

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRM-M No.33440 of 2014 (O&M)

Bishan Bansal and others

... Petitioners

Versus

State of Haryana and another

... Respondents

2. CRM-M No.33441 of 2014 (O&M)

Ajay Sahni

... Petitioner

Versus

State of Haryana and another

... Respondents

3. CRM-M No.33442 of 2014 (O&M)

Vijay Gautam and another

... Petitioners

Versus

State of Haryana and another

... Respondents

Date of decision: 14th December, 2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Tarun Singla, Advocate for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Bipan Ghai, Senior Advocate with
Mr. Veneet Soni, Advocate for the private respondent(s).

FATEH DEEP SINGH, J.

The above detailed three petitions, all under Section 482 Cr.P.C. seeking invocation of the inherent powers of this Court for quashing impugned orders dated 10.09.2014 (Annexure P1) whereby an application under Section 319 Cr.P.C. moved on behalf of one of the accused was allowed by the Court of learned Additional Sessions Judge, Faridabad. The petitioners in CRM-M No. 33440 of 2014 namely Bishan Bansal, Vinod Jindal, Rajesh Singla and Nanak Chand Tayal being Directors-cum-Owners of M/s SRS Real Estate Private Limited (in short, 'the accused Company'); in CRM-M No. 33441 of 2014 Ajay Sahni Structural Engineer and in CRM-M No. 33442 of 2014 Vijay Gautam and Ajay Gautam Architects, were summoned as additional accused for offences under Sections 337, 338, 304 (Part II) and 34 IPC and aggrieved over which these petitions by these three sets of petitioners have come into being. Challenge having arisen out of the same very order passed in one and the same case pertaining to consanguinity as to facts and involving similar questions of law, are thus being taken up and disposed off conjointly by this common judgment which will also bring about brevity.

After hearing at length Mr.R.S. Cheema, Senior Advocate assisted by Mr. Tarun Singla, Advocate on behalf of the petitioners; Mr.Munish Sharma, Asstt. Advocate General, Haryana for the State of Haryana/respondent No.1 and Mr.Bipan Ghai, Senior Advocate assisted

by Mr. Veneet Soni representing the private respondents and on perusal of the records.

The undisputed facts that cropped up during the course of submissions are that the accused Company, whose Directors are petitioners Bishan Bansal, Vinod Jindal, Rajesh Singla and Nanak Chand Tayal, admittedly had carved out a group housing colony under the name and style of M/s SRS Residency in Sector 88, Faridabad in an area of approximately 15.061 acres and which was extended by another 2.281 acres vide license No.47 of 2010 dated 19.06.2010, thus, totaling to 17.342 acres, which was duly approved by the competent authority i.e. Director, Town and Country Planning, Haryana who had issued license No.1272-76 on 2006 dated 11.11.2006 and the same was to be regulated under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975. It is worthwhile to refer here that building plan of the group housing colony was approved by the Director through Memo No.12180-85 dated 08.05.2007 for which the building plans were duly sanctioned. Under one of the stipulations, the accused Company could lease out part of the premises to attain a particular object and it is by virtue of this, a lease agreement dated 16.04.2012 (Annexure P2) was executed between the accused Company and Mrs.Sukhvarsha Malhotra (hereinafter referred to as, 'the principal accused') wherein the terms and specifications of this lease deed were incorporated. The lease was for a period of 90 years, with effect from the date of its execution and

under which, area measuring 815 square meters was allocated and earmarked and upon execution of the lease deed the accused Company which happened to be the lessor had delivered possession of the said land meant for the raising of a School, to the lessee, the principal accused. It is during the course of events, on 11.12.2012 during construction of the Nursery School premises, the building collapsed leading to death of six persons. It was on the basis of this mishap, the local district administration conducted an inquiry leading to registration of the FIR bearing No.277 dated 11.12.2012 under Sections 304-II, 337, 338 and 34 IPC at Police Station Bhupani, District Faridabad. After investigations, chargesheet against Mrs.Sukhvarsha Malhotra, Arvind Gupta and Umesh Gupta of M/s Arvind Gupta Construction Company, to whom the lessee had hired for the construction of school building, were arraigned as accused. During the course of trial, an application under Section 319 Cr.P.C. was moved on behalf of one of the accused leading to passing of the impugned order and that is how the parties are before this Court aggrieved over these findings by the learned trial Court.

Appreciating the submissions of the two sides, it is much in abundance and apparent that it is the principal accused who is more aggrieved of being alleged to be framed in this case which has led to the moving of application on her behalf under Section 319 Cr.P.C. and who even before this Court has sought to oppose the prayer of the petitioners

by all means when out of the petitioners, Ajay Sahni and Ajay Gautam have been cited as prosecution witnesses.

No doubt, under the provisions of Section 319 Cr.P.C., vast powers have been given to a Court during the course of an inquiry or trial when it appears to the Court from the evidence that any person not being an accused had committed an offence for which he can be tried together with the accused already facing trial, the Court if it is reasonably satisfied that such a person too has committed an offence, can resort to such an exercise of powers. However, at the same time, it needs to be kept in mind that such a need to proceed against a person other than the accused before the Court can only arise if it appears to the Court that such a person is guilty of an offence on the basis of evidence so recorded during the course of inquiry or trial.

By now, the law on this point is well enshrined in the case of **‘Hardip Singh v. State of Punjab’ 2014(1) RCR (Criminal) 623** and none of the counsel representing the various contestants dispute over the proposition of law laid down therein and giving the definition of ‘evidence’, their Lordships have held that evidence means material that has come before the Court during an inquiry or trial by it and not otherwise. It is not by any means put to question even by Mr.Bipan Ghai, learned Senior Counsel representing the Principal accused that it was on the basis of lease deed executed on 16.04.2012 (Annexure P12) this site for nursery school was leased out for 99 years to the main

accused and as has been contended by Mr.R.S. Cheema who has sought to place reliance upon '**DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana & others**' (2003) 5 SCC 622, whereby it has been sufficiently laid down that the transferee in such a case would be subject to the same statutory obligations which were placed on the licensee and therefore would too be subject to the control of the law of the land, and therefore by all means bound by the terms and conditions of the license so granted by the authorities.

It is well sufficiently established on the records that on 22.06.2012 much after the lease of the piece of land to the principal accused, she executed by virtue of Annexure P14 an agreement with construction Company M/s Arvind Gupta Construction Company Pvt. Ltd. for construction of the school building and it is much in abundance reflected from the records that between this period from April 2012 to December 2012, by virtue of Annexure P15 the principal accused has engaged services of Sanjeev Kumar Gupta of Sunglobe who had prepared the structural designs for the nursery school and it is by no means there that the layout plans for the school were well there before the principal accused on the date of lease by virtue of Annexure P7. It is there in evidence by virtue of Annexure P17/A that the Department of PWD (B&R) in its report dated 14.12.2012 has submitted that the accident was during the construction of school building and the fact-finding committee had given its findings by virtue of Annexure P20 and

it is primarily on the basis of this, the final report under Section 173 Cr.P.C. was submitted by way of Annexure P21 whereby the principal accused, lessee Mrs. Sukhversha Malhotra; her contractors Arvind Gupta and Umesh Gupta were arraigned as accused and it was subsequent thereto her structural engineer Sanjeev Kumar Gupta was brought about in supplementary chargesheet (Annexure P22). It is subsequent thereto, Umesh Gupta the accused facing trial had the audacity to move an application for summoning the present petitioners, is in itself suggestive of its very object and purpose.

Mr. Cheema has sought support from ‘**Abdul Kalam v. State (Government of NCT of Delhi)**’ 2006(3) RCR (Criminal) 360 and ‘**Baldev Raj Kapur v. State**’ 2009 Cri.L.J. 1418 (Delhi High Court) to drive home the point on the term ‘negligent conduct’ as enshrined in Section 288 IPC. Admittedly, the building was under construction by the principal accused, her contractor and structural engineer, who were supposed to ensure that they do not act in a negligent manner and Section 288 IPC is reproduced to lay emphasis, which reads as under:

“288. Negligent conduct with respect to pulling down or repairing buildings - Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with

imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Thus, learned counsel representing the private respondents could not convince this Court nor the learned State counsel how or by what means the petitioners have any role at that very juncture in construction of the premises in question and similarly Delhi High Court in **Baldev Raj Kapur’s case (ibid)** harboring on this proposition had laid down the position where reliance has been place upon a catena of case law that there should be a prima-facie evidence to indicate that the person who so being arraigned as an accused had any role to play in the building process and therefore to the mind of this Court there was no direct nexus between the petitioners and construction of the school building which has collapsed when the upper floor was under construction and therefore, this Court is unable to understand how a role is being assigned to the petitioners in this case.

Admittedly petitioners Bishan Bansal, Vinod Jindal, Rajesh Singla and Nanak Chand Tayal happens to be the Directors of the accused Company whereas accused Ajay Sahni is the structural engineer and the accused Vijay Gautam and Ajay Gautam are the Architects. Mr.Ghai could not convince this Court how and by what means they had a role to play in construction of the school building and how and by what means they could be brought about as accused. Neither they guided

the lessee nor they provided any such logistics enabling the principal accused to carry on with the construction. Learned counsel for the accused facing trial by no means could come to the aid of their client to bear out how the owners of the accused Company who happens to be the Directors, could be vicariously liable towards such a commission of crime over which they are not even remotely connected to. It is a settled proposition of law that one cannot draw a presumption that being a mere Company's Directors entails that for any illegal act committed by anyone even on behalf of the Company, the owners are liable. To the very specific query of this Court, learned State counsel could not pinpoint even a single allegation, any role assigned to the petitioners namely Bishan Bansal, Vinod Jindal, Rajesh Singla, Nanak Chand Tayal, Ajay Sahni, Vijay Gautam and Ajay Gautam, at the very inception that they too had participated in this construction or were in any manner negligent or acted in a manner bringing them within the domain of criminality and since they are not directly involved or participated in commission of any such offence, they could not be fastened with any liability on the basis of vicariousness as has been laid down in '**S.K. Alagh v. State of Uttar Pradesh and others**' (2008) 5 SCC 662 and so the proposition of law laid down in '**Maksud Saiyed v. State of Gujarat and others**' (2008)5 SCC 668 and '**Sunil Bharti Mittal v. Central Bureau of Investigation**' (2005)4 SCC 609 and in the latter wherein the principle of '*alter-ego*' was propounded wherein

their Lordships have laid down the proposition that '*sine-qua-non*' for taking cognizance of an offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence; and therefore, it needs to be specifically expressed how a prima-facie case was made out against the persons being so arraigned as accused, which is totally amiss in the present case and therefore, there needs to be sufficient material either in the police report or otherwise for the learned Court below to have exercised its powers which is totally missing in the present case and their Lordships have further elaborated it holding out that before summoning as an additional accused, the Court needs to express its satisfaction of the material evidence which forms a part of such an order and elaborate the reasons for summoning them as additional accused.

Learned State counsel could not satisfy this Court how the Directors of the accused Company were in control of affairs of the construction by the lessee and that they were issuing directions and managing the construction and their state of mind at the relevant point of time and so is the case of other petitioners so sought to be summoned by the aid of Section 319 Cr.P.C. Thus, there is total absence of *mens-rea* qua these persons and there is no evidence of intent and action of these persons to do any such criminal act nor their conduct comes within the domain of criminality as per the principles of criminal jurisprudence and therefore, by what means they have been held to be vicariously liable for

the acts of the lessee and her agents is anybody's guess. Similar was the proposition as laid down in '**Avnish Bajaj v. State**' 2008(6) AD (Delhi) 381; and '**Sharad Kumar Sanghi v. Sangita Rane**' (2015) 12 SCC 781.

Considering from the other angle, as is apparent from the impugned order, the State had not supported the application and rather it is by one of the co-accused who were there figured in the report under Section 173 Cr.P.C. has sought to summon the present petitioners out of whom two are cited as prosecution witnesses, certainly would be a malicious attempt not only to scuttle the evidence and browbeat them and ensure that whatever may be the evidence, is washed away by their arraignment as an accused.

Hon'ble the Supreme Court in the case of '**Iridium India Telecom Ltd. v. Motorola Incorporated and others**' (2011) 1 SCC 74 as has been laid down and cited by learned counsel for the petitioners, had taken note of such a trend and their Lordships were pleased to remark that there has been a dishonest and mala-fide resortation to such a provision of law and that when the very documentary evidence irrefutably establishes and could not be controverted by any means that it was a legal and valid transfer of the premises for a period of 99 years by the accused Company to the principal accused and who as per this written undertaking was supposed to construct the premises on her own, of course within the domains of the local civic laws so applicable to

such constructions and therefore, it could not be established by any means nor brought before this Court by any of the sides so trying to oppose the stand of the petitioners, how or by what means the petitioners were in any manner associated in such construction and at the most the construction, if any, was supposed to be carried on by the lessee in accordance with the sanctioned plan. It was the basement structural failure which was to be used as a part of the school which caused the mishap. Obviously when nothing is suggestive that it was construction being carried on by the accused Company and therefore, in terms of definition assigned to 'Owner' under the Haryana Development and Regulation of Urban Areas Act, 1975, it includes a person in whose favour a lease of land in an urban area for a period of not less than 99 years has been granted; and therefore, by all intents and purposes Mrs.Sukhvarsha Malhotra is termed to be the owner of this premises and thus the ratio laid down in **DLF Qutab Enclave Complex Educational Charitable Trust's case (ibid)** certainly comes to the aid of the petitioners. Since the petitioners at no point of time had any concern or link with the construction upon this land, upon which the school was being built, and that too by the lessee on her own by exclusively engaging contractors of her choice with structural engineers as per her needs and desires, the petitioners having no relevance whatsoever, no command and control over her acts in raising the construction which certainly needs to be as per the civic laws, certainly deters acceptance of

what is sought to be put forth by learned counsel contesting the private respondents and the learned Court below in the very impugned orders has concluded that the petitioners were real persons and owners and thus, termed them to be the real culprits, certainly shows the resolve with which the Court has gone about in the dispensation of justice. The irrefutable and rather invariably accepted documentary proof on the record leaves no scope to doubt that it was none else than the accused who are facing trial, who were the persons prima-facie responsible for this mishap and to which the petitioners have no role to play, are matters which certainly weigh heavily in the mind of this Court prodding it to exercise its inherent powers under Section 482 Cr.P.C. in view of the law laid down by the Hon'ble Supreme Court in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, wherein following eventualities have been provided for:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except

under an order of a Magistrate within the purview of Section 155(2) of the Code;

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

It is very well established that it is a pure and pure misuse of the process of the Court to attain a sinister design and goal and thus, it is an eventuality where the Court needs to step in to put an end to such a misuse, impels this Court to accept these three petitions qua the petitioners and thereby setting aside the impugned orders dated 10.09.2014 (Annexure P1) against them and discharging the accused so subsequently arraigned as additional accused.

All the present three petitions thus stand allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

December 14, 2016

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No