barely a few days ago i.e., on 26.01.2024 and investigation is still pending, enter into the material/evidence collected for determining the aforesaid issue, we find that the allegation is of forgery and fabricating a board resolution dated 01.10.2022, which was drawn at Chandigarh, Punjab. Based on the said resolution, it is alleged that the petitioner no.1 along with other accused executed 11 sale deeds in favour of several persons some of whom are also accused and the proceeds of such sale deeds were not deposited wholly in the account of the company, namely, Radiant Buildcon Pvt. Ltd., instead a substantial part thereof was misappropriated and the same was deposited either by online transaction/cheques or in cash in various accounts of the petitioners at Lucknow, meaning thereby, the proceeds of crime as alleged were transferred and retained at Lucknow in the accounts held by the petitioners. We are not concerned as to whether the allegations are correct or not. These questions cannot be gone into under Article 226 of the Constitution of India, at this stage, therefore, we have to determine the issue of territorial jurisdiction on the plain and simple reading of the FIR. In the FIR, we find details of such accounts where the sale considerations were deposited and which, as alleged, belong to the petitioners, have been given. Thus, not only there is allegation of theft of sale deeds at Lucknow which on a query being put to the counsel for the informant though referred as original sale deeds, is in fact a reference to certified copies of such sale deeds but, apart from it, the money received by the petitioner and the other accused from the sale deeds executed and registered by them at Chandigarh, Punjab, allegedly on the basis of forged and fabricated resolution of the Board

of Directors, was transferred to the accounts of the petitioners and deposited at Lucknow. Therefore, it is very difficult to accept at this stage the contention of Shri S. C. Mishra, learned Senior Counsel that the FIR could not have been lodged at P.S. Sarojni Nagar, Lucknow, nor the Investigating Officer of the said police station could inquire the crime. Not only theft has been alleged at Lucknow but the proceeds of crime based on the forged and fabricated board resolution dated 01.12.2022 have also been deposited in the bank accounts of the petitioners at Lucknow including the bank of petitioner no.2, who is the wife of petitioner no.1, though, not a director or employee of the company referred here-in-above, in which the petitioner no.1 was a director. As of now, it cannot be said that the offence or the consequence ensuing therefrom has not occurred within the territorial jurisdiction of Police Station- Sarojni Nagar, Lucknow and/or that the same was not amenable to inquiry or trial by the Court of competent criminal jurisdiction in the District Court at Lucknow having jurisdiction in respect of the said police Station. Based on bare reading of the FIR and the details contained therein this argument is liable to be rejected.

In arriving at this conclusion we, inter alia, rely upon the decision rendered by Hon'ble the Supreme Court in the case of ***Lee Kun Hee & Ors vs State Of U.P. & Ors.*** reported in ***(2012) 3 SCC 132*** wherein their Lordships had the occasion to consider the provisions of Section 179 Cr.P.C. Their Lordships have held that use of the words "anything which has been done" and "consequence which has ensued" in Section 179 Cr.P.C. substantially enlarges and magnifies the scope of jurisdiction contemplated under Section 179 Cr.P.C. so as to extend the same over areas contemplated by the two phrases. Under Section 179 Cr.P.C. even the places (wherein the consequence of the criminal act) "ensues" would be relevant to determine the Court of competent Jurisdiction. Therefore, even the Courts within whose local jurisdiction

the repercussion/effect of the criminal act occurs would have jurisdiction in the matter. In the said case a complainant was holding the bill of exchange at Ghaziabad in India, therefore, the Supreme Court opined *“that the consequence emerging out of the denial of encashment of the bill of exchange could be deemed to ensue at Ghaziabad in India. As such the competent Court at Ghaziabad India would have jurisdiction in the matter under Section 179 Cr.P.C.”* In this very context, Supreme Court considered the provisions of Section 181 (4) Cr.P.C., which in its opinion left no room for any doubt that culpability is relatable even to the place at which consideration is required to be returned or accounted for. In the case at hand, as already stated, the proceeds of the alleged crime were transferred and deposited in the bank accounts of the petitioner at Lucknow and were retained therein, therefore, Section 181(4) Cr.P.C., according to which any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the evidence was received or retained, or was required to be returned or account for by the accused persons, gets attracted. Initial crime in this case, as alleged, is the fabrication of board resolution dated 01.12.2022 at Chandigarh, based thereon the execution and registration of sale deeds, by which flats constructed by Radiant Buildcon Pvt. Ltd. were sold off by the petitioners unauthorisedly in criminal breach of trust and the proceeds therefrom were not deposited in the company's account, instead they were wholly or substantially or partly deposited in their personal accounts at Lucknow. This of course, is coupled with the allegation of theft of the sale deeds at Lucknow. The latter gives a cause of action wholly at P.S.- Sarojni Nagar, whereas the former would be covered under Section 179 Cr.P.C. and Section 181(4) Cr.P.C. at least at this stage.

Thus, on a perusal of FIR it cannot be said that no part of cause of action has arisen within the territorial jurisdiction of P.S. Sarojni Nagar commissionerate of Lucknow. We may in this context also refer to decision of Hon'ble Apex Court in the case of ***Kushal Kumar Gupta and another Vs. Mala Gupta*** reported in ***(2011) 12 SCC 434***.

This apart we may once again refer to Section 156 (2) which categorically provides that no proceeding of a police officer, which obviously means proceeding of investigation referred therein in sub-section 1, in any such case shall at any stage be called in question on the ground that the case was one in which such officer was not empowered under this Section to investigate. We may in this context refer to decision of Hon'ble Apex Court in the case of ***Rasiklal Dalpatram Thakkar vs State Of Gujarat & Ors.*** reported in ***(2010) 1 SCC 1***, wherein their Lordships of the Supreme Court of India considered the said provisions and opined that sub Section 2 of Section 156 Cr.P.C. ensures that once an investigation is commenced under sub Section (1), the same is uninterrupted on the ground that the police officer was not empowered under the Section to investigate. It is in the nature of "savings clause" in respect of investigation undertaken in respect of cognizable offences. We may also refer to the decision of Hon'ble Supreme Court in the case of ***Satvinder Kaur vs State (Govt. Of N.C.T. Of Delhi) And Anr.*** reported in ***(1999) 8 SCC 728***, wherein considering the same provision it was inter-alia opined that sub-section 2 of Section 156 makes the position clear by providing that no proceeding of a police officer in any such case shall at any such stage be called in question on the ground that the case was one in which such officer was not empowered to investigate. After investigation is completed, the result of such investigation is required to be submitted as provided under Sections 168, 169 and 170 Cr.P.C. Section 170 Cr.P.C. specifically provides that if, upon investigation, it appears to the officer in charge of the police station that there is a sufficient

evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate, such officer shall forward the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit for trial. Further, if the investigating officer arrives at the conclusion that the crime was not committed within the territorial jurisdiction of the police station, then FIR can be forwarded to the police station having jurisdiction over the area in which the crime is committed. But this would not mean that in a case which requires investigation, the police officer can refuse to record the FIR and/or investigate it. In view of the above, Section 156 (2) Cr.P.C. also comes in the way of the petitioner in succeeding on the aforesaid account.

For all these reasons, the first submission regarding lack of jurisdiction is rejected, subject to what has already been held by the Hon'ble the Supreme Court in the case of ***Satvinder Kaur (supra)***, as noticed above.

This is not a case where FIR has been lodged against a company, but a case where the FIR has been lodged against individuals, one of whom is the Director.

As regards the second submission that dispute is essentially of civil/commercial nature, therefore, action under criminal law is unwarranted, we do not find any merit in this submission also as allegations against the petitioner no.1 is of having fabricating and forging a board's resolution dated 01.10.2022 and based thereon to have executed and registered several sale deeds and thereby committing offence of criminal breach of trust, as the sale deed were in respect of flats which had been constructed by the company namely Radiant Buildcon Pvt. Ltd. and there was no authorization by the company in favour of petitioner no.1 for selling of the said flats.

Moreover, it is also the allegation that the proceeds of said crime were misappropriated by the petitioner no.1 by transferring and depositing the same in his bank account and that of his wife at Lucknow.

Now, whether the allegations are correct or not cannot be seen under Article 226 of the Constitution of India at this stage as this is a matter of investigation, unless, of course it was a case where it was apparently incorrect and there could be no two views about it. The contention of Shri S.C. Mishra, learned Senior Counsel in this context that the petitioner no.1 had not been paid the remuneration for quite some time and there was a understanding between the company and the petitioner no.1 that he would be paid from the sale receipts by sale of the aforesaid flats.

As regards the contention of Shri S.C. Mishra, learned Senior Counsel that the company and the informants were all along aware of the transactions being made by the petitioner no.1 on behalf of the company but no objection were raised and the FIR has been lodged only on 26.01.2024, belatedly, merely because of initiation of various proceedings by the petitioner no.1 against the company and its directors, as noticed here-in-above, therefore, it is a mala-fide action, Shri J.N. Mathur, learned counsel for the informant submitted that they came to know about the board resolution dated 01.10.2022 only on 08.01.2024 and thereafter they issued another public notice on 11.01.2024 and also approached the police authorities concerned who opined that a detailed application would be required, setting out in detail the events which had taken place, constituting a crime whereupon a written complaint was made and FIR was lodged on 26.01.2024 and no advantage can be taken by the petitioners merely on the aforesaid ground. He submitted that even after coming to know of the public notice issued by the company the petitioner no.1 executed and got registered a sale deed as is evident from the list of sale deeds

annexed with the writ petition but he has cleverly not mentioned the date of execution of such sale deed in favour of Ms. Shalini Chaudhary which, in fact, appears to have been executed on 11.01.2024. In our opinion ground raised by Shri S. C. Mishra, learned Senior Counsel by itself cannot be the basis for its quashing. This is a defence of the accused petitioners and it is not for this Court under Article 226 of the Constitution of India to go into these factual issues. We have gone through the material on record relating to the proceedings initiated by the petitioner no.1 as already noticed in the earlier part of the judgment but even these documents do not persuade us to hold that it is a purely civil or commercial dispute, considering the allegations made in the FIR. We may in this context refer to the decision of the Hon'ble Supreme Court in the case of *Lee Kun Hee (supra)* (para 73). We are of the opinion that considering the nature of the offence alleged to have been committed by the petitioners, there can be civil liability coupled with criminal culpability. Moreover, considering the allegations regarding forging and fabrication of board resolution dated 01.10.2022 and also mis-appropriating the proceeds of sale deeds executed based thereon it can give rise to criminal culpability/liability also. Many of the proceedings referred by Shri S. C. Mishra, learned Senior Counsel are unrelated to the allegations in the FIR. To say that the aforesaid dispute is the background which has led to false implication does not cut much ice as of now, unless the allegations are found to be false during investigation. On a bare reading of the FIR it cannot be said that the offences alleged are not cognizable or are not made out, at least at this stage. The proceedings challenging the decision of Board of Directors proposing to remove him through petitioner no.1 from the post of Director of the company would not involve an inquiry or investigation into the allegations of forgery and fabrication of the board resolution or at least it would not preclude an investigation by

the police as, if proved, this may amount to a criminal offence. We, therefore, reject the second submission also.

The third submission is with regard to concealment of proceedings referred by Shri S.C. Mishra, learned Senior Counsel, which according to him, were the background for filing of the FIR. We do not find any substance in this submission also. None of the said proceedings relied by Shri S. C. Mishra, learned Senior Counsel and as recorded by us while noticing his arguments, have any direct bearing on the allegations in the FIR so as to preclude a criminal investigation into such allegations or a judicial review of validity of the FIR under challenge before us. From a bare reading of the FIR it cannot be said that no cognizable offence is made out.

The explanation offered by Shri S.C. Mishra, learned Senior Counsel with regard to deposit of one of the amounts in the account of one of the purchasers who is also an accused, i.e., Mr. Dhillon to the effect that it was a loan extended by said Mr. Dhillon to the petitioner no.1, is a plea of defence and we cannot go into this plea at this stage under Article 226 of the Constitution of India. We must put it on record that Shri J. N. Mathur, learned counsel appearing for the informant submitted that this was a fantastic plea which no prudent person could accept but we say no more in this regard.

Shri Mathur also invited our attention to the signatures on the board resolution dated 01.10.2022, which according to the FIR is forged and fabricated, conjointly with another resolution bearing the signatures of some of the signatories of the forged resolution to contend that on a perusal from naked eyes itself the forgery and fabrication was apparent, however, we do not express any opinion in this regard also.

Having gone through the contents of the FIR and even at the cost of repetition we may say that this is not a case where the FIR should be quashed under Article 226 of the Constitution of India.

We accordingly do not find any merit in the case. This, of course, is without prejudice to the rights of the petitioners in the pending investigation and also to avail such other remedies as may be prescribed in law.

Subject to above, we **dismiss** this writ petition.

(Narendra Kumar Johari,J.) (Rajan Roy, J.)

Order Date :- 20.03.2024

R.K.P./Vipul