

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th November, 2019

Pronounced on: 27th November, 2019

+ CRL.M.C. 4551/2018 and Crl.M.A.31631/2018, 35622-35623/2018, 5574/2019

SALMAN KHURSHID

..... Petitioner

Through: Mr. Sidharth Luthra, Senior Advocate with Mr. Aadil Singh Boparai, Ms. Sakshi Kotiyal, Mr. Shivanshu Singh & Mr. Prithvi Narula, Mr. Pramod Kumar Dubey and Mr. Kushank Sindhu, Advocates along with petitioner in person.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Meenakshi Chauhan, APP for State with SI Rakesh Kumar, PS Amar Colony
Mr. Puneet Mittal, Senior Advocate with Ms. Vasudha Bajaj & Mr. A.Gupta, Advocates for R-5.

+ CRL.M.C. 5069/2018 and Crl.M.A.33507/2018

S.R VAISH

..... Petitioner

Through: Mr. Madhav Khurana, Advocate with Mr. Nitin Saluja, Mr. Mudit Gupta, Mr. Varun Singh, Mr. Aman Panwar, Mr. Akshay, & Mr. Harsh G. Advocates

versus

STATE & ORS.

..... Respondents

Through: Ms. Meenakshi Chauhan, APP for
State with SI Rakesh Kumar, PS Amar
Colony
Mr. Puneet Mittal, Senior Advocate
with Ms. Vasudha Bajaj, Mr.
Rupendra Pratap Singh, & Mr.
A.Gupta, Advocates for R-3 & R-4.

+ **CRL.M.C. 175/2019 and Crl.M.A.5611/2019**

STATE

..... Petitioner

Through: Ms. Meenakshi Chauhan, APP for
State with SI Rakesh Kumar, PS Amar
Colony

versus

DR. SHARDA NAYAK

..... Respondent

Through: Mr. Siddharth Luthra, Senior
Advocate with Ms. Mumtaz Bhalla,
Mr. Aadil Singh Boparai, Ms. Ritika
Ahuja & Ms. Vaishali, Advocates for
R-1.
Mr. Puneet Mittal, Senior Advocate
with Ms. Vasudha Bajaj,
Mr. Rupendra Pratap Singh &
Mr. A.Gupta, Advocates for R-2.

+ **CRL.REV.P. 950/2018 and Crl.M.A.5601/2019**

DELHI PUBLIC SCHOOL SOCIETY & ORS..... Petitioners

Through: Mr. Puneet Mittal, Senior Advocate
with Ms. Vasudha Bajaj & Mr.
Rupendra Pratap Singh & Mr.
A.Gupta, Advocates

versus

STATE & ANR

..... Respondents

Through: Ms. Meenakshi Chauhan, APP for
State with SI Rakesh Kumar, PS Amar
Colony
Mr. Siddharth Luthra, Senior
Advocate with Ms. Mumtaz Bhalla,
Mr. Aadil Bopanai, Ms. Ritika Ahuja
& Ms. Vaishali, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

1. These petitions arise out of various orders relating to a criminal case pending on the file of the Metropolitan Magistrate, South-East District at Saket Courts Complex, New Delhi and have given rise to certain common questions of fact and law and, therefore, on the request of all parties, have been heard together and are being decided through this common judgment. It may be mentioned here that the criminal case relates to first information report (FIR) no.421/2015 of police station Amar Colony, which was registered on 31.03.2015, on the complaint of Rear Admiral M.M. Chopra, described as Vice-Chairman of Delhi Public School Society ("DPS Society") respecting an incident that had statedly occurred from about 9.30 a.m. onwards on 30.03.2015 in the office of DPS Society located at F Block, East of Kailash, New Delhi-110 065.

2. On the allegations made in the complaint dated 30.03.2015 which formed the basis of the above-said FIR, the police initially took it to be a case involving offence punishable under Section 448 read with Section 34 of the Indian Penal Code, 1860 (IPC), reference at that

time having been made to the involvement of Dr. (Mrs.) Sharda Nayak (respondent in Crl. MC 175/2019 and Crl. Rev. 950/2018), she concededly being a life member of the said society. The initial investigation into the said FIR resulted in a report dated 18.02.2016 (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 being submitted in the court of the Metropolitan Magistrate on 01.03.2016 on the basis of which cognizance was taken for offence under Section 448 IPC whereby the afore-said respondent (Sharda Nayak) was summoned as an accused.

3. By order dated 01.03.2017, the request of investigating agency for “*further investigation*” was allowed by the Metropolitan Magistrate and this eventually led to a supplementary report (supplementary charge-sheet) dated 15.12.2017 being submitted whereby request was made for prosecution of certain others to be initiated, they including petitioner Mr. Salman Khurshid (Crl. MC 4551/2018) and petitioner S.R. Vaish – also described as Satyajit Vaish – (Crl. M.C. 5069/2018), the investigating agency requesting for cognizance to be taken and trial to be held for offences under Sections 419, 451, 474, 120B IPC.

4. Cognizance on the supplementary charge-sheet was taken by the Metropolitan Magistrate, by order dated 08.01.2018, in terms of which the two above-mentioned petitioners, and one Narender Kumar, were summoned. But, the said order was set aside by this court by order dated 09.05.2018 in Crl. MC 1589/2018 for the reason the main charge-sheet had not been considered. The Metropolitan Magistrate

thereafter passed a fresh order, this time upon perusal of the main charge-sheet and the supplementary charge-sheet and by proceedings recorded on 04.08.2018 took cognizance and issued process against the said three persons summoning them as accused.

5. Meanwhile, the case against the person described as prime accused (Dr. Sharda Nayak) had come up before the Metropolitan Magistrate for consideration of charge. By order dated 09.06.2017, charge was found made out for putting her on trial for offences punishable under Sections 416, 451, 467, 471, 474 IPC. The order led to formal charges being framed on 22.07.2017. The said orders framing charge, and the charges framed in its wake, were assailed before the court of Sessions, its revisional jurisdiction having been invoked by petition (Crl. Rev. 493/2017) preferred by respondent Dr. Sharda Nayak. The revision petition was allowed, by judgment dated 15.09.2018 of the Additional Sessions Judge, setting aside the order of the Metropolitan Magistrate, the respondent Sharda Nayak having consequently been discharged.

6. While the State and the complainant (and Society) have challenged the revisional court's order of discharge of respondent Sharda Nayak by Crl. MC 175/2019 and Crl. Rev. 950/2018, the other two accused viz. Mr. Salman Khurshid (petitioner in Crl. MC Nos.4551/2018) and Mr. S.R. Vaish (petitioner in Crl. MC 5069/2018) by their respective petitions have brought challenge to the summoning order passed by the Metropolitan Magistrate in their respect.

7. From the material submitted with the two charge-sheets which have been presented pursuant to investigation into the subject FIR it appears that there is substantive evidence available confirming the fact that Mr. V.K. Shunglu (second petitioner in Crl.Rev.P.950/2018) was the elected Chairman of DPS Society holding the said office during the relevant period, Rear Admiral M.M. Chopra (third petitioner in Crl.Rev.P. 950/2018 – also the first informant) being the Vice Chairman. While the former (the then Chairman of DPS Society) was away on some foreign visit, the latter (the Vice Chairman) was in India and in absence of the former would assumably be looking after the duties of the office held by him.

8. Though in the FIR, registered on the complaint of the Vice Chairman of DPS society, allegations have been made about trespass into the premises of its office at about 09:30 a.m. on 30.03.2015, the investigation has brought out evidence showing the entry of the aforementioned persons sent up for trial with a large group of others around 08:30 a.m. and in this regard reference may be made to the statements (under section 161 Cr.P.C.) of security guards named Tutu Kumar, Tarni Prasad Singh, Sham Bihari, Abhey Singh, confirmation of their word coming forth in similar statements (under section 161 Cr.P.C.) of certain others including Zeenat Khader (Joint Secretary), Komal Yadav (driver), Madan Singh (driver) and Ashwani Kumar (driver).

9. The prosecution relies upon, *inter alia*, the eye-witness account of a large number of employees of DPS society including Mr. P.K.

Mahajan (Deputy Director), Jaender Singh Virdi (Additional Secretary), Anupama Kumari (Programme Executive), Smt. Sunita Mehendiratta (Executive Assistant), Sanjeev Ranjan Prasad (Accountant), Ratheesan (Accountant), Mohd. Naushad (Accountant), Mr. I.J. Noata (Consultant), Veer Singh Naryal (UDC), Manju Rawat (UDC), Gireesh Chander (LDC), Dharam Singh (peon), and Sanju Kumar (*safai karamchari*), each of whom by their respective statements (under section 161 Cr.P.C.) seek to confirm that Dr. Sharda Nayak, accompanied by Mr. Salman Khurshid, Mr. S.K. Vaish and Mr. Narender Kumar (the three persons additionally sought to be prosecuted), forming part of a large group, had entered into the office of DPS Society and gone into the office room of the Chairman where Dr. Sharda Nayak had proceeded to occupy the official chair of the Chairman, declaring to the entire staff that she had taken over as the Chairperson of DPS Society. These witnesses also seek to state that the said four persons had called the entire staff to the conference room where they were addressed by Dr. Sharda Nayak and Mr. Salman Khurshid, each of whom had told those assembled that the existing working Committee of the Society had been dissolved and Dr. Sharda Nayak had been elected as the new Chairperson.

10. It may be mentioned here itself that, during the investigation into the FIR, the police had called upon Dr. Sharda Nayak, by notices under section 91 Cr.P.C. to furnish documentary proof, *inter alia*, about such changes in the Society wherein she may have been elected as the Chairperson, she having responded by a reply merely stating

that the required documents were in public domain and could be inspected in the office of Registrar of Societies.

11. It was conceded at the hearing that there had been no such elections (as was claimed) held preceding the above mentioned incident of 30.03.2015 wherein Mr. V.K. Shunglu, the existing Chairman of the DPS Society may have been replaced by Dr. Sharda Nayak. In this context, in fact, the learned senior counsel appearing on her behalf (also appearing for Mr. Salman Khurshid) submitted that Dr. Sharda Nayak had been under some “*illusion*” about her claim to be the Chairperson of DPS Society. From this, it can be safely deduced that on the date of the incident *i.e.*, 30.03.2015 Mr. V.K. Shunglu continued to be the Chairman of the DPS Society and the claim allegedly made at the time of the visit and stay of aforesaid persons in the office of the Chairman of the said society, during his absence, about Dr. Sharda Nayak having been elected as the new Chairperson was not only false but baseless to their knowledge.

12. Be that as it may, it must also be noted here that the investigation has brought out that during the relevant period, the DPS Society comprised of nineteen life members. The said nineteen life members included not only the then Chairman and Vice Chairman of the society, but also three out of four persons against whom allegations have been made, *viz.* Dr. (Mrs.) Sharda Nayak, Mr. Salman Khurshid and Mr. Narender Kumar. It may also be noted here that it was conceded at the hearing that the grand-father of the fourth accused (S.R.Vaish) had been earlier a life member of the said society.

13. From the FIR, registered on the basis of complaint dated 31.03.2015 of the Vice Chairman of DPS Society, it is clear that he (the first informant) was himself not present at the scene at the relevant point of time. It appears that the information which he conveyed to the police was based on the facts which he may have gathered from the employees of the society who would have been present, some of whom have been mentioned above. He reported “illegal trespass” into the office of the society by “some personnel”, the locks of the office of the Chairman having been broken, the intruders appearing to be “very dangerous and harmful”, Dr. (Mrs.) Sharda Nayak having “forcibly occupied” the office of the chairman and having issued orders to the staff and certain others quarters, and on such facts solicited intervention of the police for restraint against continuation of such activities. As observed earlier, the police took it to be a case of criminal trespass and registered the FIR for investigation only into the offence under section 448 read with section 34 IPC. It is inherent in this that it was incumbent on the investigating police to gather evidence by examining all relevant witnesses, particularly such employees as were present on the premises and may have seen or heard or otherwise witnessed the events in full or in part.

14. The main charge-sheet which was submitted on 01.03.2016 concluded with a request for prosecution to be initiated for the aforesaid offence (under section 448 IPC) against Dr. (Mrs.) Sharda Nayak. As has been brought out at the hearing by petitioner Mr. Salman Khurshid himself, the first charge-sheet was based primarily

on the statements of Ms. Sunita Mehendiratta (Executive Assistant), Ms. Anupama Kumari (Programme Executive), Mr. Veer Singh Naryal (UDC), Mr. Gireesh Chander (LDC), Ms. Manju Rawat (UDC), Mr. Dharam Singh (peon), Mr. Shyam Lal (peon), Mr. Malbe Abbas (peon), and Mr. Sanju Kumar (*Safai Karamchhari*). The said charge-sheet (*i.e.*, the main one) referred to reports of two other incidents subsequent to the one of 30.03.2015, the first occurring on 13.04.2015 and the second on 15.05.2015, the latter (the incident of 15.05.2015) forming subject matter of a separate FIR No.605/2015 involving offences under sections 365/323/342/452/34 IPC of Police Station Amar Colony. It was conceded at the hearing that Dr. (Mrs.) Sharda Nayak is also an accused in the criminal case arising out of said other FIR (No.605/2015) which is now pending consideration of the charge (post the summoning order) in the same court of Metropolitan Magistrate.

15. The main charge-sheet referred to the probe into the role of certain others, *viz.*, Mr. Manish Gupta, Mr. Kanwar Pal Malik and Mr. Rajiv Maheshwari, they having accompanied Dr. (Mrs.) Sharda Nayak to the office of DPS society on 30.03.2015, the investigating agency finding no sufficient material to attribute culpability on their part. It also stated that Mr. Salman Khurshid and Mr. Narender Kumar (who have been summoned on the basis of supplementary charge-sheet) being life members of the DPS society had “*legal right*” to come to its office, no eye witness having made any “*specific allegations against them*” except as to their presence.

16. It appears that the complainant (and DPS society) were not satisfied with the result of investigation culminating in the charge-sheet as aforementioned, presented on 01.03.2016, for trial only of Dr. (Mrs.) Sharda Nayak to be held, that too on the charge limited to the one for offence under section 448 IPC. A protest petition was filed, to the maintainability of which objections were raised. But, while the said matter was pending before the Metropolitan Magistrate, the Station House Officer (SHO) of Police Station Amar Colony, by his request in writing dated 18.02.2017, sought permission of the Metropolitan Magistrate for “*further investigation*” to be carried out. Taking note of this request, the Metropolitan Magistrate, by her order dated 01.03.2017, gave go-ahead to the investigating police, while declining to act upon the protest petition which, in the given fact-situation, even otherwise had been rendered unnecessary.

17. As is clear from the narration of the chronology, the supplementary charge sheet which was submitted in the wake of “further investigation” in exercise of the power vested in the police in terms of section 173 (8) Cr.P.C. has resulted in summoning as accused of three more persons (two of whom are petitioners before this court), by the impugned order dated 04.08.2018, the third of them (Narender Kumar) having chosen not to challenge the said order till date.

18. It may be noted at the same time that the supplementary charge-sheet had sought prosecution as additional accused not only of the said three persons but also of three others (Manish Gupta, Rajiv Maheshwari and Mr. K.P. Malik), order of the Metropolitan

Magistrate being conspicuously silent in their regard, there being no grievance raised even by the complainant or the State in this respect.

19. It also needs to be noted again that as a result of the cognizance being taken on the supplementary charge-sheet, the scope of proposed trial stands expanded so as to include not merely the offence under section 448 IPC but also the offences punishable under sections 419/451/474 and 120-B IPC. Further, as was conceded at the hearing on these petitions, it is clear that the supplementary charge-sheet is based, *inter alia*, not only on the version of witnesses who were examined in the initial investigation but also certain others including Ms. Zeenat Khader (Joint Secretary), Mr. Ratheesan (Accountant), Mr. Mohd. Naushad (Accountant), Mr. I.J. Noata (Consultant), Mr. Girish Chand Bhat (LDC), Mr. Komal Yadav (driver), Mr. Madan Singh (driver), and Mr. Ashwani Kumar (driver).

20. To recapitulate, the Metropolitan Magistrate had summoned Dr. (Mrs.) Sharda Nayak as accused, by order dated 01.03.2016, on the basis of material submitted with the main charge sheet. As noted earlier, by order dated 01.03.2017, she granted the prayer of the police for further investigation and thereafter directed the matter to come up for “status report” being submitted on 18.04.2017. The supplementary charge-sheet was submitted in December, 2017. Even while the further investigation was under-way, the Metropolitan Magistrate proceeded to consider – prematurely, in opinion of this court – the question of charge against Dr. (Mrs.) Sharda Nayak on the basis of

material presented with the main charge sheet that had been submitted earlier.

21. By order dated 09.06.2017, the Metropolitan Magistrate concluded that *prima facie* case was made out for putting the aforesaid person (Dr. Sharda Nayak) on trial on charge for offences under sections 416/451/467/471/474 IPC. The said order, and the charges framed in its wake, have been set aside by the revisional court by impugned order dated 15.09.2018. Noticeably, by virtue of supplementary charge sheet the evidence gathered therewith had also come on record and cognizance had been taken thereupon leading to additional three accused having been summoned on 04.08.2018. The factum of filing of the supplementary charge-sheet is noticed in the proceedings of the revisional court. But then, it is not clear as to whether the revisional court had taken a view based on consideration of the evidence in entirety – that is to say as to whether the material which was considered by said forum included the evidence presented both with the main charge-sheet and the supplementary charge-sheet.

22. There is, however, no doubt as to the fact that the revisional court's view, leading to the order of discharge of Dr. (Mrs.) Sharda Nayak, is based on scrutiny of the material restricted to the role attributed to her. It has, *inter alia*, noted that she was a life member of the DPS society, and there was no evidence of forced entry as locks of the office were not broken. It concluded that there was no case of criminal trespass for the reason there was no intent to commit an offence or to intimidate, insult or annoy any person. It held that no

person had accused her of having made any mis-representation leading to the offence of cheating, none having been induced to deliver any property or to do or omit to do anything which said person would not have otherwise done. The revisional court has also held that there was no impersonation indulged in by Dr. (Mrs.) Sharda Nayak inasmuch as she had signed certain documents (to which reference is made by the complainant side) in her own name. It accepted the argument of Dr. (Mrs.) Sharda Nayak that merely signing the said documents in the capacity of Chairperson of DPS society would not amount to execution of a false document so as to incur liability to be prosecuted on criminal charge of forgery.

23. The learned senior counsel for the DPS Society (which is aggrieved), he being supported by Additional Public Prosecutor pressing the petition of the State, has submitted that the revisional court while directing discharge of Dr. (Mrs.) Sharda Nayak has fallen into error not only by not appreciating the facts and circumstances brought out through the evidence that has been presented in light of correct position of law but also by overlooking the additional evidence which was presented with the supplementary charge-sheet.

24. Petitioners Mr. Salman Khurshid and Mr. S.R. Vaish, on the other hand, contend that it was unjust and unfair on the part of the Metropolitan Magistrate to act upon the material gathered during “further investigation” with the supplementary charge-sheet since it was based on, as is their argument, “*de novo*” or “re-investigation” rather than “further investigation”. It is their submission that the

material submitted with the main charge sheet itself had indicated that no case was made out against either of them, the evidence gathered and presented during the supplementary charge-sheet being not worthy of reliance.

25. It is the argument of petitioner Mr. Salman Khurshid that the summoning order dated 04.08.2018 does not disclose any reasons, and therefore, it deserves to be set aside, reliance being placed on *Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609*. It is submitted that the fact that he (Mr. Salman Khurshid) is a life member of the DPS Society cannot be lost sight of and that given his “*legal right*” to come to the said office, he cannot be prosecuted in the present case only because he had accompanied Dr. (Mrs.) Sharda Nayak and others to the said place. He placed reliance, *inter alia*, on *Vinay Tyagi vs. Irshad Ali, (2013) 5 SCC 762* and *Hathi Singh & Ors. vs. State of Rajasthan, (1979) 4 SCC 340*. It is his argument that there is no evidence of any inducement or deceit indulged in by him and the representation that Dr. (Mrs.) Sharda Nayak had become the Chairperson of the society would not constitute the offence of cheating and for this he relies on *Ms. Alverna B. Mcgrath vs. Dr. G.K. Francis & Anr., Crl.Rev.236/2009* of Madras High Court. It is also his argument, based on rulings of the Supreme Court in *Mohd. Ibrahim vs. State of Bihar, (2009) 8 SCC 751*, and *Sheila Sebastian vs. R. Jawaharaj & Anr., (2018) 7 SCC 581* that there is no case of forgery made out inasmuch as Dr. (Mrs.) Sharda Nayak had used her own name, though in assumed capacity of Chairperson, the presence of the said person

and others accompanying her only giving rise to a civil dispute. An alternative argument is raised that a prosecution for offence of criminal conspiracy under section 120-B IPC read with sections 448 and 451 IPC is barred (in absence of sanction) under section 196(2) Cr.P.C. and, in this context, reliance is placed on *Rahul Kanwal & Ors. vs. State & Anr., 2004 SCC Online Del 608*.

26. The petitioner Mr. S.R. Vaish refers to a franchise that had been given by DPS Society in favour of “Manav Vikas Society”, of which he is the President, for opening of a school in Gurgaon and seeks to justify his visit to the office of the society in that context. There is reference (in the case for prosecution) to his services having been availed by Dr. (Mrs.) Sharda Nayak during the period of her stay in the office of DPS society for several hours on 30.03.2015 for purposes of sending certain e-mails from the computer systems of the society office. His argument is that only screen-shots of such e-mails have been presented, no case being made out in absence of any better evidence about such role having been played by him, also because there was no certificate under section 65-B of Indian Evidence Act, 1872. In this context, he places reliance on *Sanjaysinh Ramrao Chavan vs. Dattatray Gulabro, (2015) 3 SCC 123*. He has argued that since Mr. V.K. Shunglu was not in India at the time of alleged incident, the entry into the office, and the acts of commission or omission attributed to the accused persons, only constitute a “civil trespass”, referring in this context to *Abdul Hossain vs. Massadul Haq, 1972 Crl.L.J. 1499*. It is also his argument that no case of

criminal trespass is made out because none of the witnesses for the prosecution would state that intent was to commit an offence or to intimidate, insult or annoy any person. He refers in support to *Mathri vs. State of U.P.*, AIR 1964 SC 986, and *Isaac Isanga Musumba & Ors. vs. State of Maharashtra*, (2014) 15 SCC 357.

27. *Per contra*, the complainant, and the State, submit grievance that the evidence in entirety has been glossed over. Reference is made not only to the statements under section 161 Cr.P.C. of the above mentioned persons but also to the documentary evidence showing presence of all the four persons (who are sought to be prosecuted) in the office of the society from 8:30 a.m. onwards, at least one of the witnesses (Sanju Kumar, *safai karamchari*) describing those accompanying Dr. (Mrs.) Sharda Nayak, and the three other accused, as “*bouncers*”. Reference is also made by the complainant, and the State, to the documentary evidence showing, *inter alia*, that Dr. (Mrs.) Sharda Nayak had been in contact with another security agency (Super Slueth Security Agency & Allied Services) even prior to the incident of 30.03.2015, she having informed Mr. Aseem Khajuria (witness for the prosecution), proprietor of the said security agency, through Mr. Manish Gupta, in advance of the visit to the office of DPS Society on 30.03.2015, that she would be requiring security services at the DPS Society office and that when called he should come prepared with all the necessary documents such as agreement, etc. and he having accordingly reached the society office sometime between 9:30 and 10:00 a.m. on 30.03.2015, alongwith agreement prepared in the format

which was in use, drawn on a non-judicial stamp paper. The documentary evidence includes agreement purporting to have been executed on 30.03.2015 by the said witness on behalf of security agency and by Dr. (Mrs.) Sharda Nayak in her purported capacity of Chairman of DPS Society. It is pointed out that the agreement was printed on a non-judicial stamp paper that had been purchased on 03.01.2015. This, according to the complainant and State, demonstrates prior design, concert and intent to take over the Society office.

28. Along with the charge-sheet, the police also presented certain other documents which had been executed, signed or issued by Dr. (Mrs.) Sharda Nayak in the capacity of Chairperson of DPS Society using its letter head or other stationery or e-mail IDs. These include a letter of appointment bearing No.DPSS/ADMN/6019 addressed to Mr. Rajeev Maheshwari appointing him as the administration in-charge of DPS Society. Further material includes a communication addressed to Mr. Omkar Misra, regional head of Premier Shift Pvt. Ltd. Sainik Farms, New Delhi (security agency engaged by the society) requiring security services to be removed with immediate effect and charge to be handed over to new security agency. This communication was issued by the Secretary of the DPS Society appointed in that capacity by Dr. (Mrs.) Sharda Nayak. She issued a press note under her signatures declaring herself to be the Chairperson of DPS Society, referring to certain earlier events like elections held in January, 2014 and constitution of a Dispute Resolution Committee, etc. She

addressed a letter to Station House Officer of Police Station Amar Colony, acknowledged by the said office vide DD No.4-B on 31.03.2015 on the subject of threats allegedly extended by two named persons. She constituted a new working committee and addressed a letter to the life members signing her name in the capacity of Chairperson of DPS Society inviting accused Narender Kumar to be the Chairman Emeritus. She appointed Mr. K.P. Malik a new Public Relations Officer of DPS Society, addressing a communication to him on the subject, on the letter head of the Society, signing in the capacity of Chairperson. By two separate communications, also signed by Dr. (Mrs.) Sharda Nayak as Chairperson of DPS Society, prepared on the letter-heads of the Society, she informed Mr. Pramod Grover and Mr. M.M. Chopra informing each of them that their membership of the Society had been suspended, certain serious charges reported against them intended to be investigated/inquired into by a retired Judge of the Supreme Court. A similar communication was addressed to Mr. Rajiv Taneja, Secretary of the Society, this being captioned as “office order”, thereby communicating termination of his contract as Secretary with immediate effect. Yet another communication was addressed to Pro-Vice Chairman (Satellite Schools), *inter alia*, informing about postponement of certain meetings, Dr. (Mrs.) Sharda Nayak signing as a Chairperson using the letter-head of the Society.

29. There is further evidence presented which statedly indicates that even after the FIR had been lodged on 31.03.2015 about the incident of 30.03.2015, Dr. (Mrs.) Sharda Nayak continued declaring herself to

be the Chairperson of DPS Society sending various communications in that capacity using the letter-heads of the Society, these including a complaint dated 13.04.2015 to SHO of Police Station Amar Colony alleging criminal trespass, destruction of evidence, etc. and a letter dated 01.04.2015 addressed to the Hon'ble Prime Minister of India making certain allegations of corruption and irregularities in the affairs of DPS Society, which communication was made over by the Ministry of Home Affairs, *inter alia*, to Commissioner Delhi Police, the authorities in the government treating it as a communication received from Chairman of DPS Society. Further, on 15.04.2015, she addressed an e-mail to "Core School Principals" requiring certain data to be sent to her, she being the Chairperson of DPS Society. Another similar communication was addressed on 23.04.2015 to Pro-Vice Chairperson, again on the letter-head of the Society, declaring herself to be the Chairperson. Besides such communications on the letter-heads, there is material presented indicating e-mails have been sent using the e-mail IDs of the Society, at the instance of Dr. (Mrs.) Sharda Nayak, reference to the role of petitioner Mr. S.R. Vaish being in this context.

30. The grievances of the complainant, and the State, *vis-à-vis* the revisional court's order directing discharge of Dr. (Mrs.) Sharda Nayak are correct. In fact, the error in the approach to the matter began when the case was taken up by the Metropolitan Magistrate for consideration of charge. As has been noted earlier, the deficiencies in the investigation leading to the main charge-sheet had been pointed

out first by the complainant lodging protest petition, the investigating agency conceding by making its own request seeking liberty to subject the case to further investigation. The facts alleged and the evidence presented, even with the main charge-sheet, had demonstrated the possibility that the case might involve prosecution for offences beyond the one punishable under section 448 IPC. Further, the deficiency in the initial investigation related to the role of persons other than Dr. (Mrs.) Sharda Nayak who alone had been sent up for trial at that stage. It is against this backdrop that the Metropolitan Magistrate accepted the request of the police for opportunity to be given for further investigation. Though some argument was raised at the earlier hearing on these petitions as to impermissibility of further investigation being allowed after cognizance had been taken, the said ground of challenge has been given up with due deference to the law authoritatively laid down by the Supreme Court in recent decision reported as *Vinubhai Haribhai Malaviya & Ors. vs. The State of Gujarat & Anr., 2019 SCC Online SC 1346*.

31. Be that as it may, once the Metropolitan Magistrate had accepted the submissions that the earlier investigation suffered from deficiency and that the matter required further investigation not only to collect additional evidence to examine what offences had been committed but also to ascertain if any other persons were complicit in such crimes as may have been committed, there was no question of proceeding to hear the parties on the basis of main charge-sheet on the issue of charge against the solitary accused summoned in its respect.

By the order whereby further investigation was allowed, the case was taken to the next date only to await report regarding further investigation. There was no occasion or justification to shift from the said position. The fact that the Metropolitan Magistrate took a decision on the question of charge against Dr. (Mrs.) Sharda Nayak alone, that too on the basis of main charge-sheet, even while the further investigation was still not concluded, only means the issue has been adjudicated upon without the benefit of complete evidence being taken into consideration. This has resulted in a situation wherein the case for prosecution on what turns out to be a crucial accusation – offence of criminal conspiracy involving all the four afore-mentioned individuals – having also been overlooked.

32. The revisional court committed a similar error and impropriety by proceeding to consider the case for framing of charge against Dr. (Mrs.) Sharda Nayak on the basis primarily of the evidence that was presented with the main charge-sheet. Technically speaking, since the order that was impugned before it was based on scrutiny of such limited material, the revisional court while examining its correctness could not have gone into the additional evidence that was presented with the supplementary charge sheet. But then, conscious as it was that a supplementary charge-sheet had been presented even while the revisional challenge was pending, such supplementary report having also led to additional accused persons being summoned on basis of additional material, the revisional court could not have proceeded to determine the question of charge based on limited scrutiny. It was

instead desirable in such fact-situation that it should have remitted the case to the trial Magistrate for re-consideration. The revisional court's order is perverse because it does not take into consideration substantial part of the evidence that had come on record with the supplementary charge-sheet and this may be illustrated by reference merely to the evidence showing termination of the services of the existing security agency and bringing along by Dr. (Mrs.) Sharda Nayak and others of the proprietor of the new security agency engaged by her, by prior concert, along with security guards of such new agency. Similar deficiency on account of non-consideration of supplementary charge-sheet also while directing discharge of an accused was dis-approved of by the Supreme Court in *Deepu @ Deepak vs. State of Madhya Pradesh, 2019 (2) SCC 393*.

33. On the foregoing facts, and in the circumstances, the impugned order of discharge passed by the revisional court cannot be sustained. But, as has been observed earlier, since the order directing charges to be framed against Dr. (Mrs.) Sharda Nayak passed by the Metropolitan Magistrate is also perverse on account of deficient scrutiny of the evidence in entirety, the said order also cannot be allowed to stand. The appropriate course, in such fact-situation, would be to remit the case for fresh consideration on the question of charge.

34. This court must reject the argument of the other two petitioners (i.e. Mr. Salman Khurshid and Mr. S.R. Vaish) as to impermissibility of the Metropolitan Magistrate directing further investigation. The facts and circumstances taken note of at length above clearly show

that the initial investigation was perfunctory. The additional evidence which has come on record through the supplementary charge-sheet would itself justify the permission granted by the Metropolitan Magistrate for further investigation, the power and jurisdiction to do so in which regard is now duly acknowledged with reference, *inter alia*, to decision in *Vinubhai Haribhai Malaviya* (supra). This court also finds no substance in the submission that the supplementary charge sheet represents an endeavor of the police to carry out “re-investigation” or “*de novo*” probe. Without doubt, some of the witnesses were again examined. But then, given the deficiencies which were pointed out, it was only appropriate to do so in the present case.

35. The argument that the summoning order must be set aside only because it does not give detailed reasons ignores the settled law on the subject. In *Nagawwa vs. Veeranna Shivalingaappa Konjalgi*, (1976) 3 SCC 736, the Supreme Court had held that it is not the province of the Magistrate at such stage to enter into a detailed discussion on the merits or demerits of the case.

36. In *Kanti Bhadra Shah vs. State of West Bengal*, (2000) 1 SCC 722, the Supreme Court ruled thus:-

“12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing

avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.”

(emphasis supplied)

37. In *Chief Controller of Imports & Exports vs. Roshanlal Agarwal*, (2003) 4 SCC 139, the legal position was reiterated thus:-

*“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in *U.P. Pollution Control Board v. Mohan Meakins Ltd.*(2000) 3 SCC 745 and after noticing the law laid down in *Kanti Bhadra Shah v. State of W.B.* (2000) 1 SCC 722, it was held as follows: (U.P. Pollution case, SCC p. 749, para 6)*

“6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed

order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

(emphasis supplied)

38. In *Bhushan Kumar & Anr. vs. State (NCT of Delhi) & Anr.*, (2012) 5 SCC 424, while addressing similar issues, the Supreme Court referred to its decision reported as *Chief Enforcement Officer vs. Videocon International Ltd.*, (2008) 2 SCC 492, and construed the provisions of Sections 190 and 204 Cr.P.C. concerning “cognizance” and “issuance of process” and observed thus:-

“13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.”

(emphasis supplied)

39. The reliance by the petitioners on decisions in *Mehmood Ul Rehman vs. Khazir Mohammad Tunda & Ors.*, (2015) 12 SCC 420, *Sunil Bharti Mittal vs. Central Bureau of Investigation*, (2015) 4 SCC 409 and *Birla Corporation Limited vs. Adventz Investments & Holdings Limited & Ors.*, 2019 SCC Online SC 682, is misplaced.

Explaining the position of law, the Supreme Court in recent decision reported as *State of Gujarat vs. Afroz Mohammed Hasanfatta*, 2019 SCC Online SC 132, has delineated the fine distinction respecting the summoning order vis-à-vis in a case arising out of police report in contrast to a case arising out of criminal complaint and has explained the ruling in *Mehmood Ul Rehman* (supra). The following observations of the court in the said case (*Afroz Mohamed Hasanfatta*) are, infact, complete answer to the contentions urged to the contrary by the petitioners:-

“24. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is “there is sufficient ground for proceeding.....”; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is “there is ground for presuming that the accused has committed an offence.....”. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.”

25. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the

charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190 (1)(b)Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking on file. In the present case, cognizance of the offence has been taken by taking into consideration the charge sheet filed by the police for the offence under Sections

420, 465, 467, 468, 471, 477A and 120B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality.”

(emphasis supplied)

40. Given the abundant material that has been noted earlier, it cannot be said that there are no grounds to proceed against these petitioners who seek to assail the summoning order. The summoning order confirms that in taking the view reflected therein, the Metropolitan Magistrate had taken into consideration the material submitted with the main charge-sheet as well as supplementary charge-sheet and, thus, there is sufficient indication available on record regarding application of mind. The challenge to the summoning order, thus, cannot be accepted.

41. As a result of the view taken above vis-à-vis the question of framing of charge against Dr. (Mrs.) Sharda Nayak, and the rejection of the challenge to the summoning order for reasons set out above, it would be appropriate that this court refrains from recording any observations on the merits of the case pressed by the State for putting the four above-mentioned accused persons on trial or, for that matter, the contentions of the accused on question of charge, lest any view recorded here prejudices the argument of either side. These are matters that ought to be considered by the criminal court which is *in seisin* of the case.

42. For the foregoing reasons, the petitions of Mr. Salman Khurshid and Mr. S.R. Vaish (CrI.M.C. 4551/2018 and CrI.M.C.5069/2018) along with applications filed therewith are dismissed.

43. The petitions of State (CrI.M.C. 175/2019) and of Delhi Public School Society & Ors. (Cr.Rev.P. 950/2018) along with applications filed therewith are allowed. The order dated 09.06.2017 of the Metropolitan Magistrate along with formal charges framed in its wake by said court on 22.07.2017 and judgment dated 15.09.2018 of the additional sessions Judge in CrI.Rev. 493/2017 are set aside.

44. As a consequence of the above directions, the criminal case against Dr. (Mrs.) Sharda Nayak stands revived, she being obliged to appear as an accused in the case before the concerned criminal court on the date being fixed hereinbelow. She would also be obliged to furnish fresh bail bonds to regulate her presence in the proceedings hereinafter.

45. The criminal case of the State arising out of FIR No.421/2015 of Police Station Amar Colony, based on the two above mentioned charge-sheets, shall be taken up by the concerned court of Metropolitan Magistrate for consideration of the question of charge on the date to be fixed for the purpose by the presiding officer of the said court as per its convenience. Needless to add, however, that the Metropolitan Magistrate in rendering a decision on the question of charge against the four persons who stand summoned will not feel bound or be influenced by the view taken on the said subject by the

orders which have been set aside or any observation of this court recorded in this judgment.

46. Reference has been made in earlier part of this judgment to another criminal case arising out of FIR No.605/2015 of Police Station Amar Colony. As has been noticed, the said case relates to an incident which seems to have a direct nexus with the incident which is the subject matter of the case from which these petitions arise. Before proceeding further, the Metropolitan Magistrate will consider if both the cases require to be heard or tried together or jointly.

47. The parties are directed to appear before the concerned criminal court on 16th December, 2019.

48. The petitions and the applications filed therewith are disposed of in above terms.

(R.K. GAUBA)
JUDGE

NOVEMBER 27, 2019

vk