

Neutral Citation No. - 2025:AHC:106714

Reserved on 28.05.2025

Delivered on 08.07.2025

Court No. -79

Case :- APPLICATION U/S 482 No. - 32420 of 2016

Applicant :- Sanjeev Kumar Jain And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Santosh Kumar Tripathi

Counsel for Opposite Party :- G.A.,S.B.Singh

Hon'ble Prashant Kumar,J.

1. Heard Shri Santosh Kumar Tripathi, learned counsel for the applicants, Shri Shashidhar Pandey, learned AGA for the State respondents, Shri Vimlendu Tripathi along with Sri Deepesh Kumar and Sri Prashant Tripathi, learned counsel for opposite party no.2 and perused the record.

2. The instant application under Section 482 Cr.P.C. has been filed with the prayer to quash/set-aside the further proceedings as well as the order dated 6.7.2016 passed by the Additional Chief Judicial Magistrate-3rd, District Ghaziabad in complaint case no.4523 of 2015 under Sections 420, 467, 468, 471 and 120-B IPC and also the order dated 28.9.2016 passed by the Additional Sessions Judge, Court No.15, District Ghaziabad in Criminal Revision No.169 of 2016.

FACTUAL MATRIX

3. The opposite party no.2 is the Managing Director of a Company known as M/s Devidyal Aluminium Industries Pvt. Ltd. (earlier known as "Hindustan Chains Pvt. Ltd."), which had entered into an agreement with M/s Parsvnath Developers Limited (PDL) and M/s Parsvnath Buildwell Private Limited (PBPL) for constructing residential flats on the land which belonged to opposite party no.2. The agreement was executed between the parties, which had terms and conditions enumerated in it. It is alleged that the applicant no.1, Sanjeev Kumar Jain was the Managing Director and Authorized Signatory, applicant no.2, Pradeep Jain was the Chairman and applicant no.3, Sandeep Jain was the director of M/s Parsvnath Developers Limited. The day-to-day functioning of M/s Parsvnath Developers Limited

was carried out by Shri Sanjeev Kumar Jain and Shri Pawan Gupta as as they were the responsible persons for day to day functioning of the builder Companies (PDL & PBPL).

4. As per the agreement it was the responsibility of the applicants and their company for construction of the residential towers and sale of the same to the prospective buyers and for that it was the responsibility of the applicants and their company to get a 'No Objection Certificate' and other permission from all the authorities.

5. After getting all the permissions, the opposite party no.2 entered into an re-agreement known as "Assignment of Development Rights Agreement" on 28.12.2010 with M/s Parsvnath Buildwell Pvt. Ltd along with other companies. With this assignment letter a separate general power of attorney was executed by opposite party no.2 in favour of PBPL and other stakeholders to deal with all the authorities, for development of the project, on behalf of opposite part no.2. This general power of attorney was the part of the assignment agreement.

6. As per the agreement of "Assignment of Development Rights" on the land of opposite party no.2, the sale certificate of the flats was to be executed by opposite party no.2 to the prospective flat owners and the proceeds of the said flats was to be divided into ratio of 81.5% : 18.5% respectively between M/s Parsvnath Buildwell Private Limited and opposite party no.2.

7. In this agreement the time given for completion of project was 36 months, which was to end on 28.12.2013, however, there was an extension clause of six months. Even after the completion of this agreed period as well as grace period of six months a very limited work was carried out inspite of time being the essence in the agreement dated 28.12.2010. After the completion of the period when the project was not completed, a legal notice was sent on behalf of opposite party no.2 on 04.08.2014. The relevant paragraph of the notice dated 04.08.2014 is quoted hereunder:-

"6. Since the Agreement themselves are cancelled, as a necessary corollary the General Power of Attorney dated 28.12.2010 given for execution of obligations of

you M/s Parsvnath Developers Limited and you M/s Parsvnath Buildwell Private Limited is also hereby cancelled and revoked”.

By this legal notice, General Power of Attorney was revoked.

8. The sanction of the map by the Ghaziabad Development Authority (in short “GDA”), which was approved on 17.03.2007, expired after five years on 16.03.2012 because the project was not completed in time for which the builders had moved an application on 08.01.2015 requesting for the revalidation of the map, which was rejected by the GDA vide order dated 26.08.2015. The order dated 26.08.2015 is quoted hereunder:-

गाजियाबाद निकास प्राधिकरण
विकास पथ, गाजियाबाद।

पत्रांक

दिनांक:

सेवा में,

श्री संजीव जैन (अधिकृत हस्ताक्षरी)

में हिन्दुस्तान चेन्स प्रा०लि०

"पार्श्वनाथ एकजोद्विका

149, जी०डी०रोड अर्थल, गाजियाबाद।

विषय:- मानचित्र सं० 1169/टी.एम.ए./जी.एच./2006 दिनांक 15.2.07 के ग्राम अर्थला एकजोद्विका के सम्बन्ध में।

कृपया उपरोक्त विषयक आपके पत्र दिनांक 3.7.15 के सम्बन्ध में सूचित करना है कि प्रश्नगत प्रकरण में विधिक राय के अनुसार एसाइन्मेन्ट आफ डवलपमेन्ट राईट्स एग्रीमेन्ट के पैरा 15(1) के अनुसार अनुबन्ध दिनांक 20.12.15 के अनुसार परियोजना पूर्ण करने की अवधि 30 थी जिसमें 6 माह का ग्रेस पीरिएट दिये जाने का प्राविधान है तथा 17(2) के अनुसार अनुबन्ध के प्राविधानों के तथ्यों की आपसी सहमति से निस्तारित किये जाने की व्यवस्था है। उक्त सम्बन्ध में कोई विवरण पत्रावली पर उपलब्ध नहीं है। ऐसी स्थिति में अनुबन्ध समाप्त है। साथ ही यह भी सूचित करना है कि मानचित्र सं० 1169/टी.एम.ए./ जी.एच./2006 दिनांक 15.2.07 के समयावधि 6 वर्ष के लिए थी जो समाप्त हो चुकी है अतः आपके प्रार्थना पत्र पर विचार किया जाना संभव नहीं है।

भवदीय,
आर०सी०पाण्डेय
नगर नियोजक

9. It is alleged that M/s Parsvnath Buildwell Private Limited could not succeed in getting the earlier sanctioned map (which had lapsed with efflux of time) re-approved, now hatched a conspiracy by forging the letter head of opposite party no.2 applied for further extension of the earlier agreement executed on 28.12.2010 on forged letter of “Hindustan Chains Pvt. Ltd.” dated 08.07.2015, which was presented before the Chief Architect Town Planner of Ghaziabad Development Authority which was rejected. The said letter head was different to the letter head addressed by opposite party no.2 on earlier occasion to GDA dated 20.10.2006 and 01.02.2007.

10. When opposite party no.2 came to know about that letter, they informed the GDA that this is a forged letter and no further request should be entertained by the builders on behalf of opposite party no.2 as the agreement and General Power of Attorney was revoked.

11. The opposite party no.2 feeling duped because of the forged letter head filed before the GDA claiming to be their filed an application under Section 156 (3) Cr.P.C. The contents of the application was as under:-

परिवादी निम्न निवेदन करता है:-

1. यह कि "मै० देविदयाल एल्मुनियम इण्डस्ट्रीज प्रा० लि० (पूर्व नाम हिन्दुस्तान चैन्स प्रा० लि०) एक प्राईवेट लि० कम्पनी है जो कम्पनी अधिनियम 1956 के प्रावधानों के अन्तर्गत पंजीकृत है जिसका पंजीकृत कार्यालय "होटल गोपाल प्लाजा छोटी बजरिया रेलवे रोड निकट घंटाघर गाजियाबाद उत्तर प्रदेश" है तथा राजकुमार अग्रवाल उक्त कम्पनी के मैनेजिंग डायरेक्टर व अधिकृत हस्ताक्षरी है चूंकि उक्त राजकुमार अग्रवाल की आयु 76 वर्ष है तथा उनका स्वास्थ्य भी अक्सर सही नहीं रहता है इस कारणवश उनके द्वारा अपने अकाउंटेंट व अधिकृत हस्ताक्षरी गिरीश प्रसाद मेहरा पुत्र आर०पी० मेहरा कार्यालय होटल गोपाल प्लाजा छोटी बजरिया रेलवे रोड निकट घंटाघर थाना कोतवाली गाजियाबाद को उक्त परिवाद को प्रस्तुत करने हेतु अधिकृत किया गया है।

2. यह कि परिवादी भूमि क्षेत्रफल लगभग 31 एकड़ स्थित ग्राम अर्थला, परगना लोनी, तहसील व जिला गाजियाबाद सम्बन्धित खसरा नं०-1216, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1240, 1241, 1242, 1243, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1226, 1227, 1228, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1213, 1258, 1253, 1254, 1255/1, 1255/2, 1259, 1262, 1287 1288, 1291, 1292, 1293, 1294, 1260, 1261, 1252, 1244 1271/2, 1218, 1162, 1271, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1257, 1163, 1256, 1273, 1274, 1230, 1229, 1217, 1296, 1397, 1313, 1312, 1330, 1244, 1218, 1217, 1295, 1296, 1297 (फुल खसरा नं०-79) के मालिक व काबिज बजरिये संक्रमणीय भूमिधर चले आते हैं। (ऐतदपश्चात् उक्त भूमि को परिवादी की प्रश्रगत भूमि वर्णित किया गया है)

3. यह कि विपक्षी सं०-1, 2 व 4 "मैसर्स पार्सवनाथ डवलर्पस लि० व मैसर्स पार्सवनाथ बिल्डवैल प्रा० लि० व पार्श्वनाथ डवलर्पस लि०" के क्रमशः मैनेजिंग डायरेक्टर, चेयरमैन व डायरेक्टर हैं तथा 'मैसर्स पार्सवनाथ बिल्डवैल प्रा० लि० व पार्श्वनाथ डवलर्पस लि०' के समस्त कार्यों को विपक्षी सं०-1 ता 5 द्वारा क्रियान्वित किया जाते हैं तथा उसके समस्त कार्यों के लिये विपक्षी सं०-1 ता 5 ही उत्तरदायी हैं।

4. यह कि विपक्षीगण के द्वारा परिवादी के समक्ष परिवादी की उक्त वर्णित प्रश्रगत भूमि पर 45 मीटर ऊँचाई वाले फ्लैटों के 30/35 टॉवरों का निर्माण करके उन फ्लैट्स को सम्बन्धित क्रेतागण को विक्रय करने हेतु प्रस्ताव रखा गया था जिसके लिये परिवादी ने अपने खर्चे पर गाजियाबाद विकास प्राधिकरण से मानचित्र स्वीकृत कराकर हिंडन एयरफोर्स से अनापत्ति प्रमाण पत्र प्राप्त करके विपक्षीगण को उपलब्ध करायी थी तथा अन्य सम्बन्धित भिन्न-2 विभागों से अनापत्ति प्रमाण पत्र प्राप्त करके फ्लैट्स का निर्माण करने का उत्तरदायित्व विपक्षीगण का था।

5. यह कि इसी उद्देश्य की पूर्ति हेतु परिवादी व विपक्षीगण के मध्य एक असाईनमेंट ऑफ डवलपमेन्ट राईट्स एग्रीमेन्ट ASSIGNMENT OF DEVELOPMENT RIGHT AGREEMENTS") दिनांक 28.12.2010 को परिवादी व विपक्षीगण पार्श्वनाथ बिल्डवैल के मध्य निष्पादित हुआ था तथा उक्त असाईनमेंट एग्रीमेन्ट दिनांक 28-12-2010 कार्यालय सब रजिस्ट्रार द्वितीय गाजियाबाद में बही नं०-1 जिल्द नं० 4439 के पृष्ठ सं०-79 से 108 पर क्रम सं०-9717 पर दिनांक 28.12.2010 को पंजीकृत हुआ था। (ऐतदपश्चात् परिवाद पत्र में उक्त "ASSIGNMENT OF DEVELOPMENT RIGHTS AGREEMENTS" को संक्षिप्त में "असाईनमेंट एग्रीमेन्ट दि 28.12.2010" वर्णित किया गया है।)

6. यह कि उक्त असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 की शर्तों के अनुसार परिवादी की प्रश्रुत भूमि पर निर्मित होने वाले फ्लैटों का विक्रय पत्र विपक्षीगण के द्वारा वर्णित सम्बन्धित क्रेतागण को परिवादी के द्वारा निष्पादित किया जाना था तथा सम्बन्धित प्लैट्स के विक्रय होने से प्राप्त प्रतिफल की धनराशि में से 81.5 प्रतिशत धनराशि का भुगतान विपक्षीगण को प्राप्त होना था तथा शेष 18.5 प्रतिशत धनराशि परिवादी को प्राप्त होनी थी।
7. यह कि उक्त असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 की तयशुदा शर्तों के अनुसार परिवादी की प्रश्रुत भूमि पर विपक्षीगण के द्वारा समस्त फ्लैट्स का निर्माण असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 से 36 माह की अवधि के अन्दर पूर्ण करना था तथा इस अवधि के अन्दर निर्माण कार्य पूर्ण ना होने की दशा में 6 माह का अधिकतम ग्रेस पीरियड/अवधि प्रदान किया जाना था परन्तु उक्त 36+ 6 अर्थात् कुल 42 माह की समयअवधि के उपरान्त भी कार्य पूर्ण ना होने की दशा में नियत समय सीमा को आगे बढ़ाये जाने का कोई प्राविधान असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 में नहीं था।
8. यह कि यहाँ यह वर्णित करना अत्यंत महत्वपूर्ण है कि उक्त 6 माह का ग्रेस पीरियड उसी स्थिति में बढ़ाया जाना तय हुआ था जब विपक्षीगण के द्वारा शेष कार्य को 6 माह की अवधि में पूर्ण होना अवश्यभावी होना निश्चित हो अर्थात् यदि 6 माह की अवधि में विपक्षीगण के द्वारा शेष बचे हुए निर्माण कार्य को पूर्ण करके उसका विक्रय पत्र निष्पादित करने के लिये 6 माह की अतिरिक्त अवधि की आवश्यकता पड़ने पर ही उक्त ग्रेस अवधि को प्रदान करने का प्राविधान था अन्यथा किसी भी सूरत में उक्त 6 माह की ग्रेस अवधि को प्रदान करने का प्राविधान नहीं था।
9. यह कि यद्यपि परिवादी व विपक्षीगण के मध्य प्रश्रुत भूमि पर फ्लैटों के निर्माण समय सीमा दि० 27.12.2013 तक तथा ग्रेस अवधि सहित अधिकतम अवधि दि० 27.06.2014 तक थी परन्तु विपक्षीगण के द्वारा आग्रह किये जाने पर व फ्लैट्स के सम्भावित क्रेतागण के हित को दृष्टिगत रखते हुए परिवादी के द्वारा मौखिक रूप से उक्त अवधि को धीरे-2 करके दि० 22.12.2014 तक बढ़ा दिया था परन्तु दि० 22.12.2014 के बाद से विपक्षीगण के द्वारा प्रश्रुत फ्लैट्स के निर्माण की बाबत ना तो कोई प्रयास किया गया है और ना ही इस बाबत कोई अन्य धनराशि दिनांक 24.06.2015 के बाद से परिवादी को अदा की है इस कारण वश भी उक्त असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 पूर्ण रूप से निष्प्रभावी हो चुका था इसी कारण वश विपक्षीगण के द्वारा परिवादी की शेष धनराशि दिये बिना ही उक्त भूमि को हड़पने का मंसूबा बना लिया था।
10. यह कि दिनांक 27.06.2014 के उपरान्त उक्त असाइनमेंट एग्रीमेंट दिनांक 28.12.2010 स्वतः ही शून्य व निरस्त होने व उसकी कोई पाबन्दी परिवादी या उनके वारिसान पर नहीं है तथा परिवादी के द्वारा उक्त आशय का एक पंजीकृत कानूनी नोटिस दिनांक 04.08.2014 व एक रिमाईण्डर नोटिस दिनांक 16.08.2014 अपने अधिवक्ता श्री जे०एम० बारी एडवोकेट दिल्ली के विपक्षीगण को प्रेषित किया था परन्तु उक्त नोटिस व रिमाईण्डर नोटिस का गलत व मिथ्या उत्तर विपक्षीगण के द्वारा दिनांक 02.09.2014 को परिवादी को दिलाया गया था।
11. यह कि असाइनमेंट एग्रीमेंट दि० 28.12.2010 के अनुपालन में परिवादी की प्रश्रुत भूमि पर फ्लैट्स के निर्माण हेतु गाजियाबाद विकास प्राधिकरण के द्वारा जो मानचित्र नक्शा दिनांक 17.03.2007 को स्वीकार किया गया था जिसकी अन्तिम तिथि 16.03.2012 थी वह अधिकतम ग्रेस अवधि सहित 27.06.2014 के उपरान्त से निरस्त हो चुका है तथा उक्त नक्शे की पुनः स्वीकृत कराने हेतु विपक्षीगण के द्वारा गा०वि०प्रा० के कार्यालय में एक पत्र दि० 08.01.2015 प्रेषित किया गया था जिसको जी०डी०ए० के द्वारा दिनांक 26.08.2015 को अस्वीकार किया जा चुका था।
12. यह कि जब विपक्षीगण अपने उक्त उद्देश्य में कामयाब नहीं हो सके तो अपने गलत उद्देश्यों की पूर्ति हेतु विपक्षीगण के द्वारा आपस में षड्यंत्र रचकर परिवादी की कम्पनी का फर्जी व कूटरचित लैटरहेड बनाकर परिवादी की फर्जी अधिकारिता प्राप्त होने का एक फर्जी व कूटरचित पत्र दिनांक 08.07.2015 को चीफ आर्किटेक्ट टाऊन प्लानर गाजियाबाद विकास प्राधिकरण को प्रेषित किया था तथा उक्त पत्र के माध्यम से विपक्षीगण के द्वारा गाजियाबाद विकास प्राधिकरण से प्रश्रुत फ्लैटों के निर्माण की बाबत रिवाईज्ड प्लान स्वीकृत कराने हेतु आवेदन किया था परन्तु गा०वि०प्रा० के द्वारा उस आवेदन को दिनांक 26.08.2015 को अस्वीकार कर दिया गया है।

13. यह कि उक्त फर्जी व कूटरचित पत्र दिनांक 08.07.2015 की बाबत मुकदमा पंजीकृत करने व उचित कार्यवाही करने की बाबत परिवादी ने एक पत्र दिनांक 03.09.2015 को कार्यालय गाजियाबाद विकास प्राधिकरण में प्रेषित किया था परन्तु उनके द्वारा उस जाली व फर्जी कूटरचित प्रार्थना पत्र दिनांक 08.07.2015 पर कोई कार्यवाही ना करके उक्त कूटरचित पत्र दिनांक 08.07.2018 पर विपक्षीगण के पक्ष में कार्यवाही प्रारम्भ कर दी है जिसकी बाबत गाजियाबाद विकास प्राधिकरण के द्वारा दिनांक 19.10.2015 को विपक्षीगण को सूचित किया था जिसकी एक प्रति उनके द्वारा परिवादी को भी प्रेषित की गयी थी इस प्रकार विपक्षीगण के द्वारा जाली व कूटरचित प्रार्थना पत्र दिनांक 08.07.2015 को असल के रूप में प्रयोग करके उसका लाभ लेने में कामयाब हो गये हैं।

14. यह कि ऐसी दशा में उपरोक्त कारणोंवश विपक्षीगण के द्वारा परिवादी के विश्वास को भंगकर/तोड़कर व धोखाधड़ी व जालसाजी करके परिवादी की कम्पनी का फर्जी व जाली लैटरहेड तैयार करके उसपर परिवादी की ओर से फर्जी जाली पत्र कूटरचित करके उसको असल के रूप में प्रयोग करके उसकी संदोष-हानि परिवादी को पहुँचाकर स्वयं संदोष-लाभ प्राप्त करने के लिये विपक्षीगण को अंधारा 420/467/468/471/120 बी आई०पी०सी० मा० न्यायालय में तलब किया जाकर वाद विचारण विपक्षीगण को दण्डित किया जाना न्याय की दृष्टि में अति आवश्यक है।

अतः श्रीमान जी से निवेदन है कि उपरोक्त कारणोंवश विपक्षीगण के द्वारा परिवादी के विश्वास को भंगकर/तोड़कर धोखाधड़ी व जालसाजी करके परिवादी की कम्पनी का फर्जी व जाली लैटरहेड तैयार करके उसपर परिवादी की ओर से फर्जी व जाली पत्र कूटरचित करके उसको असल के रूप में प्रयोग करके उसकी संदोष-हानि परिवादी को पहुँचाकर स्वयं संदोष-लाभ करने प्राप्त करने के लिये विपक्षीगण को अंधारा-420/467/468/471/120 बी आई०पी०सी० मा० न्यायालय में तलब किया जाकर बाद विचारण विपक्षीगण को दण्डित किये जाने की कृपा की जाये।

दिनांक 09.11.2015

परिवादी

राजकुमार अग्रवाल पुत्र श्री गोपाल दास अग्रवाल द्वारा
अकाउंटेंट व अधिकृत हस्ताक्षरी गिरीश प्रसाद मेहरा
पुत्र स्व० आर०पी० मेहरा आयु 56 वर्ष कार्यालय
होटल गोपाल प्लाजा छोटी बजरिया रेलवे रोड निकट
घंटाघर थाना कोतवाली जिला गाजियाबाद।

Meanwhile, the prospective flat buyers, who had invested a huge amount having realized that they have been duped and nothing is coming up some of them have approached the Consumer Forum and some of them before the other authorities. Under the pressure, it is alleged that the developers had moved a forged letter on 08.07.2015.

12. In the aforesaid application, after adducing evidence summons were issued on 06.07.2016. The same have been assailed by means of instant application.

ARGUMENT ON BEHALF OF THE APPLICANTS

13. Sri Santosh Kumar Tripathi, learned counsel for the applicants submits that the impugned letter dated 08.07.2015 was written by somebody else and

the applicants have got nothing to do with it. He further submits that even though opposite party no.2 had filed a complaint on 09.11.2015 before the Additional Chief Judicial Magistrate, Ghaziabad but there was no allegation in the said complaint against the company or the directors and, hence, no summons could have been issued against them. He further submits that the applicant no.1, had resigned on 16.05.2015 before the alleged letter dated 08.07.2015 and, hence, no offence can be said to have been made out against the applicants. He was not the director at the time when the letter was sent to the GDA. He further submits that since the company was not made a party in the complaint so no proceeding can be initiated against the directors/applicants of the company.

14. He further submits that for the same set of dispute, Arbitration Proceedings are there and there is no rational for initiating Criminal Proceedings for the same set of dispute. To buttress his argument, learned counsel for the applicants has placed reliance on the judgement of Hon'ble Apex in the case of **Maa Annamalai Vs. State of Karnataka and another**¹ in which it has been held that in absence of basic ingredients, no person be compelled to face the criminal prosecution. The relevant paragraph of said judgement are quoted hereunder:-

“We have carefully considered the rival contentions. It emerges that:

a) In the instant case, the appellant ceased to be a Director of the company from 27.12.1997 whereas the alleged offences, if any, were committed during the period from 24.5.1998 to 17.9.1999.

b) Admittedly, there are no allegations against the appellant in the First Information Report.

c) The company had invited investment from the depositors to invest in the business/benefit funds after receiving due approval of the scheme from the Reserve Bank of India. Therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination.

d) The complainant/respondent no.2 submitted in writing to this Court that he does not want to proceed against the appellant because according to him the appellant has been inadvertently included as an accused by the Investigating Officer. He further mentioned in the letter that he had already received 55% of the deposited amount from the Official Liquidator and he did not want to proceed against the appellant.

e) Even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in absence of any allegations and material to show that the appellant was in-charge of or responsible for the conduct of the

¹ 2010 (8) SCC 524

company's business which had given rise to the offence. From any angle of the matter, the appellant cannot be compelled to face the criminal trial in this case.

42. The inherent power should not be exercised to stifle the legitimate prosecution but at the same time no person be compelled to face criminal prosecution if basic ingredients of the alleged offence against him are altogether absent.

43. On consideration of the totality of the facts and circumstances of this case, the impugned judgment of the High Court is set aside and the appeal is allowed and the proceedings initiated against the appellant on the basis of the complaint registered as CC 22656 of 2001 pending before the Xth Addl. Chief Metropolitan Magistrate, Bangalore, are quashed.”

15. He further relied on the judgement of in the case of **Sharad Kumar Sanghi Vs. Sangita Rane**² wherein it is held that when a company has not been arrayed as a party by the complainant no criminal proceeding can be initiated against the Chairman, Managing Director and Directors.

16. Learned counsel for the applicants further relied on the judgement of Hon'ble Apex Court in the case of **Shiv Kumar Jatia Vs. State of NCT of Delhi**³ wherein it has been held that Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Director of the Company when the company is an accused. Hence, until and unless the company is made a party no proceeding can be initiated against the applicants.

17. Further there is an arbitration proceeding going on between the parties for the same set of dispute, there is no reason for initiating a criminal proceedings and the same has been instituted in a malafide manner just to put undue pressure on the applicants for some kind of settlement.

18. Learned counsel for the applicants further placed reliance on the judgement of Bombay High Court in the case of **Satish D. Sanghavi v. Union of India and others**⁴.

2 (2015) 12 SCC 781

3 (2019 (17) SCC 193

4 2012 (171) CompCas 309

ARGUMENT ON BEHALF OF OPPOSITE PARTY NO.2

19. Per contra, Sri Vimlendu Tripathi, learned counsel for opposite party no.2 submits that there was neither any reason nor any occasion for opposite party no.2 to send that alleged letter especially when they themselves had requested the GDA not to entertain any application on their behalf and when the agreement was revoked.

20. He further submits that the defence of the applicants that they were not connected with the day-to-day affairs of the companies is not supported by any unimpeachable/uncontroverted memorandum/certificate and the same is a matter of fact and is in the realm of the trial Court depending upon appreciation of evidence. It is only the applicants, who could have been benefited by the alleged letter. Hence, there is not an iota of doubt that the forged letter was written/sent by the applicants.

21. He further submits that the submission on behalf of the applicants that there is an arbitration going on, hence, criminal proceeding should not be initiated is incorrect. To buttress his argument he is placing on the judgement of Delhi High Court in **Hero Fincorp Limited v. State (NCT of Delhi) and another⁵**. He further submits that the argument of the applicants that it is a civil dispute, in which no criminal proceeding can be initiated in reply it is submitted that this is a case of forgery of documents, which is apparently forged and for which divergent stand is being taken by the applicants and three applications are connected to each other. He further submits that in paragraph no.31 of leading case they have accepted that the applicants have authority to sign the letter. For ready reference paragraph no.31 of the instant application is quoted as under:-

“That the applicants Company as constituted rights by Development Rights Agreement and General Power of Attorney both dated 28.12.2010 has written a letter dated 08.07.2015 to Ghaziabad Development Authority to sanction the revised plan which is not accepted by the Ghaziabad Development Authority.”

22. In response to the fact that the applicants have submitted resignation prior to such letter is doubted by opposite party no.2. The authenticity of the resignation letter is doubted. He further submits that if a document is

⁵ 2022 SCC OnLine Del 25

doubted it can only be seen in trial after adducing evidence, and hence, the resignation letter, which is under doubt cannot be considered in an Application U/S 482 Cr.P.C. as it is a defence of other side.

23. Under these facts and circumstances, the matter can only be adjudicated after adducing evidence, which can only be done by the trial Court.

FINDINGS

24. Heard learned counsel for the parties and perused the record.

25. In this case, the applicants were the Directors of Real Estate Development Company known as M/s Parsvnath Developers Limited (PDL) and M/s Parsvnath Buildwell Private Limited (PBPL). The developer company had entered into an agreement with M/s Devidayal Aluminium Industries Pvt. Ltd (formerly known as Hindustan Chains Pvt. Ltd.) for development of the residential project on the land belonging to M/s Devidayal Aluminium Industries Pvt. Ltd.

26. As per the agreement, it was the responsibility of the applicants to complete the residential project and for that the developer had to obtain all the requisite “No Objection Certificates” from various the authorities. For the smooth functioning of the project an “Assignment of Development Rights Agreement” was executed between the parties on 28.12.2010 wherein all the construction activities sales and permissions was to be taken by the builders and to smoothen the activities, the opposite party no.2 had executed a General Power of Attorney. On the basis of the General Power of Attorney the builder was authorized to file for NOCs and permissions on behalf of opposite party no.2. The time was an essence in this agreement. The time for completion of the project was 36 months, which came to an end on 28.12.2013. However, in the agreement there was a grace period of six months. The developer on the basis of permission received from the GDA to develop the project had advertised and collected huge amount of money from the prospective flat buyers and it is alleged that a major portion of money was syphoned off to other companies and the project was not

developed in time. The builder after collecting the money had virtually abandoned the project. When the project did not see the completion within the stipulated time including the grace period a legal notice was sent to the developer thereby rescinding the agreement and had also revoked the General Power of Attorney.

The map of the project was originally sanctioned on 17.03.2007 and the same was to be completed in a period of 5 years, however, the same was not completed and the validation of the map came to an end on 16.03.2012 with the efflux of time. The builder had made a request to the GDA for revalidation of the map but the same was refused by the GDA. Since there was a pressure on the builder to restart the project, an application for revalidation of the map was filed on the Letter Head of the Hindustan Chains Pvt. Ltd. in favour of the builder on 08.07.2015.

27. Since the opposite party no.2 had already revoked the contract as well as General Power of Attorney, when they came to know about this letter, they immediately informed the GDA that since the agreement has been rescinded, hence, there was no question of any revalidation.

28. Once the opposite party no.2 came to know about the forged and fabricated letter placed before the GDA seeking revalidation of the map, they immediately filed an Application under Section 156 (3) Cr.P.C. alleging that the letter dated 08.07.2015 was a forged and fabricated document and was never sent by opposite party no.2, in which after adducing evidence summons have been issued against the applicants, which have been assailed by means of instant application.

29. Learned counsel for the applicants has argued that the applicants have not written the letter dated 08.07.2015 and somebody else has written this letter. It is a pure disputed question of fact as to who has sent this letter. It is only the applicants and the builder, who could have been benefited by this letter. There is no reason for anybody else to have send such letter.

30. Thereafter, learned counsel for the applicants had argued that the applicant no.1, Sanjeev Kumar Jain had resigned on 16.05.2015, however,

the alleged letter was sent to GDA on 08.07.2015 and the same could not have been said to have been signed by the him. The veracity of the resignation letter has been seriously doubted by the opposite party no.2. This fact is also pure disputed question of fact as to when the applicants have resigned and when his resignation was accepted. The alleged letter of resignation is not supported by any documentary evidence to show that when the applicants actually resigned and when their resignation was accepted.

31. Evidently, the beneficiary of this letter was only the applicant's company and it cannot be assumed that some third party had sent this letter.

32. Learned counsel for the applicants has placed reliance on the judgement of Hon'ble Apex in the case of **Maa Annamalai Vs. State of Karnataka and another (supra)** in which the Hon'ble Apex Court has held that there was no allegation against the applicant in the FIR in that appeal, hence, the Court had given a finding that in absence of any specific allegation there cannot be any vicarious liability to show that he was incharge and responsible for the conduct of the company, which had given rise to the offence. However, in this case there are specific averments in the complaint, which goes to show that it was only the applicant's company, who would have benefited from filing forged letter and it has been specifically alleged that the same was done by the applicant. So now the applicants have to adduce evidence to prove its defence.

33. Insofar as the judgement of Hon'ble Apex Court in the case of **Sharad Kumar Sanghi Vs. Sangita Rane (supra)** is concerned, for ready reference paragraph nos.11 & 13 of the said judgement are quoted hereunder:-

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours Private Limited in the context of Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.”

A plain reading of the above judgement shows that in that case the allegation was against the company and without making the company a party, proceedings cannot be initiated. However, in the present complaint there are specific allegations levelled against the applicants, who were said to have been the directors of the company. A fabricated letter was placed before the GDA for revalidation of the map in favour of the company. The alleged fabrication cannot be done by the company but by the directors or the other responsible person on behalf of the company, hence, even if the company is not made an accused, the proceedings against the applicants can be initiated.

34. The applicants have placed reliance on the judgement of **Shiv Kumar Jatia Vs. State of NCT of Delhi (supra)** wherein the relevant paragraph no.19 of the said judgement which was relied upon is as follows:-

“The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company.....”

A plain reading of this judgement clearly shows that the liability of the directors or the controlling authority of the company and the criminal liability has been elaborately considered in the case of **Sunil Bharti Mittal Vs. Central Bureau of Investigation⁶**. In the matter of **Sunil Bharti Mittal (supra)** it has been held that the directors or the person incharge of the company can be prosecuted where the company is also an accused as the company is an artificial person and acts through its Directors and Managing Directors. If such company commits an offence involving *mens rea* it is clear

6 (2015) 4 SCC 609

that the intent and action would be of that individual, who could be the Director or other controlling person of the company, who had acted on behalf of the company, hence, if the *mens rea* is there, the criminal proceeding can be initiated against the Director or the other person responsible for the working of the company.

35. In this case a fabricated letter has been placed before the GDA for revalidation of the map. Since the responsibility to get the NOC was that of the applicant's company, so it is assumed that the person responsible for conducting the affairs of the company (Director) would obviously be responsible for such an act, hence, the criminal proceeding can be initiated against them.

36. After perusing the record I find it is not a case where from the plain reading of the complaint as well as summoning order no *prima facie* case is said to have been made out against the applicants.

37. The entire averments whether the applicants were responsible on the date of the incident or he had resigned is a pure disputed question of fact, which can only be seen after adducing evidence in the trial.

38. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. The summoning order has been issued after looking into the complaint and recording statements of the complainant and the witnesses. The arguments raised by learned counsel for the applicants are all disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only *prima facie* case is to be seen in the light of the law laid down by Supreme Court.

CONCLUSION

39. Hon'ble Supreme Court in the matters of **State of Haryana Vs. Bhajan Lal**⁷, **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra**⁸, **R.P.**

7 1992 Supp (1) SCC 335

8 AIR 2021 SC 1918

Kapur Vs. State of Punjab⁹, State of Bihar Vs. P.P.Sharma¹⁰, and lastly, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another¹¹ (Para-10) has laid down the guidelines, in which it was held that only those cases in which no *prima facie* case is made out can be considered in an application under Section 482 Cr.P.C.

40. The instant application does not fall under the guidelines laid down by the Hon'ble Supreme Court in the judgments mentioned above, and followed in a number of matters. Moreover, the facts as alleged cannot be said that, *prima facie*, no offence is made out against the applicants. It is only after the evidence and trial, it can be seen as to whether the offence, as alleged, has been committed or not.

41. The facts and the accountability of the applicants are different from that of the investors nominee director of Application U/S 482 Cr.P.C. No.32964 of 2016 as the role, accountability and the responsibilities of the applicants was different from the investor nominee director.

42. Hence, the instant application filed under Section 482 Cr.P.C. cannot be entertained and is, accordingly, **dismissed**.

43. However, it is open for the applicants to take all its defence in the trial.

44. It is made clear that the observations made in this order would not come in the way of the trial and the trial may proceed without being influenced by the observations made by this Court.

Order Date :- 08.07.2025

S.P.

9 AIR 1960 S.C. 866,

10 1992 SCC (Cr.) 192

11 2005 SCC (Cr.) 283