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

+ **W.P.(CRL) 3110/2019**

RAJESH GOYAL & ANR

..... Petitioners

Through Mr N. Hariharan, Senior Advocate with
Ms Pooja Soni, Mr Siddharth yadav, Mr Prateek
Bhalla, Ms Rekha Punya Palli, Mr Sharang Dhulia,
Mr Chandra Shekhar Yadav, Ms Gitanshi Arora,
Mr Varun Sharma, Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr Sanjay Lao, ASC with Mr Karanjeet
Sharma, Advocate with Inspt. Mukesh Rana,
EOW.

Mr Sidharth Joshi, Mr Ambareu, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.11.2019**

CRL.M.A. 39716/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(CRL) 3110/2019 & CRL.M.A. 39715/2019 (stay)

3. Issue notice. Mr Lao, the learned ASC and learned counsel for the complainant accept notice.
4. The petitioners have filed the present petition, *inter alia*, praying as

under:-

“Quash Orders dated 17.11.2018, 21.02.2019, 25.02.2019, 13.03.2019, 15.04.2019, 27.05.2019, 27.06.2019, 19.07.2019, 24.07.2019, 22.08.2019 & 30.09.2019 passed by the court of Ms. Ekta Gauba, ACMM (North West) Rohini Courts Delhi in Complaint Case No. 14258/18 titled as "State vs. M/s Rajesh Projects (India) Pvt. Ltd. & Ors ." and the proceedings arising therefrom;

(b) De-freeze the Bank Accounts of the Petitioners;

(c) Direct the prosecuting agencies to release the seized passports, documents; and/or”

5. Mr N. Hariharan, learned Senior Counsel appearing for the petitioners drew the attention of this Court to the orders impugned in the present petition and contended that the same indicate that the learned ACMM (North West) Rohini Courts, Delhi is seeking to monitor the investigation by issuing various directions, including (a) changing of the Investigating Officer; (b) making observations regarding freezing of assets and bank accounts; and (c) directing that information be made to the concerned authorities under the Prevention of Money Laundering Act. He also submitted that several observations have been made by the learned ACMM, which indicate a predisposed mind.

6. He contended that the learned ACMM has, without adjudicating any issues, already made observations to the effect that the funds have been siphoned off by the petitioners by cheating the public. None of the said allegations have been substantiated, as the matter is still at the investigation stage. He states that no report has been filed by any investigating agency before the learned ACMM to enable the court to be in seisin of these

matters. He submits that the learned ACMM would have no jurisdiction to monitor investigations even prior to any such report being filed. He further submits that some of the flat buyers have moved the National Company Law Tribunal and matters relating to the respondent company are pending before the National Company Law Tribunal (NCLT). Further, an Interim Resolution Professional has been appointed.

7. Without going into the controversy in the present petition, it is seen that the orders passed by the learned ACMM includes several directions issued to the investigating agencies. The said directions are in the nature of directing an expeditious and a fair investigation. Clearly, the petitioners cannot be heard to contend that the investigation be conducted contrary to the said principles.

8. The principal allegation against the petitioners is that they have collected funds from flat buyers on account of booking flats and have failed to deliver the same. It is contended on behalf of the learned counsel appearing for the complainants that the flats were booked even prior to obtaining the requisite sanctions. It is also stated that some of the funds collected from the complainants (flat buyers) were transferred to other companies owned by the promoters and in this manner, the funds have been siphoned off by the promoters of respondent no.2.

9. The allegations made by the complainants require to be investigated. It is seen that the learned ACMM had, by an order, directed investigation to be conducted by the ACP. Although, Mr Hariharan contends that such direction is without jurisdiction, this Court finds that the petitioners suffer no prejudice if the investigation is conducted by a senior officer.

10. It is also clear from the allegations made by the complainants that a

forensic audit is required to be conducted with regard to the affairs of the respondent company. The said forensic audit would definitely assist the concerned investigation agency in making an informed decision as to whether the complaints made are merited.

11. Mr Hariharan states that the Investigating Officer has already appointed a forensic auditor and the audit is in progress. And, at this stage, the petitioners do not object to the same.

12. Apart from the above, there are three other aspects regarding the directions issued by the learned ACMM that require to be considered. First, is regarding the directions that information be provided to other agencies. This amounts to inviting other agencies to commence proceedings. Clearly, there is no occasion for the learned ACMM to pass such directions. The question whether any complaint is required to be made to move any other agency or authority to initiate proceedings, is a matter for the complainants or the concerned authority to initiate and there was no occasion for the learned ACMM to issue directions in this regard.

13. The second aspect is regarding observations made regarding freezing of bank accounts and assets. In this regard the investigating agencies are required to take such action, provided the same is permissible in law and the conditions for taking such emergent action are satisfied. In this view, the concerned authorities are directed to take an independent decision uninfluenced by any observations made by the learned ACMM.

14. The third aspect is regarding observations made by the learned ACMM regarding the alleged offence. A plain reading of the impugned order indicates that the learned ACMM has made certain observations indicating that the court has accepted the allegations made against the

petitioners. There are observations to the effect that the petitioners have “cheated” and collected money. There are also observations to the effect that funds have been siphoned off. The learned ACMM was not called upon to return any such finding. At this stage, the court was not adjudicating any such question.

15. Without going into the questions whether the learned ACMM could monitor the investigation at this stage, it is clear that such observations are unwarranted as the learned ACMM was not called upon to form any view in this regard. In view of the above, all observations made by the learned ACMM to the effect that the petitioners have cheated the flat buyers or have siphoned off any funds, are expunged.

16. To obviate any objections or challenge on the ground of bias in view of the observations made by the learned ACMM, this Court directs the concerned District Judge to allocate this matter to any other ACMM.

17. The directions that investigations be conducted by a police officer of the rank of an ACP shall not preclude the police authorities from appointing any other senior officer to monitor/undertake the investigations in a fair manner.

18. The petition is disposed of with the aforesaid observations/directions. The pending application is also disposed of.

19. Order *dasti*.

VIBHU BAKHRU, J

NOVEMBER 05, 2019/pkv