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

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Date of Decision : March 27, 2019

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W.P.(CRL) 2981/2018 & CrI.M.A.No.33291/2018

MADAN LAL CHOWATIA & ORS.

..... Petitioners

Represented by: Mr.Neeraj Kumar Singh, Advocate

versus

STATE & ANR

..... Respondents

Represented by: Mr.Avi Singh, ASC for the State with
Ms.Purnima Malik, Advocate
Mr.Tanmaya Mehta, Advocate for R-
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CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioners seek setting aside of the order dated 2nd April, 2018 passed by the learned Additional Sessions Judge as also the order dated 10th June, 2016 passed by the learned Metropolitan Magistrate summoning the petitioner for the offences alleged and directions to the learned Metropolitan Magistrate to take fresh cognizance after considering all the charge sheets and material available before it.

2. A brief background of the case.

3. FIR No.313/2014 under Sections 420/406 IPC was registered at Police Station Kirti Nagar pursuant to an application under Section 156(3) Cr.P.C. on the complaint of respondent No.2 Hitesh Kothari. In the FIR, the allegations of the complainant were that on 20th April, 2007 Champat Lal

Babu Lal Jain a partner in M/s.Suraj Constructions Vijaywada (AP) came to his house and represented that he was constructing a mall-cum-multiplex 'Ripple Mall' at Vijaywada and that the prices would go very high so the complainant would earn high profits if he purchased some area in the mall. Accordingly, for a consideration of ₹7 crores 15 lakhs the complainant was allotted a total area of 8000 square feet and an agreement in this regard was entered into on 20th April, 2007. Respondent No.2 paid the entire agreement amount of ₹7 crores 15 lakhs from 20th April, 2007 to 3rd March, 2010 and also gave a sum of ₹2 crores 38 lakhs as loan to Champat Lal however on completion of the mall, the accused refused to transfer the space ad-measuring 8000 square feet in the name of the complainant.

4. During the hearing of the application for bail of Champat Lal, he filed certain documents purported to be signed by the complainant regarding cancellation of the agreement signed by the complainant with M/s.Suraj Constructions Pvt. Ltd. and allotment of share to M/s.Fuso Glass India Pvt. Ltd. for a sum of ₹9.5 crores. These documents submitted by the petitioner No.2 Champat Lal Jain are the bone of contention because the complainant states that the documents are forged and fabricated whereas petitioners claim that they are genuine. Investigation also revealed that Hitesh Kothari had paid a sum of ₹9 crores, 64 lakhs and 69 thousand to M/s.Fuso Glass India Pvt. Ltd. and the petitioners have issued share certificates of the said amount in favour of the complainant whereas the complainant denied purchasing the share certificates of M/s.Fuso Glass India Pvt. Ltd.

5. During the course of investigation Sections 467/468/471/34 IPC were added. The Investigating Agency filed the charge sheet on 11th April, 2016. FSL Report dated 15th May, 2015 filed along with the charge-sheet fortified

the stand of the complainant to some extent and noted that to come to a conclusive opinion further extensive admitted writings of contemporary period i.e. year 2010-2011 containing the words/ combinations as occurring in the questioned writings of the person concerned/ suspect if any be supplied for comparison.

6. Grievance of the petitioners is that despite this opinion by the FSL, cognizance was taken by the learned Metropolitan Magistrate and the petitioners were summoned as accused. Petitioners filed a revision petition challenging the order dated 10th June, 2016 which was also dismissed on 2nd April, 2018.

7. On 13th June, 2016 a letter was received from FSL Rohini at Police Station, Kirti Nagar regarding examination of the exhibits and it was stated that:

“during the course of examination of the case, it has been observed that the admitted signatures attributed to Sh. Hitesh Kothari in FSL case No. 2016/D-1528 have pattern/ model other than the admitted signature received earlier in the writing/ signatures characteristics of the person concerned.

i) More standard (admitted) signature of Shri Hitesh Kothari of contemporary period i.e. years 2010-2015, available in the official records at different places.

ii) More standard (admitted) writings of Sh. Hitesh Kothari containing words/sentences executed in Capital letters and amounts written in figures as well as words etc. of the contemporary period.

iii) The respective original documents, xerox copies of admitted documents are required for examination. It needs to mention that if the originals of the Xeroxed documents are not possible to deposit in this Laboratory then photography/

examination of those Xeroxed documents may be arranged on suitable date & time as per availability of the expert.”

8. Thereafter FSL team visited the office of Sub-Registrar Basai Darapur Delhi, Chennai Police and Directorate of Revenue Intelligence and clicked the photographs of admitted signatures and hand-writing from original documents whereafter first supplementary charge-sheet with the above-noted Opinion was filed. Based on the photographs so clicked as noted above, a further opinion was received from the FSL opining that the questioned signatures and hand-writing matched with the admitted and specimen signatures of the complainant Hitesh Kothari.

9. Learned counsel for the petitioners claim that the Court could have taken cognizance only after the supplementary charge sheets were filed even if cognizance was required to be taken. Since after filing of the charge sheet, supplementary charge sheets have already been filed, the learned Trial Court will have to consider the entire material at the stage of hearing of arguments on charge. Thus if on the face of the complaint and the investigation carried out resulting in the filing of the charge sheet and supplementary charge sheet in case no offence is made out against the petitioners, the learned Trial Court would be within its jurisdiction to discharge the petitioners.

10. Contention of learned counsel for the petitioners that before taking cognizance learned Trial Court ought to have waited for the supplementary charge sheets which contained the report of the FSL requires to be negated because if on the face of the complaint and the investigation carried out till that stage a prima face case is made out, the order of the Magistrate taking cognizance cannot be held to be illegal. Section 173(8) Cr.P.C. permits

further investigation to the investigating agency till the end of the trial as and when any fresh material comes to its notice. To hold that the cognizance should not be taken till the last supplementary charge-sheet is filed would negate the very purpose of filing of a supplementary charge-sheet under Section 173(8) Cr.P.C.

11. Petition and application are therefore dismissed however the petitioners will be at liberty to address arguments at the stage of charge and if based on the charge sheet and the supplementary charge sheets no case is made out, the learned Trial Court will be within its jurisdiction to discharge the petitioners.

MARCH 27, 2019
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(MUKTA GUPTA)
JUDGE