

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

Reserved on: April 13, 2015

Pronounced on: May 13, 2015

+ (i) **CRL.M.C. 4445/2013 & CrI.M.A.15907/2013**

DAULAT RAM GUPTA Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (ii) **CRL.M.C. 4446/2013 & CrI.M.A.15911/2013**

RAJMAL GUPTA Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (iii) **CRL.M.C. 4447/2013**

JAI PAL SINGH Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (iv) CRL.M.C. 4886/2013 & CrI.M.A.17585/2013

RAMESH Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (v) CRL.M.C. 4887/2013 & CrI.M.A.17588/2013

BHARAM SINGH Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (vi) CRL.M.C. 4888/2013 & CrI.M.A.17593/2013

BRIJ LAL Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent

Through: Mr. Deepak Dhingra, Advocate

+ (vii) CRL.M.C. 4889/2013 & CrI.M.A.17595/2013

SATPAL Petitioner

Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent
Through: Mr. Deepak Dhingra, Advocate

+ (viii) **CRL.M.C. 4890/2013 & Crl.M.A17597/2013**

KRISHNA Petitioner
Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent
Through: Mr. Deepak Dhingra, Advocate

+ (ix) **CRL.M.C. 4891/2013 & Crl.M.A.17602/2013**

DHARAM SINGH Petitioner
Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent
Through: Mr. Deepak Dhingra, Advocate

+ (x) **CRL.M.C. 4892/2013 & Crl.M.A.17604/2013**

VIRENDER Petitioner
Through: Mr. Pankaj Vivek, Advocate

versus

ALAKNANDA PROPERTIES P. LTD. Respondent
Through: Mr. Deepak Dhingra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The above-captioned ten petitions have been preferred by petitioners-*Daulat Ram Gupta (A-72), Rajmal Gupta (A-73), Jai Pal Singh (A-53), Ramesh (A-75), Bharam Singh (A-27), Brij Lal (A-34), Satpal (A-83), Krishna (A-61), Dharam Singh (A-36)* and *Virender (A-98)* [accused numbers as provided by the trial court]. In the above-captioned ten petitions, quashing of complaint under Sections 192/218/383/386/405/409/420/423/425/426/427/441/447/451/463/468/503/506 of the IPC read with Section 120-B of the IPC and Section 34 of the IPC is sought on the ground that there are no averments against petitioners, who are subsequent purchasers of the land in question and also on the ground that these criminal proceedings are lingering on for the last 13 years, but still are at the stage of pre-charge evidence.

2. At the hearing, learned counsel for petitioners had submitted that these ten petitions arise out of the aforesaid complaint titled *Alaknanda Properties Pvt. Ltd. v. Balbir and Ors. (Annexure P-1)* and continuance of criminal proceedings in respect of the complaint (*Annexure P-1*) is an abuse of the process of the court because the ingredients of the offence alleged are not made out against petitioners and on the subject matter of the instant criminal complaint, a civil suit (*Annexure P-4*) is also pending since the year 2001.

3. Quashing of the aforesaid complaint is sought by learned counsel for petitioners while relying upon a decision of a coordinate Bench of this Court in CRL.M.C.4890/2005 titled *Hitesh Bhardwaj v. Alaknanda Properties Pvt. Ltd.* rendered on 1st October, 2007 whereby the complaint in question stands quashed qua co-accused-*Hitesh Bhardwaj*. Reliance was also placed upon another decision of a coordinate Bench of this Court in *Ramesh Kumari & Anr. v. Alaknanda Properties (P) Ltd.* 2010 SCC Online Del 4425 wherein this very complaint qua co-accused-*Ramesh Kumari and another* already stands quashed on the ground of there being no specific averments against aforesaid co-accused. So, it was submitted by learned counsel for petitioners that on parity basis, the complaint in question deserves to be quashed qua petitioners as assertions against petitioners are quite vague in the pre-summoning evidence, whereas in the complaint in question, there are no specific averments against petitioners.

4. Lastly, it was submitted that there is no reasonable probability of the complaint in question reaching to a logical conclusion because the proceedings arising out of the complaint in question are moving at a snail's pace and already thirteen years have been lapsed and so, continuance of proceedings arising out of the complaint in question is nothing, but clear abuse of process of the court.

5. Learned counsel for respondent-complainant supports the impugned summoning order of 7th August, 2001 vide which petitioners have been summoned as accused persons for the offences under Sections 418/420/423 of IPC read with Section 120-B of IPC and Section 506

(Part-II) of IPC and it was submitted that mere pendency of a civil suit is no bar to continuance of the proceedings arising out of the complaint in question because there are allegations against petitioners of conspiring with their co-accused persons to commit the offences in question. Thus, it was submitted that the decisions relied upon by petitioners are of no avail as there are categorical assertions against petitioners in the complaint in question.

6. It was submitted that petitioners were aware that the land which they purchased was exclusively owned by respondent-complainant and since there are serious allegations against petitioners, so the complaint in question does not deserve to be quashed qua petitioners and infact, these petitions are premature. It was pointed out that similar petitions filed earlier by petitioners were dismissed in default and so, these petitions are not legally maintainable. Otherwise also, it was submitted that the case is at the pre-charge evidence and so, these petitions should not be entertained at this stage because petitioners will have an efficacious remedy to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge.

7. On the aspect of delayed trial, the pertinent observations of the Apex Court in *Ranjan Dwivedi v. CBI*, (2012) 8 SCC 495 are as under: -

“The Magistrate had taken cognizance vide its order dated 16-8-1999 and issued process. The accused approached the High Court for quashing of the criminal proceedings on the ground of delay. The High Court quashed the proceedings on the ground of unnecessary delay of 12 years. The prosecution approached this Court against the order of the High Court.

This Court while setting aside the order of the High Court remanded the matter to the High Court for fresh disposal after considering all the relevant factors including that the criminal courts are not obliged to terminate trial of criminal proceedings merely on account of lapse of time. This Court has observed, that, while considering the issue of delay in trial there are some relevant factors which ought to be taken into consideration by the court such as, whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay, number of witnesses examined, volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features, if any. No generalisation is possible and should be done.”

8. After having heard both the sides and on perusal of the complaint in question, pre-summoning evidence, the impugned summoning order, the material on record and the decisions cited, I do find that the criminal proceedings arising out of the complaint in question are lingering on for the last more than one decade and the case is still at the stage of pre-charge evidence. The obvious reason is that there are 104 accused persons in the complaint in question. There are allegations of petitioners criminally conspiring with their co-accused in committing the offences for which petitioners have been summoned. No doubt, two coordinate Benches of this Court have meticulously gone through the averments in the complaint in question and the pre-summoning evidence and have chosen to quash the criminal proceedings qua co-accused *Hitesh*

Bhardwaj and *Ramesh Kumari* and *another*, but so far as petitioners herein are concerned, I do find that their names figure in the complaint in question.

9. What exact role was played by which of petitioners, is not clearly spelt out in the complaint in question and in the pre-summoning evidence, there are general allegations against petitioners. However, this Court is of the considered opinion that the case of petitioners is not at par with the case of co-accused persons-*Hitesh Bhardwaj* and *Ramesh Kumari* and *another* because the conspiracy angle was not considered while quashing the criminal proceedings against co-accused persons. Such a view is being taken because it is well-known that in the case of criminal conspiracy, direct evidence is seldom available. In any case, in the exercise of extraordinary inherent jurisdiction under Section 482 of Cr.P.C., this Court is not expected to delve deep into the facts and to piecemeal appreciate the respective submissions of the parties when the case is still at the pre-charge evidence stage.

10. Petitioners have an alternate and efficacious remedy to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge. On this aspect, pertinent observations of the Apex Court in *Padal Venkata Rama Reddy Alias Ramu v. Kovvuri Satyanarayana Reddy & Ors.* (2011) 12 SCC 437 are 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."

11. In the facts and circumstances of this case, this Court is not inclined to pre-judge the pre-summoning evidence particularly when petitioners-accused persons have an opportunity to cross-examine respondent-complainant at the stage of recording of pre-charge evidence. A much clearer picture would emerge after the cross-examination of respondent-complainant is concluded. So, let the trial court make all endeavours to conclude the hearing on the point of charge within a period of sixteen weeks. To avoid any unnecessary inconvenience to petitioners, who have already faced the criminal proceedings for the last thirteen years, they are exempted from personally appearing before the trial court till the arguments on charge are concluded, subject to their filing an application under Section 205 of Cr.P.C. alongwith their affidavit with the following undertaking: -

- a. that the proceedings of the case shall be regularly conducted by counsel (whose name shall be disclosed in application), who shall appear on behalf of petitioners on every hearing and will not seek adjournment;*
- b. that petitioners shall not dispute their identity as accused in the case;*
- c. that the petitioners shall appear in person as and when directed in future to do so; and*
- d. that petitioners shall not raise the question of prejudice in future.*

12. Without commenting upon merits of this case, the above-captioned ten petitions and the applications 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.

(SUNIL GAUR)
JUDGE

MAY 13, 2015

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