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

\+ CRL.A. 615/2019

% *Judgment reserved on 21st May, 2019*
Judgment pronounced on 28th May, 2019

NAVAL KISHORE KAPOOR ..... Appellant
Through : Mr. Shariq J. Reyaz with Mr. Lakshay Dhamija and Mr. Sunav Rastogi, Advocates.

versus

NATIONAL INVESTIGATING AGENCY ..... Respondent
Through : Mr. Siddharth Luthra, Senior Advocate with Mr. Surinder Singh, Mr. Anoopam N. Prasad and Ms. Mehak Jaggi Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been filed under Section 21 of the National Investigation Act, 2008 read with Section 482 of the Code of Criminal Procedure(hereinafter referred to as **'Cr.P.C.'**) assailing the order dated 06.02.2019 (hereinafter referred to as **'Impugned Order'**) passed by the learned Additional Sessions Judge-03, New Delhi District, Patiala House Court, New Delhi whereby cognizance was taken against the appellant for the offences punishable under Sections 120-B of the Indian Penal Code and Sections 17 and 21 of the Unlawful Activities (Prevention) Act, 1967 in RC-10/2017/NIA/DLI, on a supplementary chargesheet dated 22.01.2019.

2. While assailing the impugned order, Mr. Shariq J. Reyaz, Advocate appearing for the appellant contended that the impugned order is based on conjunctures and surmises and deserves to be set aside; that appellant was named as Public Witness-28 in the main charge sheet dated 18.01.2018 filed by the respondent; that the appellant had been joining the investigation as and when called by the respondent; that on 25.07.2018, the appellant was handed over a notice dated 24.07.2018 under Section 34 of the Unlawful Activities (Prevention) Act by the respondent for providing the bank statement of M/s. N.Z. International FZC, Dubai from the opening to closing date till 31.07.2018; that on 26.07.2018, the appellant was arrested without being served with an arrest order or communicating the reasons and grounds of his arrest; that the appellant was arraigned as accused No. 13 in the supplementary chargesheet filed under Section 120B of the Indian Penal Code and Sections 17 and 21 of the Unlawful Activities (Prevention) Act, 1967; that vide Impugned Order, the learned Trial Court erroneously and wrongly took cognizance against the appellant holding that there are sufficient grounds to proceed against the appellant; that the learned Trial Court failed to take note that no fresh material for the submission of the supplementary chargesheet has been filed by the respondent; that the respondent deliberately and knowingly suppressed the material evidence; that the respondent wrongly linked the appellant with the accused No. 10 Zahoor Ahmad Shah Watali for aiding and abetting the flow of funds to channelize the same to the secessionists and separatists in Kashmir Valley; that the allegation against the appellant that he had entered into an Agreement

with M/s Trison Farms and Constructions Pvt. Ltd. through its Director Zahoor Ahmad Shah Watali (Accused No.10) for purchase of a piece of land measuring 20 Kanals in Sozeith Goripara Nagbal, Budgam for a consideration of Rs.6,00,00,000/- (Rupees Six Crore Only) as premium and Rs.1,000/- (Rupees One Thousand Only) as annual rent for initial period of 40 years and the appellant remitted a total sum of Rs.5,57,90,000/- (Rupees Five Crores Fifty Seven Lacs Ninety Thousand Only) in 22 instalments between 2013 and 2016, however, no land in question was found in the name of M/s Trison Farms and Constructions Pvt. Ltd. and the appellant was remitting the foreign money in India through accused No. 10, is vague and without any supporting document, hence, no offence under Section 120-B of IPC and Sections 17 and 21 of the Unlawful Activities (Prevention) Act is made out against the appellant.

3. Mr. Shariq J. Reyaz, learned counsel for the appellant has relied upon ***Hitendera Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors.*** reported in ***AIR 1994 Supreme Court 2623***, wherein the Apex Court has observed that:

> *"“12. Of late, we have come across some cases where the Designated Courts have charge-sheeted and/or convicted an accused person under TADA even though there is not even an iota of evidence from which it could be inferred, even prima facie, let alone conclusively, that the crime was committed with the intention as contemplated by the provisions of TADA, merely on the statement of the investigating agency to the effect that the consequence of the criminal act resulted in causing panic or terror in the society or in a section thereof. Such orders result in the misuse of TADA. The Parliament, through Section 20A of*

TADA has clearly manifested its intention to treat the offences under TADA seriously in as much as under Section 20A(1), notwithstanding anything contained in the CrPC, no information about the commission of an offence under TADA shall even be recorded without the prior approval of the District Superintendent of Police and under Section 20A(2) no court shall take cognizance of any offence under TADA without the previous sanction of the authorities prescribed therein. Section 20A, was thus, introduced in the Act with a view to prevent the abuse of the provisions of TADA.

13. We would, therefore, at this stage, like to administer a word of caution to the Designated Courts regarding invoking the provisions of TADA merely because the investigating officer at some stage of the investigation chooses to add an offence under same provision of TADA against an accused person, more often than not while opposing grant of bail, anticipatory or otherwise. The Designated Courts should always consider carefully the material available on the, record and apply their mind to see whether the provisions of TADA are even prima facie attracted."

He also relied upon ***Vinay Tyagi Vs. Irshad Ali @ Deepak and Ors.*** reported in ***(2013) 5 Supreme Court Cases 762.***

4. Refuting the arguments addressed on behalf of the appellant, Mr. Siddharth Luthra, learned Senior Counsel appearing for the respondent contended that the present appeal is barred by the law of limitation as well as Section 21 of the NIA Act, 2008; that the present appeal has been filed with an ulterior motive to delay the proceedings before the learned Trial Court; that the appellant in connivance with his business partner i.e. accused No. 10/Zahoor Ahmad Shah Watali has actively participated in the alleged offence; that there is no bar on

the Investigating Agency from filing a supplementary chargesheet against an accused on unearthing the fresh cause of action against him; that that the learned Trial Court after scrutinizing the material available on record has rightly concluded that there are sufficient ground to proceed against the appellant.

5. To substantiate his arguments, Mr. Luthra, learned Senior Counsel for the respondent has placed reliance on ***Hemant Dhasmana Vs. Central Bureau of Investigation and Anr.*** reported in ***(2001) 7 Supreme Court Cases 536***, wherein it has been held that :

> *"16. xxxxxx After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track."*

6. It is pertinent to mention that after some arguments, Mr. Siddharth Luthra, learned Senior Counsel for the respondent did not press his preliminarily objection that the appeal had been filed beyond limitation.

7. We have heard learned counsel for the appellant and perused the material available on record.

8. On the material facts, perusal of the chargesheet dated **18.01.2018** shows that during the course of investigation, it was revealed that number of traders were engaged in the LoC trade having relatives across the border, who were closely associated with banned terrorists organisation and the ex-militants and their family members were using

proxy companies and use of LoC trade route for smuggling of contraband and weapons.

9. Investigation further revealed that the secessionists were primarily dependant on Hawala Network and conduits to bring money from off-shore locations to India, to fuel anti-India activities in Jammu & Kashmir. It was found that accused Zahoor Ahmad Shah Watali was one such conduit and incriminating documents were seized from the house of his cashier-cum-accountant viz. Ghulam Mohd. Bhatt indicating that he was receiving foreign contribution from Pakistani establishment and terror organisations and their further remittance to the Hurriyat leaders and secessionists of Jammu & Kashmir, which points towards that he was an active channel to transmit funds from abroad to India to fuel secessionists activities and to wage a war against the Government of India.

10. Investigation further disclosed that accused Zahoor Ahmad Shah Watali had received a sum of Rs. 93,87,638.31 as foreign remittance in his NRE account maintained with J&K Bank through an unknown source. It was further revealed that accused Zahoor Ahmad Shah Watali had also received a sum of Rs. 2,26,87,639.31 as foreign remittance in his different NRE accounts from 2011 to 2013, under 'Other Income head' in his proprietorship firm under the name and style of 'Trison Internnational', Srinagar.

11. After procuring the following documents, the Investigating Agency found that accused persons including accused No. 10 / Zahoor Ahmad Shah Watatli, were routing the money from Hawala transfers and cash couriers from fake and bogus companies floated in the United Arab

Emirates (UAE) and arrayed the appellant, a resident of UAE as Prosecution Witness.

Particulars of Documents	Opinion
Letter No. RC-10/2017/NIA/DLI/14623 dt. 01.12.17. the Director, ED, 6th floor, Lok Nayak Bhawan, Khan Market, New Delhi alongwith certified copies of reply given by accused Zahoor Ahmad Shah Watali to Enforcement Directorate.	This document reveals that the Accused Zahoor Ahmad Shah Watali stated before the Enforcement Directorate that foreign remittance was received from NZ international, Dubai whereas Naval Kishore Kapoor has stated that he had never sent any remittance to Zahoor Ahmad Shah Watali from NZ International. Further he stated that only one Bank account was opened in the name of the firm which was maintained by him. Accused Zahoor Ahmad Shah Watali also stated that he knows Naval Kishore Kapoor from 1992-93 as they were family friends whereas Naval Kishore Kapoor has given statement that he knows Zahoor Ahmad Shah Watali since 2007.
Notice U/s 43F of UA (P) Act dated 14.12.2017 issued to Sh. Ankush Nanda, (Partner of M/s Saisha Construction), R-1/202, ground floor, Hauz Khas Enclave, New Delhi.	This document reveals that Notice U/s 43F of UA (P) Act was issued to Sh. Ankush Nanda, (Partner of M/s Saisha Construction) to provide the details/information related to details of property sold to Smt. Sarwa Zahoor wife of Zahoor Ahmed Shah Watali.

Reply dated 05.01.2018 of notice U/s 43F of UA (P) Act received from Ankush Nanda, (Partner of M/s Saisha Construction), R-1/202, ground floor, Hauz Khas Enclave, New Delhi.	This document reveals the direct foreign remittance from Zahoor Ahmad Shah Watali in the account of Ankush Nanda amounting to Rs. 52 lacs against flat purchased at L-25/4, DLF City, Phase-2, Gurugram in the name Smt. Sarwa Zahoor w/o accused Zahoor Ahmad Shah Watali.
Letter no. RC-10/2017/NIA/DLI/15774 dated 27.12.17 from DIG CIB, NIA to Joint Secretary (PAI), MEA, South Block, New Delhi.	This document reveals that information regarding Mudassar Iqbal Cheema was sought from Joint Secretary (PAI), MEA, South Block, New Delhi.
Letter no. J/114/17/2016, from Deputy Secretary (PAK) PAI Division, Ministry of External Affairs.	This document reveals that in response to letter no. RC-10/2017/NIA/DLI/15774 dt. 27.12.17, Deputy Secretary (PAK) PAI Division forwarded information about Mudassar Iqbal Cheema related to his posting in Pakistan High Commission, New Delhi as first Secretary w.e.f. 23.09.2015 to 02.11.2016.
Notice under section 43 F of UA (P) Act, 1967 to Naval Kishore Kapoor vide letter no. RC 10/2017/NIA/DLI/15780 dated 27.12.2017	This document reveals that Notice under section 43 F of UA (P) Act, 1967 was forwarded to Naval Kishore Kapoor for providing information/documents in the instant case.

Reply dated 28.12.2017 to notice under section 43 F of UA (P) Act, 1967 dated 27.12.2017 by Naval Kishore Kapoor.	This document reveals that Naval Kishore Kapoor replied to the notice under section 43F UA (P) Act. Vide reply he stated that the name Naval Kishore Kumar as Managing Director in the audit report of NZ Farms and Resorts Pvt. Ltd. for the assessment year 2015-16 submitted by Mustaq Ahmad Mir, Cost Accountant and audited by Sh. Anil Vasudeva Chartered Accountant, is a clerical error as his name is Naval Kishore Kapoor and the signature on the same are not his.
Letter No. CIT(A)-35/2017-18/253 dated 06.12.2017 from Sunita Singh, CIT (A)-35, New Delhi & Special Director of Appeals (FEMA).	This document reveals that the certified copy of the Appeal & other documents submitted by Zahoor Ahmad Shah Watali against the Adjudication order passed by the Assistant Director, Directorate of Enforcement, Srinagar vide order No. Adj/01/SRZO/2016/AD(SK) dated 24.10.2016.
Report dated 28.12.2017 forwarded by Sh. T T Bhutia on the letter No. CIT(A)-35/2017-18/253 dated 06.12.2017 from Sunita Singh, CIT (A)-35, New Delhi & Special Director of Appeals (FEMA).	This document reveals that accused Zahoor Ahmad Shah Watali has filed appeal against the adjudication order passed by the Assistant Director, Enforcement Directorate, Srinagar. wherein penalty of Rs 3 lacs was imposed upon him under section 13 of FEMA, 1999. The said Appeal is pending.

12. After filing the chargesheet on 18.01.2018, the respondent/National Investigating Agency procured following document associated with the appellant/Naval Kishore Kapoor.

Particulars of document	Opinion
Letter No. RC/10/2017/NIA/DLI dt. **15.05.2018** to the District Magistrate, Budgam, J&K to provide information related to land measuring 20 kanals situated at Sozieth Goripur Narbal, Tehsil Beerwah district Budgam, J&K	This document reveals that NIA sought information qua the ownership of the land at Sozieth Goripur Narbal, Tehsil Beerwah district Budgam, J&K.
Letter no. ADCB/Misc/2018/120 dated 19.05.2018 from Addl. Deputy Commissioner, Budgam	This document reveals that the discrepancies in alleged leased land between Trison Farms and Construction Pvt. Ltd. as under: - 1. Agreement mentions that the party of First Part i.e. Trison Farms & Constructions Pvt. Ltd. is absolute owner of the property under consideration. As per Article 370 of the Indian Constitution, a non-resident of J&K cannot possess immoveable property in J&K. Here M/s Trison Farms & Constructions Pvt. Ltd. is a non-resident in J&K. 2. The agreement failed to mention the type of Agreement like Agreement to sell, lease agreement etc.

	3. The agreement under reference has been notarized in the name of Mr. Ghulam Mohd. It should have been notarized in the name of either of the parties i.e. Zahoor Ahmad Shah Watali or Naval Kishore Kapoor. 4. 4 kanal of land in the name of Shahnaz Hussain Shah D/o Gh. Hussain Shah r/o Shopian (vendees) (Khatan No. 77, Survey No. 873/820/113 Min) vide Mutation no. 2115 sale deed dated 20-12-2005 are in the mortgage to J&K Bank. 5. The land is agricultural i.e. Abi Awal Nambal. 6. Conversion of land has not taken place before leased of deed. 7. Without change of title, land cannot be leased for commercial purpose.
Letter no. ADCB/Misc/2018/134 dated **22.05.2018** from Addl. Deputy Commissioner, Budgam.	This document reveals that the details of land/property of Zahoor Watali which was purchased by Naval Kishore Kapoor as per agreement deed between M/s Trison Farms and Construction Pvt. Ltd. and Naval Kishore Kapoor dated 07.11.2014.

Letter No. 22/Municipal J&K-Corres/DC/NIA-Hqrs/7218 dated **15.06.2018** to the Commissioner, Srinagar, Municipal Corporation, MA Road, Lal Chowk, Srinagar.	This document reveals that request was forwarded to the Commissioner, Srinagar, Municipal Corporation for providing information regarding cost of project/construction of flats in respect of Trison City Project of Zahoor Ahmad Shah Watali.
Letter No. 22/Municipal J&K-Corres/DC/NIA-Hqrs/7219 dated **15.06.2018** to the Commissioner, Jammu, Municipal Corporation, Town Hall Jammu.	This document reveals that request was forwarded to the Commissioner, Jammu, Municipal Corporation for providing information regarding cost of project/construction of flats in respect of Riverside Apartments project &Trison project of Zahoor Ahmad Shah Watali.
Notice under section 43F UA (P) of 1967 vide letter no. RC 10/2017/NIA/DLI/7876 dated **03.07.2018** to Ghulam Mohd. Bhat, son of Mohd. Sidiq Bhat resident of Tarahama Kunzer Tangmarg, District Baramulla, Kashmir.	This document reveals that the details/information related to case were sought from Ghulam Mohd. Bhat.
Reply dated **05.07.2018** to notice under section 43F UA (P) Act, 1967 from Ghulam Mohd. Bhat, son of Mohd. Sidiq Bhat resident of Tarahama Kunzer Tangmarg, District Baramulla, Kashmir.	This document reveals that the acquaintance of Ghulam Mohd. Bhat with Zahoor Ahmad Shah Watali and his business. The association of Zahoor Ahmad Shah Watali with other Hurriyat leaders and the financial transactions with them.

Letter no. SMC/PS/Comm/2970 dated **09.07.2018** from Commissioner Municipal Co-corporation to Deputy Commissioner (CIB) NIA Hqrs, New Delhi.	This document reveals that the information regarding cost of project/construction of flats in respect of Trison City Project of Zahoor Ahmad Shah Watali at Narbal District Budgam was forwarded to Deputy Commissioner (CIB) NIA Hqrs, New Delhi
Letter no. JMC/BS/865-66 dated **12.07.2018** from Senior Town Planner, Municipal Corporation Jammu to Deputy Commissioner (CIB) NIA Hqrs, New Delhi	This document reveals that building permission for the two projects of "Trison Apartments" and "Riverside Apartments" has not been issued by Jammu Municipal Corporation in the name of Zahoor Ahamad Shah Watali.
Notice under section 43F of UA (P) Act 1967 issued vide letter no. RC-10/2017/NIA/DLI/8925 dated **24.07.2018** to Naval Kishore Kapoor son of Om Prakash Kapoor, W F 70, Vaishno Gali, Jallandhar C 14.	This document reveals that Notice under section 43F of UA(P) Act 1967 was issued to Naval Kishore Kapoor for providing bank statement of M/s N Z International FZC, Dubai from the opening to closing date.
Reply dated **26.07.2018** by Naval Kishore Kapoor to the Notice under section 43F of UA(P) Act 1967 dated 24.07.2018 of NIA.	This document reveals Naval Kishore Kapoor provided United Arab Bank Ajman UAE, Account no. 00710212140001 of N Z International FZC to NIA.
Arrest memo dated **26.07.2018** related to arrest of accused Nawal Kishor Kapoor.	This document reveals that accused Naval Kishore Kapoor was arrested in the instant case.

Personal Search memo dated **26.07.2018** related to arrested accused Nawal Kishore Kapoor alongwith seized articles from him.	This document reveals that personal search was carried out of the arrested accused Naval Kishore Kapoor and seized the articles as per Personal Search Memo.
Forensic/financial analysis report dated **12.12.2018** submitted by Ms. Budhraja Adlakha & Co., Chartered Accountants, Karol Bagh, New Delhi in connection with accused Zahoor Ahmad Shah Watali.	This document reveals the discrepancies in the accounts and statements of Zahoor Ahmad Shah Watali. Report concluded that no real business was being conducted and even if the same was being conducted it was of a very minor level and not to the extent as given in the balance sheets.
Production-cum-Receipt Memo dt. **09.11.2018** related to Bank documents received from Sh. Anmol Rattan Diwan, Chief Manager, SBI, NRI Branch, Jalandhar in connection with Naval Kishore Kapoor.	This document reveals that Naval Kishore Kapoor withdrew the entire amount from his account as soon summons were issued to him by the NIA.

13. The subsequent development in the investigation and fresh cause of action against the appellant, led the responent to file a supplementary chargesheet on **22.01.2019** against him on the following grounds:

"17.2.3 During the scrutiny of the documents seized from the office premises of accused Ahmad Shah Watali (A-10) i.e. Trison Farms and Constructions Pvt. Ltd.,

documents pertaining to a Dubai based firm M/s. NZ International FZC were recovered wherein details of partnership of accused Zahoor Ahmad Shah Watali (A-10) with accused Naval Kishore Kapoor (A-13) were found. In the said documents, a trade license was found bearing number 1361 of file number 280/2003 pertaining to M/s. NZ International FZC issued by United Arab Emirates, Government of Ajman and with date of establishment as 14.12.2007 and validity of license till 13.12.2016. The said license also informed the nature of business of M/s. NZ International to be 'General Trading, Import and Export, Foodstuff Trading" and bore the license names as 'Zahoor Ahmad Shah, Kapoor Naval Kishore' with 'Gaurav Kapoor (son of accused Naval Kishore Kapoor) as the manager of the said firm. Further, the documents also contained a Board Resolution dated 08.05.2005 of M/s. NZ International FZC wherein decision of meeting of Board of Directors of the company, viz 'Mr Kapoor Naval Kishore' and 'Mr. Zahoor Ahmad Shah' was described and included three resolutions, vi. opening of company's bank account in HSBC, permission to both the Directors to operate the account & grant of signing authority to operate the company's bank account to the manager Mr. Gaurav Kapoor.

17.2.4 During the course of examination of accused Naval Kishore, scrutiny of documents seized from the premises of accused Zahoor Ahmad Shah Watali & his associates and examination f witnesses carried to unearth the conspiracy to raise and transfer funds from Dubai to India by accused Naval Kishore Kapoor and accused Zahoor Ahmad Shah Watali, several facts merged, as enumerated below, which make it evident that ***accused Naval Kishore Kapoor was acting as a cover in the well-organized conspiracy wherein funds were being channelled to the state of Jammu & Kashmir*** *through accused Zahoor Ahmad Shah Watali.*

17.2.4.2 Investigation revealed that accused Zahoor Shah Watali in his reply dated 30.10.2012 addressed to Sh. J. P. Mishra, Assistant Director, Enforcement Directorate, *replying to the notice given by the E.D. dated 09.10.2012 under Section 37 of FEMA, 1999, had declared that he owned the following 08 companies viz. :*

1. *Trison Farms and Constructions Pvt Ltd.,*
2. *Trison International,*
3. *NZ International FZC, Dubai,*
4. *Yasir Enterprises,*
5. *M/s. 3 Y,*
6. *Kashmir Veneer Industries,*
7. *Trison Power Pvt. Ltd.*
8. *Three Star Enterprises*

He further stated that out of these 08 companies, 02 companies were not active viz. Trison Power Pvt. Ltd. and Three Star Enterprises. ***Only one company viz NZ International 29, Ajman, UAE is located outside India and has operations outside India. The said firm is a partnership concern between the accused Naval Kishore Kapoor and the accused Zahoor Ahmad Shah Watali.***

17.2.4.5 During the course of investigation, it was ascertained that the accused Zahoor Ahmad Shah Watali received foreign remittances to the tune of Rs.93,87,639.31 in his A/c No. NRE-0252040200000505 J&K Bank from 2011 till 2013 from unknown sources.

17.2.8 During the course of investigation, it was revealed that a firm by the name of M/s. NZ Farms and Resorts Pvt. ltd. was incorporated in India on 18 December, 2014 by accused Naval Kishore Kapoor and accused Zahoor Ahmad Shah Watali wherein accused Naval Kishore Kapoor ws the Managing Director and the accused Zahoor Ahmad Shah Watali was the Director. The information of the firm was merely to bring money from outside and operate the said firm as a cover for the instant conspiracy. Thus, accused Zahoor Ahmad Shah Watali and accused Naval Kishore Kapoor were looking for various avenues and alibis to bring the funds from offshore locations to India.

17.2.9 The conduct of the accused Naval Kishore Kapoor in wthdrawing the entire amount of Rs.39,71,984/- from his account in SBI NRI Banch (Jalandhar) on 16.10.2017 after issuance of NIA summons to him on date 13.10.2017 establishes mala fide and criminal intent on his part. The accused has not been able to explain the sudden need for repatriation of money immediately after he was directed to join investigation.

14. A close scrutiny of the documents placed on record for the first time with the present appeal i.e. Power of Attorney dated 09.12.2006 executed by accused Zahoor Ahmad Shah Watali in favour of M/s. Trison Farms & Constructions Pvt. Ltd., Partnership Deed dated 13.12.2006 and Lease Agreement dated 07.11.2014 executed between M/s. Trison Farms & Constructions Pvt. Ltd. and the appellant, reveals that the land in question belongs to M/s. Trison Farms, wherein Mr. Yamin Zahoor Shah Watali and Mr. Yawar Zahoor Shah Watali, partners of M/s. Trison Farms, executed an Irrevocable Power of Attorney dated 09.12.2006 in favour of M/s. Trison Farms and Constructions Pvt. Ltd. through its Managing Director i.e. accused No. 10 Zahoor Ahmad Shah Watali.

15. Accused No. 10 Zahoor Ahmad Shah Watali herein falsely represented himself as the 'Absolute Owner' of the said property and entered into a Lease Agreement dated 07.11.2014 with the appellant/Naval Kishore Kapoor**,** resident of United Arab Emirates ('UAE') for a piece of land measuring 20 Kanals in Budgam, Jammu & Kashmir on lease for Rs.6 Crores as premium and Rs.1,000/- towards annual rent for an initial period of 40 years for which Naval Kishore Kapoor remitted Rs.5.579 crores in 22

instalments between the year 2013 and 2016. The false representation is of significant importance as both appellant and the accused No. 10 are not strangers, but partners in M/s. N. Z. International FZC, Dubai.

16. It was further revealed that chartered accountant had signed and audited the balance sheets of the firms ***(M/s. Trison International, M/s. Trison Farms & Construction Pvt. Ltd and M/s. Yasir Enterprises)*** of the accused Zahoor Ahmad Shah Watali without seeing and verifying the supporting documents. The balance sheets of the companies were also sent to the CA by Mustaq Mir, Cost Accountant and Shabir Mir, CA from Wizkid Office, Srinagar through e-mail wherein he was asked to sign on them in Delhi.

17. Further, as per the version of the investigating agency, during the course of investigation, it was revealed that no such land exists in the name of 'Trison Farms and Construction Pvt. Ltd.' for which the two partners i.e. the appellant/Naval Kishore Kapoor and accused No. 10 Zahoor Ahmad Shah Watali entered into an agreement. The National Investigation Agency has evidently established that the said agreement between the appellant and Accused No. 10 was a sham created conjointly by them for remitting huge amount of Rs.5,57,90,000/- from unknown sources to India.

18. We deem it appopriate to add herein that the bail application of the accused No. 10/ Zahoor Ahmad Shah Watali has been rejected by the Hon'ble Supreme Court of India vide order dated **02.04.2019** in ***(Crl.A 578/2019) National Investigation Agency Vs. Zahoor Ahmad Shah Watali,*** wherein it has been stated that accusation against the accused Zahoor Ahmad Shah Watali are *prima facie* true.

19. It is a settled principle that an Investigating Officer of a case is bound to investigate the matter in a fair manner and to collect all relevant and necessary material to disclose the real state of affairs and submit his report before the Court concerned, who on analysing the documents so produced, can discharge the accused or take cognizance against him. Admittedly, an Investigating Officer is empowered under Section 173(8) Cr.P.C to proceed further into the investigation, in the event of collecting further evidence either oral or documentary in respect of the said offence, even after filing the report.

20. In a very recent judgment, the Hon'ble Supreme Court in the case titled ***State of Gujarat Vs. Afroz Mohammed Hasanfatta (Crl. A. 224/2019)*** decided on **05.02.2019** has held that cognizance can be taken relying upon the supplementary chargesheet only if the court is of the opinion that there are sufficient grounds to proceed against the accused. The germane portion of the judgment is extracted below:

> *"50. As discussed earlier, while taking cognizance of an offence based upon a police report, **it is the satisfaction of the Magistrate that there is sufficient ground to proceed against the accused**. As discussed earlier, along with the second **supplementary charge sheet**, number of materials like statement of witnesses, Bank statement of the respondent-accused and his company Nile Trading Corporation and other Bank Statement, Call Detail Records and other materials were placed. Upon consideration of **the second supplementary charge sheet and the materials placed thereon, the Magistrate satisfied himself that there is sufficient ground to proceed against the respondent and issued summons**. The learned Single Judge, in our considered view, erred in interfering with the*

order of the Magistrate in exercise of revisional jurisdiction.

51. In our view, the learned Single Judge ought not to have gone into the merits of the matter when the matter is in nascent stage. When the prosecution relies upon the materials, strict standard of proof is not to be applied at the stage of issuance of summons nor to examine the probable defence which the accused may take. ***All that the court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding.*** *The learned Single Judge committed a serious error in going into the merits and demerits of the case and the impugned order is liable to be set aside.*

52. In the result, the impugned order passed by the High Court of Gujarat in Criminal Revision No.264 of 2017 dated 03.05.2017 is set aside and this appeal is allowed. ***The order of the Magistrate taking cognizance of the second supplementary charge sheet dated 15.11.2014 in Criminal Case No.62851 of 2014 for the offences punishable under Sections 420, 465, 467, 468, 471, 477A and 120B IPC and issue of process to the respondent-accused shall stand restored. The respondent-accused is directed to appear before the trial court on 27.02.2019 and the trial court shall proceed with the matter in accordance with law.*** *"*

21. Having discussed the material available on record, we are of the considered view that the arguments advanced on behalf of the appellant that the learned Trial Court erroneously and wrongly took cognizance against the appellant because no fresh material was produced by the investigating agency in the supplementary chargesheet implicating the appellant in the alleged conspiracy, is without force as there is sufficient material available on record which

prima facie points towards the involvment of the appellant that he along with accused No. 10/Zahood Ahmad Shah Watali aided and abetted the flow of funds from fake and bogus companies floated in UAE and channelize the same to the secessionists and separatists in Kashmir Valley. The National Investigation Agency on the basis of fresh material collected, was able to unearth the fresh cause of action against the appellant/Naval Kishore Kapoor and filed the supplementary chargesheet against him.

22. Resultantly, we are of the considered view that the impugned order is within the realm of law and does not warrant any interference.

23. Accordingly, the present appeal is dismissed.

24. Needless to say, that any observation made in this order is only for the purpose of deciding the grounds urged before us today and would not be treated as an expression on the merits of the matter before the trial court.

SANGITA DHINGRA SEHGAL, J

MANMOHAN, J

MAY 28, 2019
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