

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

Reserved on: 20th November, 2014
Date of Decision: 13th February, 2015

+ CRL. M.C. 4792/2014

VINAY JAIN Petitioner
Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Harish Jaidka, Advocate.
versus
STATE & ANR. Respondents
Through: Mr. Navin Sharma, APP for the State
Mr. K.B.Andley, Senior Advocate
with Mr. M.L.Yadav, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of present petition the petitioner seeks to invoke the inherent powers of this Court under Section 482 of the Code Of Criminal Procedure (hereinafter referred to 'Cr. P.C.') for setting aside of the order dated 01.06.2013, directing summoning of the petitioner as an accused in relation to First Information Report No. 12/2013, registered at P.S. Special Cell, New Delhi under Sections 387, 467, 471 & 120-B of the Indian Penal Code (hereinafter referred to as 'IPC') pending before the Chief Metropolitan Magistrate, Patiala House, New Delhi and consequently seeks quashing of the proceedings emanating therefrom qua him.

2. The factual matrix of the case as set out by the prosecution in the Charge sheet filed in terms of Section 173 of Cr.P.C is that on 09.03.2013 the Special Cell received an intimation regarding an extortion call made to the Informant/Respondent No.2 (Mukesh Aggarwal) from an Idea Cellular Haryana Number (9728374767), criminally intimidating and demanding payment of Rs.5 Crores (Rupees Five crores) which was to be paid within 3 days. Thereafter, respondent No.2 received another call from the extortionist from a different Idea Cellular Number (9728384257) who criminally intimidated him with death threats again. On receipt of this information a Special Cell team was tasked with the job to trace out the gang and its members. The members of the Special Cell team contacted the Nodal officer of Idea cellular, Haryana and obtained details of the subscriber. As per the information furnished by the service provider, the aforementioned belonged to one Mr. Shiv Kumar, S/o Suraj Bhan, R/o House No. 2221, Ward No. 16, Shiv Colony, Matloda, Panipat, Haryana. As per the Customer Application Form (CAF), purchaser of the sim card mobile number 9728374767 had provided a photocopy of Ration Card as an identity proof. An alternate number furnished by the subscriber was 9812498139. Further, as per the CDR of 9728374767, it was revealed that the number was activated on 09.03.2013 and the caller was located in Bahadurgarh when the alleged extortion call was made. After obtaining permission for interception of the number 9728374767, the calls from this number were intercepted besides deploying the investigating team to ascertain the aforesaid information.

3. The retailer of the idea sim mobile number 9728374767 namely Ravi Kant Sagar, Jind, Haryana was contacted by the investigating authorities who informed them that in the afternoon of 08.03.2013 one young person came to his shop and purchased two sim cards of idea, bearing numbers 9728374767 and 9728384257. He also informed that both the sim cards were purchased by same person who had given a copy of his ration card as an identity proof. Accordingly, permission of interception of the other number 9728384257 was also taken on 11.03.2013 vide order no. 8048-50/X(M-0277)/Spl. Cell. Dt. 11.03.2013 and its regular order was obtained on 13.03.2013. Mobile number of the complainant was also taken on interception under rule 419 vide order dt. 10.03.2013 and its regular order dt. 18.03.2013.

4. On 12.03.2013, at about 10.20 am, a call for a duration of 62 seconds was intercepted on mobile number 9728384257 between Idea customer care and the user of this sim card in which the user activated the Idea sim card. Investigation revealed that after activation of the said sim card, a fresh extortion call was made to the complainant/respondent No.2 on his mobile number 9873214477, at about 10:26:15 hours for a total duration 2:43 minutes on the same day from this number. Extortionist threatened the complainant and also told him that he would call him again in the evening from the same number. Subsequently, respondent No.2 received another call, wherein extortionist extended threat by stating that 'Bhai' has directed him to kill the complainant if money was not paid to him. This call was intercepted on respondent No.2's mobile no. 9873214477, on 12.03.2013, at 19:59:49 Hours, for a total duration of 03:24 Minutes.

These calls were intercepted at the Server of Special Cell/ NDR, Lodhi Colony, New Delhi.

5. On the basis of aforesaid concrete information, on 16.03.2013, respondent No.2 lodged a written complaint with the Special Cell on the basis of which a formal case was registered bearing case FIR No. 12/2013, under Section 387 IPC at PS Special Cell, Delhi and necessary investigation was carried out.

6. During the course of investigation it was revealed that Shiv Kumar, in whose name the sim cards were purported to have been purchased had died 3-4 years back. Shri Mohan Dutt, brother in law of deceased informed the investigating officers about the fact of Shiv Kumar's death. He also identified the copy of the ration card annexed with the CAF of mobile number 9728374767 however, he stated that the photo affixed on the said form was bogus. He informed that Shiv Kumar was residing with some of his friends at Gurgaon at the time of his death. The said friends namely Sanjay @ Sanju and Dayanand were traced by the investigation officers who informed that one Ramkesh, brother in law of Shiv Kumar had come to their room around six-seven months before in search of a job and stayed there for fifteen days. Dayanand stated that Ramkesh had taken a photo copy of ration card of Shiv Kumar and some of his photographs with him. Ramkesh @ Ramu was traced at Bhorgah, Narela in Delhi. Ramkesh revealed that he had taken photocopy of the said ration card however he had the same with him which he produced before the investigating officers. Ramkesh further stated that he worked in the office of property dealer

namely Naveen @ Kale. He further stated that when Kale came to know that he had the ID of Shiv Kumar and his photograph, Kale kept some photographs of Shiv Kumar and also got photocopied the ration card of Shiv Kumar. Kale told him that it would be useful for some "KAM". During investigation, the office of Naveen @ Kale in the name of M/s. Bishan Properties, Jind was traced opposite Jind Court at SCF 41, Huda Market, behind Kharab Hospital. Naveen @ Kale was found present in the office from where he was apprehended. Kale, during investigation, admitted that he obtained the said two sim cards on the basis of photocopy of the Ration Card belonging to one Shiv Kumar. During interrogation accused Naveen @ Kale also revealed that he handed over those sim cards to accomplice Sanjay R/o Nindana.

7. On 03.04.2013, accused Sanjay @ J.E. was apprehended from the bus stand at Bahadurgarh who had come there to meet his associate. During interrogation Sanjay @ J.E. admitted to have made extorting calls to respondent No. 2 on 09.03.2013 and 12.03.2013. He further disclosed that after his release from jail, he contacted his relative Vikas who was working in a factory at Behror, Rajasthan where Vikas introduced Sanjay @ J.E. to his employer Mr. Upender Jain. During this meeting, Vikas & Sanjay @ J.E. boasted before accused Upender Jain that Sanjay @ J.E. could do anything for money and Sanjay @ J.E. requested Upender Jain to offer him some work. Sanjay @ J.E. disclosed that Upender Jain told him that he could provide him a good input of a big businessman from Delhi from whom huge money could be extorted, to which Sanjay @ J.E. gave his

consent. Sanjay @ J.E. further disclosed that on 06.03.2013, Upender Jain called Sanjay @ J.E. at Jhilmil Colony, Delhi and handed over one mobile phone with a Reliance number for contacting him directly. On the same day accused Upender Jain called accused Sanjay @ J.E. at Shakti Resorts, Behror Rajasthan and a conspiracy to extort money from Respondent No. 2 was hatched.

8. As per the alleged disclosure, accused Sanjay @ J.E. admitted to have been in constant touch with Upender Jain and started working under his dictates. Sanjay contacted Kale and told him about his plan of extortion and asked him to make necessary arrangements pursuant to which the said two sim cards were obtained by Kale. Sanjay @ J.E. also joined accused Jasvir Chairman for proper execution of alleged conspiracy and admitted to have made extortion call on 09.03.2013, followed by another call on 12.03.2013. Further, since respondent No. 2 did not agree to pay on pretext of financial hardship accused Sanjay @ J.E. did not have any further hope and after breaking the sim card threw his phone somewhere in Mundka. Sanjay @ J.E. further disclosed that after a few days Upender Jain called Sanjay @ J.E. and gave the address of respondent No. 2 to go to his house so that Sanjay @J.E. can fire shots at his house to extort money by putting him under the threat of his life.

9. From scrutiny of the call details of Sanjay @ J.E. & Vikas, investigating agency revealed that accused Sanjay Jain, has posed as Upender Jain before Sanjay @ J.E. to conceal his identity. Interrogation of Vikas Sharma indicated his involvement in conspiracy

with accused Sanjay Jain and Sanjay @ J.E., hence armed with incriminating material against Vikas Sharma and Sanjay Jain @ Upender Jain, investigating officer arrested Vikas Sharma. This was followed by the arrest of accused Sanjay Jain @ Upender Jain on 05.04.2013 from Domestic Airport at New Delhi. During interrogation Vikas Sharma disclosed that Sanjay Jain @ Upender Jain had told him about his brother accused Vinay Jain's (Petitioner herein) business rivalry with respondent No. 2 and respondent No. 2 had been cheating his brother Vinay Jain (Petitioner) of huge sum of money. Sanjay Jain showed his anguish in this regard before Vikas and expressed his desire of taking revenge by teaching a lesson to respondent No. 2 and extorting money from him. Vikas Sharma admitted to have introduced Sanjay @ J.E. for execution of the aforesaid job whereas, Sanjay Jain @ Upender Jain had disclosed that he was involved in conspiracy to make extortion calls to Mr. Mukesh Aggarwal and that he was in constant touch with his brother i.e. Petitioner.

10. Based upon aforesaid investigation, petitioner was apprehended on 06.04.2013 and his alleged disclosure statement was recorded, wherein petitioner is alleged to have disclosed that he conspired with his brother accused Sanjay Jain to take revenge from respondent No. 2, who was earlier Additional Director in one of the company of the petitioner i.e. M/s AVJ. Developers (I) Pvt. Ltd. and was harassing the petitioner and demanding additional funds towards profits ever since 2012.

11. On 09.04.2013, statement of respondent No. 2 was recorded

under section 164 of the Cr.P.C., who imputed the petitioner for fabricating his resignation from the Board of M/s AVJ. Developers (I) Pvt. Ltd. vide letter dated 10.08.2012 while using the same. Based upon the aforesaid incriminating circumstances, investigating agency filed its initial charge sheet on 31.05.2013, arraying the petitioner as one of the accused, seeking his prosecution under section 387, 467, 471 read with section 120-B of the IPC, on the basis of following incriminating circumstances:

“(a) Statement of complainant Sh. Mukesh Aggarwal recorded in the court u/s 164 Cr.P.C in which he alleged accused Vinay Jain in the conspiracy to commit extortion from him by putting him under fear of death. His statement that accused Vinay Jain owed an amount of Rs.30 Crores (Rupees Thirty crores) to him during business; which was the motive of accused Vinay Jain, for organizing the whole conspiracy and executing the same through his younger brother Sanjay Jain. He also alleged that his signatures were forged on the resignation letter from the directorship of M/S AVJ Developers (I) Pvt. Ltd.

(b) Documents seized from the complainant Sh. Mukesh Aggarwal towards his claim of Rs. 30 Crores, [which] owed to him by accused Vinay Jain.

(c) Original resignation letter bearing alleged forged signature of the complainant for resignation from directorship seized from the employee of accused Vinay Jain.

(d) Record of resignation of the complainant Sh. Mukesh Aggarwal on the basis of alleged forged resignation letter signed by the complainant from the Company M/S AVJ Developers (I) Pvt. Ltd. collected

from ROC Office. The record of ROC proved that the alleged forged resignation letter was filed in the ROC.

(e) Disclosure statement of accused Sanjay Jain in which he confessed that he hatched the conspiracy on the instance of his brother Vinay Jain so that his brother could settle scores with Sh. Mukesh Aggarwal.

(f) Disclosure statement of accused Vikas Sharma in which he revealed that accused Sanjay Jain had expressed his concern about his brother's enmity with his business partner and Sanjay Jain had requested him to help him to rescue his brother Vinay Jain.

(g) Disclosure/Confession statement of accused Vinay Jain in which he admitted of committing the whole conspiracy and executing the same through his younger brother Sanjay Jain.

(h) CDR analysis of mobile phones of accused Vinay Jain and complainant Sh. Mukesh Aggarwal as per which both were regular in touch before first extortion call to the complainant on 9th March and that the complainant received last call from accused Vinay Jain in the evening of 9th March after he had received extortion call. Accused Vinay Jain however did not make any call to the complainant Sh. Mukesh Aggarwal thereafter since Vinay Jain had come to know that Sh. Mukesh Aggarwal had approached Police with regard to extortion call.

(i) That accused Sanjay Jain is his real younger brother. Accused Sanjay Jain had no business affiliation of rivalry with the complainants Sh. Mukesh Aggarwal. Accused Sanjay Jain acted on the instigation of his elder brother as such there was no reason for him to hatch the conspiracy except on the instance of his elder brother Vinay Jain for settling his business dispute with Mukesh Aggarwal.”

12. Vide order dated 01.06.2013, learned trial Court took cognizance of the matter.

13. During the pendency of aforesaid proceedings, aggrieved with non-filing of the chargesheet under section 420 of the IPC, respondent No.2 filed a protest petition before the trial Court which was dismissed in terms of order dated 16.07.2013 passed by learned Chief Metropolitan Magistrate, Karkardooma Courts, New Delhi. The relevant extract of the said order is reproduced herein below:

“....I have already taken cognizance. To my mind the allegations of cheating cannot be tried in the present case. If the complainant feels that he has been cheated he should avail all other [appropriate remedies]. The present case is relating to making of extortion calls. Moreover, complainant in his protest petition/application has not given any details as to how the said amount was due. Without these details it cannot be decided whether complainant has been cheated or not. Therefore, this application is disposed of with the observation that complainant may avail all other appropriate legal remedies. In the present case, at this stage, offence U/s. 420 IPC is not made out.”

14. The said order dated 16.07.2013 has attained finality as the respondent No. 2 has not issued a challenge to it. Further, FSL report in respect of resignation letter has also come on record, which has clearly made it evident that petitioner is not a signatory of the same.

15. In this backdrop of factual matrix, Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the petitioner has argued that perusal of the charge sheet along with the supporting documents does not make out any case to sustain prosecution of the petitioner under Sections 387,467,471 read with section 120-B of the Indian Penal Code. It is argued that the conclusion arrived at by the investigating agency about complicity of the petitioner in the aforesaid case, is unfounded and defies principles of Criminal Jurisprudence. Learned Senior Counsel for the petitioner has strenuously argued that the circumstances attributed to the petitioner, even if taken un-rebutted, do not meet out basic ingredients of Section 120-A of I.P.C. to sustain his prosecution in the present case and the summoning order has been passed in a cryptic manner, without application of judicial mind. To strengthen his contentions reliance has been placed upon a *catena* of judgments to which include: **‘P.K. Narayanan v. State of Kerala’** (1995) 1 SCC 142, **‘Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.’** AIR 1988 SC 709 **‘State of Kerala v. P. Sugathan & Another’** (2000) 8 SCC 203 **‘Central Bureau of Investigation, Hyderabad v. K. Narayana Rao’** (2012) 9 SCC 512 **‘Sherimon v. State of Kerala’** AIR 2012 SC 493, **‘Satish Mehra v. State of N.C.T. of Delhi & Another’** AIR 2013 Supreme Court 506, **‘Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.’** AIR 1998 SC 128 and **‘Umesh Kumar v. State of Andhra Pradesh and Another’** (2013) 10 SCC 591.

16. *Per contra*, APP for State along with Mr. Andley learned Senior Counsel for respondent No. 2 have supported the summoning order passed by the learned trial court. It has been urged on behalf of the respondents that the petitioner is facing a conspiracy charge and since conspiracy is hatched in secrecy, there cannot be direct evidence of meeting of mind and the circumstantial evidence procured by the investigating agency is sufficient enough, at least at this stage of the proceedings when the trial court was exercising power under section 204 of Cr.P.C. It is contended on behalf of the respondents that the investigation has brought sufficient evidence pointing towards complicity of the petitioner, precisely in light of the active role played by his brother in not only conceiving the design but also in structuring role of different accused persons. The investigation has also revealed the motive for commission of the crime was hatred of the petitioner owing to the business rivalry between the petitioner and respondent No. 2. It was lastly urged by counsels for respondents that the inherent powers of this Court enshrined under section 482 of Cr. P.C. have to be exercised sparingly in exceptional circumstances.

17. Learned APP for the State in support of his submissions has relied upon a catena of judgments of the Supreme Court, which include: '**Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & Ors.**' AIR 2006 Supreme Court 1288, '**Jagdish Ram v. State of Rajasthan and Another**' AIR 2004 Supreme Court 1734, '**M/s India Carat Pvt. Ltd. v. State of Karnataka and Another**' (1989) 2

Supreme Court Cases 132 and **‘State of W.B. and Another v. Mohd. Khalid and Others’** (1995) *1 Supreme Court Cases 684*.

18. I have bestowed my thoughtful consideration to the submissions made by counsels for the parties and have also perused the trial Court record.

19. It is well settled that a conspiracy is hatched in secrecy and prosecution cannot be burdened to establish the same with direct piece of evidence. The prosecution can discharge its onus by relying upon the circumstances to establish existence of conspiracy, however, the circumstances relied upon by the prosecution have to be of a definite character which unerringly pointing towards guilt of the accused. However, a charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be

cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

20. At this juncture it would be relevant to reproduce Section 120A which reads as under:-

"120A. Definition of Criminal Conspiracy: When two or more persons agree to do, or cause to be done, -

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means
such an agreement is designated as
conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

21. On perusal of Section 120-A of IPC, it is manifestly clear that for imputing a person as a 'conspirator' there has to be existence of 'an agreement' between two or more persons either to do 'an illegal act' or to do a 'legal act through illegal means.' Since, legislature has not provided any deeming provision to draw presumption in favour of existence of conspiracy, the prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirators to do an 'illegal act' or 'a legal act through illegal means'. Apart from commission of 'acts,' prosecution is also vested with a responsibility to bring evidence on record of the crime committed in pursuance of 'an agreement' made

between the accused persons who were parties to the alleged conspiracy. It is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence. Reference is made to the judgment of the Hon'ble Apex Court in '**State of Kerala v. P. Sugathan & Another**' (Supra), wherein it has been observed:-

“12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in *V.C. Shukla v. State (Delhi Admn.)* (1980) 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and **where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence.** As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. **The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal**

conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.”

(emphasis supplied)

22. In the matter of ‘**Central Bureau of Investigation, Hyderabad v. K. Narayana Rao**’, (2012) 9 SCC 512, while dealing with the same subject matter Apex Court has observed:-

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. **Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation.** In other words, **an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which**

are not supported by cogent and acceptable evidence.”

(emphasis supplied)

23. Similar view has been taken by the Hon'ble Apex Court in the matter of '**Sherimon v. State of Kerala**' (Supra).

24. Applying the aforesaid legal principles to the facts of the present case it is observed that there is no evidence collected by the prosecution even to *prima facie* infer that the petitioner was a part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain his summoning as a conspirator. From a bare perusal of the records it is apparent that the petitioner has been arrayed as an accused by the investigating agency in utter disregard of the governing principles on the Law of Criminal Conspiracy enunciated by the Apex Court in the above discussed cases. I find force in the submissions of the learned Senior Counsel for the petitioner that petitioner cannot be prosecuted as a conspirator for merely being the biological brother of co-accused Sanjay Jain @ Upender Jain. There has to be some evidence either direct or circumstantial, to justify drawing inference about complicity of the petitioner, especially in light of the facts that both brothers are living separately and the call record analysis does not even remotely show any interaction between the petitioner and any of the co-accused involved in the act of extortion.

25. Further, the conclusion arrived at by the investigating agency regarding involvement of the petitioner in extortion is based upon assumptions and there is no tangible evidence to justify conclusion

arrived at by the investigating agency. In 'extortion', prosecution cannot be permitted to take shelter of disclosure statements of the petitioner or that of the co-accused persons as admissions in absence of any tangible evidence pointing towards conspiracy between the petitioner & other accused persons to commit 'extortion'. The prosecution has not brought forth any evidence in the form of the call records or otherwise that the petitioner was in direct contact with the co accused pursuant to which the said offence were committed. In light of the aforesaid discussion, circumstances (e), (f), (g) & (i), as carved out by the investigating agency to sustain prosecution of the petitioner are of no help to the prosecution and is to be dispelled at the outset.

26. While considering circumstance (h), I am of the considered opinion that the same is self-contradictory and further goes to support exoneration of the petitioner. The conclusion of the prosecution that the petitioner was involved in the crime is based upon the CDR analysis of the mobile phones of the petitioner which suggests that the petitioner was in constant touch with respondent No.2 before the first extortion call was made to the complainant i.e. on 9th March, 2013 and that the complainant received the last call from the petitioner on the evening of 9th March, 2013 and no call was made by him after this. However, this circumstance has to be looked in the light of the statement made by the complainant U/s. 164 Cr.P.C. In the said statement the complainant has stated that he was perplexed after receiving the first extortion call at Green River mall. He further stated that as he stepped out of the mall he met Vinay Jain's wife and his son. On her enquiring, he told her everything and also informed her that he

was going to Anand Vihar Police Station to file a complaint. When he was writing the complaint Vinay Jain kept calling him all the time. He took Vinay Jain's call and told him that he had received an extortion call. If this part of the statement is accepted un-rebutted there is nothing unnatural in the conduct of the petitioner to give a call to business acquaintance after getting to know he is in danger. This circumstance does not lead to an inference that petitioner was a participant in the conspiracy. I do not find any strength in the conclusion of the investigating agency that petitioner did not make any call to the complainant after 09.03.2013, since he had come to know that complainant had approached the Police with regard to extortion call. In fact, in my opinion had the petitioner been a part of the conspiracy to extort, he would have continued to interact with the complainant to solicit information of his moves to facilitate execution of conspiracy. Further, if it is to be inferred that the petitioner stopped interacting with the complainant out of fear after the matter was reported to the Police then I find no reason why he did not stop his accomplices on 09.03.2013 itself. Either ways, the factum of petitioner making calls to the complainant including the last call made by him on 09.03.2013 to respondent No.2 does not stand as a circumstance to enable this Court to draw an inference about complicity of the petitioner with the co-accused.

27. While answering circumstances (a) to (d), Mr. Nandrajog, learned Senior Advocate has submitted that investigating agency is not justified in relying upon these circumstances for indictment of the

petitioner. It has been vehemently argued that respondent No. 2 did not level any allegations qua the petitioner till 08.04.2013 and induction of the petitioner as an accused in the statement of respondent No. 2, is a deliberate act on the part of respondent No. 2 to exert illegal pressure upon the petitioner to coerce him to succumb to extorting demands of respondent No. 2 and has urged that criminal prosecution shall not be permitted to assist the respondent No. 2, in arm twisting the petitioner. Reliance has also been placed on ‘**Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.**’ *AIR 1988 SC 709*. Relevant extracts of the Judgment relied upon is reproduced as under:-

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. **It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.**”

(emphasis supplied)

28. Regarding circumstances (b) to (d) it is submitted by the learned Senior Counsel for the petitioner that the prosecution has exceeded its

jurisdiction while carving out aforesaid circumstances. It is urged that there is no material available on record to justify claim of respondent No. 2 that the petitioner was indebted to him to the extent of Rs. 30 Crore (Rupees Thirty crores). In respect of allegations regarding fabrication of signatures on the resignation letter of the complainant, it is argued that it has been established through the FSL report that the petitioner is not a signatory of the same, charge of section 467 & 471 IPC is ill founded. It is urged that despite absence of any evidence to justify claim of the respondent No. 2, regarding alleged liability of Rs. 30 Crores (Rupees Thirty crores) qua the petitioner or his Company, investigating agency ought to have insisted for justification of the alleged claim, instead of outrightly accepting bald allegations of respondent No. 2.

29. Admittedly, till imputation of the petitioner in the impugned case, respondent No. 2 neither did he initiate any legal process to question his “Resignation” from the board of M/s. AVJ Developers (I) Pvt. Ltd., nor did he raise a claim of alleged Rs. 30 Crores (Rupees Thirty crores). There is no evidence on the basis of which respondent No. 2 wants to maintain his claim of Rs. 30 Crores (Rupees Thirty crores) qua the petitioner. In fact, it has been brought to the notice of this Court that simultaneously with the resignation; respondent No. 2 was also paid his dues towards his equity in M/s. AVJ Developers (I) Pvt. Ltd., through cheques. Respondent No. 2 has presented the said cheques to the bank and the same were duly encashed. During the course of arguments, on specific query of this Court, this position has

not been disputed on behalf of respondent No. 2. In view of the matter, I find force in submissions of learned Senior counsel for the petitioner that had the allegations of respondent No. 2 with regard to his claim of Rs. 30 Crores (Rupees Thirty crores) or his having not executing the said "Resignation Letter" and the petitioner executing it on his behalf been true, he would not have kept quiet for such a considerable period. The allegation of respondent No. 2 that his resignation letter was forged by the petitioner false short of count in the light of the FSL report through which it has already been established that the petitioner was not the signatory of the said 'resignation letter'.

30. An alternate argument was also raised on behalf of the petitioner that even if the fabrication of the "resignation letter" had taken place the same was an independent transaction to be tried separately unless it qualified exceptions carved out under sections 218 to 223 of Cr. P.C. Although, in light of aforementioned discussions, when apparently nothing incriminating is emerging qua the petitioner, it would be merely an academic discussion. Yet, it is pertinent to mention that the acts of the investigating agency have to qualify the parameters and the procedure for prosecution of a person set forth by the legislature. The 'resignation letter' was submitted on 10.08.2012, where as the 'Extortion' was conspired in February, 2013 onwards. Both the offences are separate and distinct and cannot be clubbed together in absence of any enabling provision in Cr.P.C. Learned Counsel for the State has failed to show any enabling provision which could justify the act of clubbing two independent acts in the same trial. In this view of

the matter summoning of the petitioner is liable to be set aside on this ground also.

31. A bleak effort has also been made by the Counsel for respondent No. 2 to support the summoning order by contending that powers under section 482 Cr. P.C. should not be exercised by this court to quash the proceedings, when petitioner can raise all these pleas at the stage of charge. This Court would have considered this submission had the record reflected that the trial Court has applied its mind while passing order under section 204 of Cr. P.C. It cannot be lost sight of the fact that Trial Court has completely ignored the parameters set out by the Hon'ble Apex Court for summoning an accused as enunciated in the judgment of '**Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors**' *AIR 1998 SC 128*. The relevant extracts from the Judgment are reproduced herein below: -

“**28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put

questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

32. Summoning order against the petitioner does not meet out the aforesaid requirements and when this court independently examined material on record, neither are there any allegations to make the petitioner amenable for prosecution nor is there any material to *prima facie* substantiate culpability of the petitioner. Furthermore, having observed absence of requisite evidences justifying prosecution of the petitioner, this court cannot let the petitioner to face inquiry under section 239 of Cr. P.C. In this regard reference can be made to the observations of the Apex Court in the matter of ‘**Satish Mehra v. State of N.C.T. of Delhi & Another**’ *AIR 2013 SC 506*, where while quashing proceedings qua one of the accused, the Hon’ble Court observed:

“**21.** A criminal trial cannot be allowed to assume the character of a fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, *prima facie*, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.....”

33. In light of the aforesaid discussion, the petition is allowed. Consequently, the summoning order dated 01.06.2013 and the charge sheet are set aside qua the petitioner only. It is made clear that no observation made herein above shall be taken as finding of this Court qua the remaining accused and the trial court shall proceed against the remaining co accused uninfluenced from the aforesaid observations.

34. The trial court record be sent back forthwith.

Crl.M.A. 16385/2014

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

FEBRUARY 13, 2015
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