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

+ **CRL.M.C. 2227/2014**

Date of Decision: February 23rd , 2016

STATE

..... Petitioner

Through: Mr.Vinod Diwakar, APP.

versus

RAJESH BHANOT & ORS

..... Respondent

Through: Mr.Pradeep Kumar, Adv. for Respondent
Nos.1 to 3.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J

1. The present petition has been filed by the petitioner/State under Section 482 of Code of Criminal Procedure for setting aside the order dated 15th October, 2013 passed by the learned Additional Sessions Judge/Special Judge, Dwarka Courts, Delhi, in FIR No.358/02 registered under Sections 420/471/120B of the Indian Penal Code, Police Station Dwaraka and call/summon the case records of the FIR No.358/02, Police Station Dwarka, Delhi.

2. Briefly stated the facts giving rise to the present petition are that on 19th October, 2002, a complaint was made by National Highway Authority of India (hereinafter referred to as “NHAI” for brevity) to the

police asserting that a contract was awarded by the complainant/NHAI in favour of M/s Rana Projects International Limited for the purpose of executing a project regarding four laning of National Highway No.25 which was on Lucknow-Kanpur Section. In lieu of that, the contractor was to deposit bank guarantee with NHAI against mobilization of funds to them inter alia the other terms and conditions.

3. In pursuance of the prescribed procedure by NHAI, the contractor deposited bank guarantee no.17/99 dated 24th August, 1999 to the tune of Rs.3.98 crores which was stated to be extended by bank guarantee no.93/99-2001 and that another bank guarantee no.265/2002 dated 21st August, 2002 to the tune of Rs.2.00 crores was deposited.

4. After enquiries, it was revealed that both the bank guarantees were forged and the confirmation letters purportedly returned by the concerned banks were also manipulated by forging. After investigation on the said complaint, the police filed a final report holding that the bank guarantees were forged by one Mr.P. Ramakrishnan, who was stated to be an independent person and Mr.U.V.S. Giri, one of the employees of M/s Rana Projects International Limited. An FIR No.358/02 in this regard was registered under Sections 420/471/120-B of the Indian Penal Code.

5. Learned counsel for the petitioner has submitted that the names of accused Mr.Rajesh Bhanoth, Mr.R.S. Rana & Ms.Birkha Rana, who were the directors of the contractor company, were kept in column no.2 and it

was opined by the investigation officer that there was a lack of sufficient incriminating evidence against them.

6. Learned counsel for the petitioner/State has further submitted that vide order dated 8th September, 2011, the learned ACMM found that there were sufficient grounds for proceeding against the accused/respondents and the accused were charged under Sections 420/471/120 of the Indian Penal Code. Thereafter, aggrieved by the order dated 8th September, 2011, the respondents approached the learned Additional Sessions Judge, who allowed the revision petition and set aside the order dated 15th October, 2013.

7. Aggrieved by the said order dated 15th October, 2013, the State has filed the present petition alleging that the learned Additional Sessions Judge did not take into consideration the fact that the accused/respondents, being directors of the company, were the direct beneficiaries of the act of the accused persons and that while acting hand in glove with other, they forged the bank guarantee for defrauding and as the funds were mobilized in favour of the contractor company, wrongful loss has been caused to the complainant for causing wrongful gain in favour of the accused.

8. The present petition has also been filed by the State on the ground that the learned ASJ had failed to take into consideration the fact which clearly emerges from the record to the effect that the accused R.S. Rana

and Birkha Rana were active directors of the contractor company in the year 1999 and the accused Rajesh Bhanoth was one of the directors in the year 2002. It is also alleged that copy of the resolution dated 28th July, 1999 of the contractor company, reflects that Mr.U.V.S. Giri, the A.G.M. apprised the Board of Directors about banking consultant who could arrange the bank guarantee of Rs.3.98 crores against his commission and that by the same resolution, Mr.Rajesh Bhanoth, the then G.M. was authorised to instruct Mr.Giri to arrange the bank guarantee. Certain payments were also stated to be allegedly made to the accused Mr.P. Ramakrishanan.

9. The order of learned Additional Sessions Judge is also challenged on the ground that the evidence clearly established involvement of all the accused persons in arrangement of forged and fabricated bank guarantee and as the amounts of bank guarantee were in crores of rupees and the company was the direct beneficiary, it could not be accepted that directors of the company were not aware of the fact regarding preparation of forged bank guarantee. The accused persons were also stated to have failed to disclose the reasons as to why heavy amount in lacks of rupees were given to Mr.P. Ramakrishanan in cash with reference to bank guarantee though actual payment was never required by the bank for issuance of bank guarantee.

10. Learned APP for the State further contended that prima facie, there

was enough material on record to frame charges against the accused persons. In support of his contention, learned APP for the State relies on the pronouncement of Hon'ble Supreme Court in ***Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra (2008) 10 SCC 394*** wherein the Apex Court held that an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. An offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

11. Learned counsel for the respondents, on the other hand, has strongly opposed the petition on the ground that while disposing off the revision petition, learned Additional Sessions Judge, vide order dated 15th October, 2013 has rightly set aside the order on charge dated 8th September, 2011 on the ground that charge could not be framed at that stage against the respondents herein. Learned counsel for the respondents has further submitted that the revisionists/respondents herein were kept in column no.2 and evidence were yet to be adduced in the case. Learned ASJ has also stated to be rightly held that charge cannot be framed on presumption when the investigation agency has not found any evidence against the accused and kept them in column no.2.

12. I have heard learned counsel for the parties at length and perused the available records. I have also gone through the judgments cited by learned counsel for the petitioner.

13. The record reveals that the respondents were kept in column no.2. Apparently, the company of the respondents furnished the bank guarantee of Rs.72.00 lakhs initially and thereafter another bank guarantee of Rs.2,18,55000/- was furnished. It is the case of the respondents that the complainant concealed the fact that the said bank guarantees were genuine. Further bank guarantee of Rs.3.98 crores was furnished which was alleged to be forged one and when balance of mobilization amount was reduced, fresh bank guarantee of Rs.2.00 crores was given. It is the specific plea of the respondents that they were not having any knowledge about the alleged forged bank guarantee and for that, they had taken the legal steps.

14. It transpires from the record that after taking cognizance, the respondents were summoned by the learned Metropolitan Magistrate when they challenged the order on charge. The respondents were kept in column no.2 on the ground of lack of incriminating evidence against them. The learned ASJ has rightly held that the charge could not be framed on mere presumption when the investigation agency did not find any evidence against the accused and the accused were kept in column no.2. The learned ASJ has also rightly held that as evidence was yet to

be adduced in the case, summoning of accused persons cannot be basis for framing charge against them.

15. Needless to say, the Trial Court is always empowered under Section 319 of Cr.P.C., to proceed against the accused shown in column no.2 if sufficient evidence is available on record during the trial.

16. For all the foregoing reasons, I do not find any infirmity, illegality or irregularity in the order dated 15th October, 2013 passed by the learned Additional Sessions Judge.

17. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

FEBRUARY 23rd, 2016
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