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

**Decided on: 9th August, 2018**

+ CRL.M.C. 2090/2014 and Crl.M.A.7001/2014

AJAY KHANDELWAL ..... Petitioner

Through: Mr. Vikas Arora, Advocate with Ms. Radhika Arora & Mr. Manish Sharma, Advocates

versus

THE STATE & ANR. ..... Respondents

Through: Mr. Mukesh Kumar, APP for the State.
Mr. Ankit Jain, Advocate with Mr. Siddhant Nath, Advocate for R-2.

**CORAM:**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. By the order dated 24.01.2014, the Metropolitan Magistrate, acting upon the report of investigation which had been submitted before him pursuant to order dated 20.09.2006 in the context of the First Information Report (FIR) No.41/2000 of Police Station Punjabi Bagh, directed summons to be issued to the petitioner calling him upon to appear as an accused to face prosecution for offences punishable under Sections 406/420/120-B/506 of Indian Penal Code, 1860 (IPC).

2. Aggrieved by the said order(s), the petitioner (the accused) approached this court invoking its inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitting that the process initiated by such order is in the nature of abuse of process of court, his prayer being for the same to be set aside. The petition is resisted by the complainant (the second respondent), the State (first respondent) taking a neutral position.

3. Submissions of both sides have been heard at length and the record has been perused.

4. It is essential to go into the history of the dispute between the parties and for such purposes reference needs to be made to the pleadings of a civil suit [CS (OS) No.1005/1998] that had been initiated by the second respondent (the complainant) against Anand Prakash Khandelwal, father of the petitioner, he having been described as the managing trustee of Ram Charitable Trust, Jaipur, the suit being for the recovery of Rs.2,34,44,300/- with interest. According to the case of the complainant (as the plaintiff), Anand Prakash Khandelwal, the defendant of the suit, was a trustee of Ram Charitable Trust, Jaipur, residing at A-6/10, Vasant Vihar, New Delhi-110066. It was pleaded that the plaintiff (the complainant) had entered into a Memorandum of Understanding (MoU) dated 01.11.1994 with the said defendant, in terms of which the latter had agreed to sell to the former the property of the trust, it having been described as Khasra No.225, Village Bhojpura, Jaipur which was earmarked for development of a hotel located on one side of Tonk Road and the

other side by Bhawani Singh Road. In terms of the MoU, the responsibility for transfer of the subject property in the name of the plaintiff would have been of the defendant and all the charges for clearances from the appropriate authorities of State Govt. for the construction of a five star hotel project thereupon would also be of the defendant. It was alleged that the plaintiff had paid the consideration of Rs.5 lacs by cheque dated 25.10.1994, drawn on Canara Bank, Janpath and Rs.1.50 crores by cheque No.29203 dated 20.03.1995, drawn of Oriental Bank of Commerce, Panchkuin Road, New Delhi, which represented half of the total amount of consideration that had been settled. The cheque, as per the pleadings in the suit was encashed by the defendant and, in spite of the advance payment having been made, the defendant had failed to perform his part of the transaction. The plaintiff claimed that he had approached the defendant for refund of the amount with interest but there being no positive response, rather the defendant having refused to pay the amount back, the suit for recovery of the said amount along with interest was pressed.

5. Anand Prakash Khandelwal died on 27.10.1999. On 26.11.1999, an application was moved by the plaintiff of the case (*i.e.,* the complainant) under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (C.P.C.) seeking impleadment of the petitioner as the legal representative in place of the deceased defendant. In the said application the plaintiff referred to an *"obituary"* that had appeared in a newspaper after the death of the defendant, this bringing to his notice that the deceased defendant had left behind the petitioner herein

as the son, the plaintiff not being aware as to the status of the wife of the deceased defendant, the plea, *inter alia*, being that the right to sue had survived against the petitioner.

6. It is stated by the counsel for the petitioner at the hearing that the application under Order XXII Rule 4 CPC was not allowed by the civil court on the reasoning that the cause of action had been claimed in the suit against the trust and not against Anand Prakash Khandelwal in his individual capacity. The counsel for the complainant, however, showed ignorance in this regard and also submitted that he is not aware of the status of the civil suit.

7. Close on the heels of the application under Order XXII Rule 4 of CPC being submitted, the plaintiff of the case approached the Chief Metropolitan Magistrate by a criminal complaint styled as a petition under Section 156(3) Cr.P.C. dated 23.12.1999. The said petition was registered as criminal case (No.108/01/1999). It eventually led to directions to the police for registration of a case and for investigation thereinto being undertaken, it having been translated into FIR No.41/2000 of Police Station Punjabi Bagh from which the present proceedings arise.

8. Upon perusal of the copy of the petition under Section 156(3) Cr.P.C. and of the reports under Section 173 Cr.P.C. which were submitted in due course, it appears that the case of the complainant primarily has been that at the time of he being persuaded by Anand Prakash Khandelwal to part with money leading to the MoU being executed, he was accompanied by, amongst others, his son, *i.e.* the

petitioner. He also alleged that the petitioner, his father and Mr. Madan Lal Gupta, (*i.e.* father of the Anand Prakash Khandelwal) had claimed before him to be acting on behalf of the afore-mentioned trust offering the sale of the lands which are subject-matter of the controversy in favour of the complainant company. He would allege that his inquiries later had brought out that no such trust, as had been referred to, existed and that false representations had been made by Anand Prakash Khandelwal, his father Madan Lal Gupta and the petitioner to persuade him to purchase the land against initial consideration of Rs.1.55 crores. The complainant also alleges that, on 20.12.1999, Madan Lal Gupta (grandfather of the petitioner) and the petitioner along with two-three persons had come to the residence of Pawan Sachdeva, the managing director of the complainant company extending threats to kill him in the event of he initiating any action in the matter. The complaint itself indicates that the complainant, not deterred, had approached the police on the same date, *i.e.*, 20.12.1999, following it up by the complaint dated 23.12.1999 in the court of Chief Metropolitan Magistrate seeking criminal action to be initiated.

9. The investigation into FIR having been concluded, a report under Section 173 Cr.P.C. came to be submitted on 31.05.2001 by the investigating agency, *i.e.,* Economic Offences Wing (EOW). This report, *inter alia,* showed that the investigation had brought out that Anand Prakash Khandelwal, *i.e.* father of the petitioner had deposited the cheque dated 20.03.1995 for Rs.1 crore 50 lacs issued by the complainant in his own savings bank account No.757 with Bank of

Baroda, Bhikaji Cama Place, New Delhi on 20.03.1995 and the credit received thereagainst was transferred by him from his said savings bank account to account No.758 of M/s. Arjun Industries Limited, 425, Som Dutt Chambers-II, Bhikaji Cama Place, New Delhi on the very next day, *i.e.,* on 21.03.1995. It may be mentioned here that the evidence collected would also show that Anand Prakash Khandelwal was the managing director of the said company M/s. Arjun Industries Limited.

10. Further, an amount of Rs.1,39,10,188/- from out of the amount of the proceeds received from his savings bank account was transferred by Anand Prakash Khandelwal from the account of M/s. Arjun Industries Limited to international business branch of Bank of Baroda, Sansad Marg, New Delhi as payment for import of certain machinery in the name of the said company, these besides certain other remittances.

11. The investigation report would further indicate that Ram Charitable Trust having office at Maharishi Bhawan, Mirza Ismael Road, Jaipur, (Rajasthan) was established in 1988 and a Trust Deed came to be executed on 28.03.1988 in which Anand Prakash Khandelwal was appointed as a Managing Trustee in addition to two others. The Trust Deed statedly was registered with the office of Sub-Registrar, Jaipur vide registration No.1781, dated 28.03.1988.

12. The report of the investigation dated 31.05.2001 sought prosecution, *inter alia,* of Ms. Mausumi Bhattarcharjee, Satya Prakash Gupta son of Madan Lal and Surinder Singh Bhadoo, all directors of

M/s. Arjun Industries for offences punishable under Sections 406/420/120-B IPC, it also indicating that the case against Anand Prakash Khandelwal had abated since he had passed away on 27.10.1999. Though, in the concluding portion of the said report it was reflected that allegations against the petitioner had also been substantiated, in the earlier portion of the said report the conclusions of the investigating agency were to the contrary. It was nonetheless clearly mentioned that his name was being reflected in column No.2, there being no allegations about his involvement in the criminal conspiracy, in absence of any prosecutable evidence having come forth.

13. The Metropolitan Magistrate considered the said report dated 31.05.2001 and by proceedings dated 21.07.2001 decided to take cognizance finding sufficient grounds to proceed against all the above mentioned persons including the petitioner, this leading to processes being issued against each of them. It must be added here that the complainant at the time of consideration of the said report had expressed grievance as to the sufficiency of the investigative efforts that had been made and had sought a direction for re-investigation. This request was declined by the Metropolitan Magistrate.

14. The petitioner challenged the above mentioned summoning order dated 21.07.2001 by Criminal Misc. (Main) No.621/2002 before this court. A learned single judge, by his order dated 04.08.2003, found merit in the objections raised and consequently set aside the

order summoning the petitioner in the case and instead directed the police to carry out *"further investigation"*.

15. Pursuant to the above said directions of the court, the matter was further investigated by EOW. It resulting in a second report under Section 173 Cr.P.C. dated 21.03.2004 being submitted. Aside from the conclusions on facts which had been reported earlier in the previous report under Section 173 Cr.P.C., the second report came with following submissions and conclusions:-

> *"…The company M/s Arjun Industries Ltd. was incorporated in Jan. 1995 and was registered with Registrar of Companies, NCT of Delhi and Haryana vide regn. No. 55-64675 dt. 24/01/95. At the time of incorporation, there were four directors.*
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> 1. *Anand Parkash Khandewal*
> 2. *Ms. Mausmi Bhattacharya*
> 3. *Sat Prakash*
> 4. *Surender Singh Bhadoo*
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> *Out of these four directors, only two namely Anand Parkash Khandewal and Ms. Mausmi Bhattacharya were the authorized signatories in the bank. The company was maintaining current a/c No. 758 with Bank of Baroda, Bhikaji Cama Place, New Delhi. Anand Parkash Khandewal was also having his saving account 757 in the same bank.*
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> *In 1994-95, Anand Parkash Khandewal was the managing trustee of Ram Charitable Trust, besides, two other trustees names Mahesh Sharma and Ms. Mausmi Bhattacharya. During that period, memorandum of understanding dt. 01/11/94 was signed between Anand Parkash Khandewal and complainant in respect of sale of property of Ram Charitable Trust and accordingly, complainant made a part payment of Rs. 1.5 crores to Anand Parkash Khandewal and the same*

*received by him on 20/03095 in his saving account No. 757 maintained at Bhikaji Cama Place, New Delhi. Very next day i.e. on 21/03/95, entire amount was got transferred by him from his saving account No. 757 to current account No. 758 and the same was misappropriated. It may be mentioned that during this period Ajay Khandewal was not connected with M/s Arjun Industries Ltd.*

*The above facts further get corroboration through a civil suit filed by the complainant in Hon'ble Delhi High Court on 20/03/98 against Anand Khandewal, vide suit No. 1005/98. It may not be out of place to mention that the said suit was filed by the complainant much prior to the registration of the present case. In this suit the complainant has not alleged anything against Ajay Khandewal. However, during the pendency of the said suit Anand Parkash Khandewal died. After the demise of Anand Khandewal the complainant filed a petition dt. 27/11/99 before the Hon'ble High Court with the prayer that legal representatives of Anand Parkash Khandewal be brought on record. The petition reads as under:-*

> *"That the plaintiff on 28th Oct, 1999 has come to know from the newspaper Times of India in which obituary appeared which stated that Sh. Anand Parkash expired on 27/20/99. The said obituary, it was mentioned that Sh. Ajay Khandewal is the son of deceased representatives:*
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> 1. *Sh. Ajay Khandewal (son)*
>    *A-6/10, Vasant Vihar, New Delhi*
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> *The plaintiff is not aware whether wife of Sh. Anand Khandewal is alive or not and the plaintiff is also not aware of any of any other legal representative and heirs of the deceased defendant".*

*From the above it is evident that the complainant only after the death of Anand Khandewal, requested that name of Ajay Khandewal be substituted.*

*Investigation made has revealed that at the relevant time Ajay Khandewal had nothing to do either with Ram Charitable Trust and / or M/s Arjun Industries Ltd.*

*It is pertinent to mention that in the previous challan also it was categorically mentioned that allegations against Ajay Khandewal's involvement in criminal conspiracy gets no corroboration and as such the evidence against him is not worth prosecution. Therefore, the name of Ajay Khandewal is mentioned in col. No. 2 of the final report/ chargesheet u/s 173 CR.P.C. However, inadvertently his name was mentioned in Col. No. 4 instead of Col. No. 2. The present report is in no way concerned with regard to other accused persons who are already facing trial. Report is submitted accordingly for consideration please."*

16. The Metropolitan Magistrate considered the said report under Section 173 Cr.P.C. on 20.09.2006, the relevant portion whereof would read thus:-

"*The final report as on today does not disclose sufficient evidence for this court to proceed against Ajay Khandewal. So far as the contention that role of accused Madan and accused Ajay is common this court cannot review the order already passed by Ld. Predecessor Court but the factual position is that the evidence already on record today does not show that accused Ajay Khandewal was actively involved in this conspiracy. There is no evidence on record to show that accused Ajay Khandewal shared any part of the cheated/misappropriated amount. In the complaint also it is not specifically alleged that what exact misrepresentation was made by accused Ajay Khandewal, therefore from the final report filed by investigating agency there is no material to summon Ajay Khandewal as on today. In such circumstances, the complainant has remedy to proceed u/s 210 Cr.PC. Sub Section 3 of Section 210 provides that if the police report does not relate to any* *accused named in the complaint case, or the Magistrate does not take cognizance of the offence on the police report, the complaint case shall proceed in accordance with the provisions of Criminal Procedure Code.*

*Today none is present on behalf of the complainant at 3.40 p.m. One opportunity is granted to the complainant. Put up for further proceedings/CE on 12/2/07."*

17. Pursuant to the above mentioned directions in the order dated 20.09.2006, the complainant examined himself as the solitary witness (CW1) on 27.08.2011. In the said deposition he sought to reiterate what had been alleged by him in the FIR vis-à-vis the petitioner.

18. Upon consideration of the said testimony of the complainant (CW-1), the Metropolitan Magistrate, by order dated 24.01.2014, found grounds to proceed against the petitioner and, thus, issued summons to him for offences punishable under Section 406/420/120-B/506 IPC. The said order must be read in continuation of order dated 20.09.2006, the legality and propriety of both being questioned by the petition at hand.

19. Having gone through the record, this court finds that the approach of the Metropolitan Magistrate in dealing with the second report under Section 173 Cr.P.C. was wholly erroneous and based on procedure unknown to law. The second respondent herein had come up with a criminal complaint styled as a petition under Section 156(3) Cr.P.C. His request had been accepted in the year 2000. This led to the FIR being registered on 20.01.2000 under the directions of the Metropolitan Magistrate. The directions on such a petition under

Section 156(3) Cr.P.C. having been complied with, nothing remained pending with the court of Metropolitan Magistrate for any further action at his end to be taken up. Only the report of investigation was awaited.

20. As noted above, the investigation resulted in two reports under Section 173 Cr.P.C., the second one pursuant to directions for further investigation as issued by the learned single judge of this court in the proceedings which had been earlier taken out by the petitioner. Be that as it may, upon consideration of the said report, the Metropolitan Magistrate was expected to take a call on the question of issuance of process under Section 204 Cr.P.C. on the material that had been placed before him. There was no complaint or protest petition which had been brought by the complainant before the court. The reference to Section 210 Cr.P.C. in this view of the matter at the stage of consideration of the second report was erroneous.

21. The inquiry conducted by the Metropolitan Magistrate, by examining the complainant as CW-1, presumably under Section 200 Cr.P.C. was unauthorized. Even if it could be assumed that such material could be taken into consideration, the Metropolitan Magistrate was expected to examine the said deposition against the backdrop of what had been reported to him by the investigating agency pursuant to directions of the court. The conclusions in the second investigation report that the petitioner is not connected either to the trust or to the company cannot be wished away. There is nothing on record, nor even so alleged by the complainant, to show

that the petitioner has in any manner, directly or indirectly, been the recipient or beneficiary of the money which was passed on by the complainant to Anand Prakash Khandelwal. He cannot be roped in this matter only because he happens to be son of the said Anand Prakash Khandelwal.

22. As has been pointed out by the investigating agency in the second report, and as is the vociferous argument of the petitioner throughout, the chronology of events shows that the facts which were alleged in the complaint dated 23.12.1999 attributing certain acts of commission or omission to the petitioner were not alleged at any earlier stage even though they related to transactions that had occurred in 1994-1995. The plaint of the civil suit which was filed on 20.03.1998 is totally silent on the role of any person other than Anand Prakash Khandelwal. The argument of the counsel for the complainant that there was no occasion for any reference to role of any other person being pleaded in the said suit because it was directed against the managing trustee of the Ram Charitable Trust, does not appeal to reason. It may be that the plaintiff had a claim only against Anand Prakash Khandelwal who had taken over the money and who had dishonestly and fraudulently passed on the same to another entity in which he had an interest, this seemingly by way of criminal breach of trust, but the narration of background facts was expected to be complete and comprehensive. The role of the persons who had aided or assisted Anand Prakash Khandelwal in inducing the complainant to

part with money (by the two cheques) was required to be delineated in the averments in the plaint.

23. The tone and tenor of the application under Order XXII Rule 4 of CPC, presented in the civil suit on 27.11.1999, would rather show that the plaintiff (*i.e.,* the complainant) was not even aware of the existence of the petitioner at any earlier stage. He referred to the obituary that had been published in newspaper which he had come across and on the basis of which he had learnt about the fact that the petitioner is the surviving legal representative against whom he could proceed. The fact that the complaint leading to the FIR being lodged came on the close heels of the said application by itself would demonstrate that the story about complicity of the petitioner in the events that had happened in 1994-1995 is not credible.

24. For the above reasons, the impugned orders leading to summoning of the petitioner as accused and to his prosecution in the criminal case are found to be abuse of the process of the court. This court is consequently duty bound to step in. The said orders are, thus, set aside. The criminal proceedings against the petitioner in aforesaid case are quashed.

25. This disposes of the petition and the applications filed therewith.

**R.K.GAUBA, J.**

**AUGUST 09, 2018**
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