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

% ***Reserved on: 11.07.2023***
Pronounced on: 16.08.2023

+ **CRL.M.C. 4646/2023 & CRL.M.A. 17782/2023**

ASHOK KUMAR KHARYA ..... Petitioner

Through: Mr. S.D. Singh, Mr. Kamla Prasad, Ms. Shweta Sinha, Mr. Siddharth Singh and Mr. Kartikay Bhargva, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Manoj Pant, APP for the State with SI Nikhil Singh, P.S. EOW.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

Index to the Judgment

SWARANA KANTA SHARMA, J.

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) seeking quashing of the summoning order dated 03.03.2022, passed by the learned Chief Metropolitan Magistrate, South West, Dwarka Courts, New Delhi, (*'Trial Court'*) in Criminal Case No. 8690/2020 titled *'State vs. Mukesh Kumar Singh'* arising out of FIR No. 55/2020, registered at Police Station Economic Offences Wing, under Sections 420/406/120B of Indian Penal Code, 1860 (*'IPC'*) and quashing of the entire criminal case including the supplementary chargesheet qua the petitioner.

<u>FACTS OF THE CASE</u>

2. In a nutshell, the instant FIR was registered on 05.06.2020 at P.S. EOW under Sections 420/406/120B of IPC on the basis of joint complaint of Mr. Arun Banga and 20 other complainants, on the allegations pertaining to commission of offences of cheating, conspiracy, criminal breach of trust, forgery, financial fraud, embezzlement of funds to the tune of Rs. 20 crores, by the office bearers of the 'Eminent Officers Welfare Society', on the pretext of purchase of land under the land pooling policy of NCT of Delhi for construction of houses for the members of Society, in connivance with M/s. Khushi Properties and Developers Pvt. Ltd.

3. After investigation, chargesheet was filed by the prosecution against co-accused Mukesh Kumar Singh under Sections 409/420/406/423/411/120B of IPC and co-accused Neelam Singh

under Sections 409/420/406/411/414/120B of IPC, both directors of M/s. Khushi Properties and Developers Pvt. Ltd., on 13.11.2020.

4. Supplementary chargesheet in the present case was filed on 24.02.2022 against other alleged persons namely Ashok Kumar Kharya i.e. the petitioner, Abhishek Sinha, Vimal Kumar and Pardeep Kumar Thakur under Sections 409/420/406/120B of IPC. Accordingly, by virtue of impugned order dated 03.03.2022, the petitioner as well as other accused persons were summoned to appear by the learned Trial Court. The relevant portion of the order dated 03.03.2022 is reproduced as under:

> "One supplementary charge-sheet is filed against accused Vimal Kumar, Pardeep Kumar Thakur, Ashok Kharya and Abhishek Sinha.
>
> Cognizance had already been taken in the main charge-sheet pertaining to FIR No.55/2020. Let copy of supplementary charge-sheet be supplied to accused Mukesh Kumar Singh, Neelam as well as accused Vimal Kumar, Pardeep Kumar Thakur, Ashok Kharya and Abhishek Sinha.
>
> Let this supplementary charge-sheet be annexed with main charge-sheet i.e., FIR bearing no.55/2020.
>
> Let summons be issued to accused Vimal Kumar, Pardeep Kumar Thakur, Ashok Kharya and Abhishek Sinha through IO for next date of hearing.
>
> IO is directed to supply copy of supplementary charge-sheet to accused Mukesh Kumar Singh, Neelam and Vimal Kumar, Pardeep Kumar Thakur, Ashok Kharya and Abhishek Sinha within two days from today."

SUBMISSIONS AT THE BAR

5. Assailing the filing of supplementary chargesheet as well as summoning order dated 03.03.2022 qua the petitioner, learned counsel for the petitioner states that it was not permissible for the

police to file a supplementary chargesheet against the petitioner. It is stated that the complainant and the investigating agency had not named the petitioner as an accused in the initial chargesheet filed on 13.11.2020. It is further stated that specific permission of the learned Trial Court was required before filing supplementary chargesheet, and that the police has exceeded the jurisdiction while filing the supplementary chargesheet. It is also stated that petitioner was unaware about the payments made to Khushi Properties and the petitioner herein is not the signatory of any of the cheques or the documents issued on behalf of the Society which form the basis of commission of the alleged offence. It is further stated that petitioner had joined and rather assisted in the investigation to unearth the truth and no ingredients of offence alleged to have been committed by him are disclosed from the reading of supplementary chargesheet. Therefore, it is argued that present petition be allowed.

6. *Per contra,* learned APP for the State submits that supplementary chargesheet qua accused persons was filed after the filing of the application for further investigation. Further, it is stated that the investigating authority has brought new evidence on record by way of a supplementary chargesheet filed on 24.02.2022, and at the end of initial chargesheet, the IO had mentioned that supplementary chargesheet would be filed since the role of other persons was under investigation. Therefore, it is prayed that present petition be dismissed.

7. This Court has heard arguments addressed by learned counsel for petitioner and learned APP for the State and has carefully perused the material on record.

ANALYSIS AND FINDINGS

i. Main Chargesheet: The Case of Prosecution

8. As per prosecution, the 'Eminent Officers Welfare Society' (*'EOW Society'*) had been formed on 27.07.2015, which had offered its membership against payment of Rs.5100/- Thereafter, on 09.09.2015, the executive body of the EOW Society had finalized to develop a housing project namely 'Utkarsh Vihar Housing Project' in the L-Zone of Delhi under Land Pooling Policy of DDA and only the members of the society could get enrolled in the housing scheme. Accordingly, the EOW Society had executed an MoU with M/s Khushi Properties and Developers Pvt. Ltd. *('Khushi Properties')* on 13.10.2015,for getting professional consultation services for purchase of agricultural land measuring approximately 5 acres located in different villages of the said L-Zone for developing the 'Utkarsh Vihar Housing Project'. On 30.11.2015, meeting of Executive Body of EOW Society had been held and as per the minutes of meeting, the Society had finalized 4.4 acres of land in Khaira Village, Najafgarh, New Delhi at Rs. 3.85 crore per acre and the Society had paid Rs. 50 lacs to Khushi Properties as advance. Further as per prosecution, another meeting of the governing body of EOW Society was held had taken place on 09.12.2015 and the minutes of meetings of the same revealed that MOU dated 13.10.2015 had been in the knowledge of

executive/governing body and that payment of Rs. 50 lacs had been made in advance to the Khushi Properties. Thereafter, General Body Meetings of EOW Society had taken place on several other dates and that on 23.04.2016, it was informed that a deal of 3.2 acres of land had been made in 1st phase on proportionate basis and more than 20% amount had been paid. In meeting dated 04.12.2016, it was informed that 1.91 acre of land had been purchased for Rs. 7.63 crore and another piece of land admeasuring 1.31 acres was in advance stage of being purchased. In meeting dated 12.01.2019, it was further informed that a total of 5.04 acres of land had been purchased through Khushi Properties. During investigation, it was revealed that DDA had not issued any license or approval to any housing project including Utkarsh Vihar under land pooling policy in Dwarka or any other land pooling zone nor authorized any developer/builder/ society/company including EOW Society to offer any flat/plot in the name of DDA under land pooling policy. It was further revealed that EOW Society had not been registered with RERA Delhi. Further during investigation, the IO had analysed the bank statements of EOW Society and Khushi Properties and it was revealed that money had been transferred to Khushi Properties and land owner namely Sh. Karan Singh from the Society. From perusal of the sale deed of 1.9 acre of land which had been purchased from Sh. Karan Singh on 25.05.2016 for Rs. 7.13 crore, it was discovered that out of the total payment i.e. Rs. 7.06 crore made to the land owner Sh. Karan Singh, Rs. 4.31 crore was paid to the land owner by Khushi Properties and only Rs. 2.75 crore was paid by the Society. Till 23.05.2016, as per the bank transactions, the Society had paid Rs. 6.43 crore to Khushi Properties, while it had only paid Rs. 4.31 crore to land owner/farmer Karan Singh for purchase of land. In this way, excess/surplus amount of Rs. 2.12 crore had been deposited with Khushi Properties by the society till 23.05.2016. The bank statements had also revealed that apart from the land deal of 1.9 acre, advance payment of Rs. 4.54 crore had already been made to Khushi Properties till 22.02.2017 and all this money had been misappropriated by co-accused Mukesh Kumar Singh, who had no intention to get the land purchased for the Society since very beginning, and out of this surplus Rs. 4.54 crore, only Rs. 20 lacs had been paid to land owner Gajraj and others for the land measuring 1.3 acre in Village Khaira, Delhi. On analysis of the bank account statements, the IO had also discovered that upon receiving money from the EOW Society, Khushi Properties used to divert/transfer the money to other accounts of company and personal accounts of co-accused persons Mukesh Kumar Singh and Neelam Singh. As per prosecution, from analysis of the bank account statements, it was evident that Khushi Properties had received Rs. 16.28 crore from the EOW Society, out of which only Rs. 3.85 crore + 20 lacs had been paid to the land owners for the purchase of land and rest of the money had been misappropriated by Khushi Properties and co-accused persons Mukesh Kumar Singh and Neelam Singh. Moreover, it was also discovered during investigation that M/s. Khushi Properties and Developers Pvt. Ltd. had got struck off and dissolved by Registrar of Companies on 07.06.2017, yet it had entered into MOU dated 12.04.2018 with the EOW Society.

9. Accordingly, chargesheet was filed against Mukesh Kumar Singh and Neelam Singh, both directors of Khushi Properties, on 13.11.2020. The conclusion reached by the investigating officer pursuant to conduct of investigation was that the EOW Society had entrusted a total of Rs.16.28 crore to Khushi Properties which had been misappropriated and siphoned off by directors of Khushi Properties for their personal gain and they had no intention to procure land for the society since inception. It was stated that as per the record provided by the office bearers of EOW Society, accused Mukesh Kumar Singh used to raise demand for the money in order to purchase land in name of EOW Society and he had deliberately received the money from the Society and had siphoned off the funds with the help of Khushi Properties.

ii. Supplementary Chargesheet: Role of Petitioner and Other Accused

10. Supplementary chargesheet in the present case was filed under Sections 409/420/406/120B IPC against other alleged persons namely (i) Ashok Kumar Kharya i.e present petitioner: President, EOW Society, (ii) Abhishek Sinha: Vice-President, EOW Society (iii) Vimal Kumar: Secretary, EOW Society, and (iv) Pardeep Kumar Thakur: Treasurer, EOW Society.

11. The role of the aforesaid governing body members of EOW Society, as summed up by the prosecution in the supplementary chargesheet, is extracted as under:

"1. The pamphlets had been distributed by the society since August 2015 and rate per sq feet of the flats is also mentioned in these pamphlets while Society decided to develop a housing project on 09 September 2015. **Without even finalizing the cost of land, the rate was published and society started to raise funds as per the rates mentioned in the pamphlet**. It is pertinent to mention here that as per MOM of the society the rate of land was first discussed in the meetings on 13th October 2015.

2. In August/September a proposal was sent/distributed to some members of the society, **wherein it was clearly mentioned that the land will be purchased directly from the farmer/existing owners and will be handed over to DDA but society entered into an MOU dated 13.10.2015 and engaged a consultant/dealer (alleged M/s Khushi Properties and Developers Pvt. Ltd.) to purchase the land for the society** and released the funds of the society to the alleged company (M/s Khushi Properties and Developers Pvt. Ltd.).

3. The total project completion time was also mentioned in the Proposal as five years.

4. The payment was released to the alleged company for the period of more than 3 years (in 39 transactions) and **no reconciliation of the payment was done** by the then officepayment receipt proof was to be obtained by the society within a week.

5. No payment receipt was obtained from the alleged Company for 3 years despite clear mentioning of this fact that in the MOU (clause 14) dated 13.10.2015 that any such advance received by M/S Khushi Properties and Developers Pvt. Ltd. from EOWS shall be utilized for making the payment to the land owner/owners concerned with the land and proof of such payment to be submitted by M/S Khushi Properties and Developers Pvt. Ltd. to the EOWS within a week time from date of advance

6. MOU dated 13.10.2015 was executed and **payment to purchase land was made to a dealer/consultant instead of making direct payment to the land owner/farmer as proposed in the proposal/pamphlets/brochure**. **This MOU was never shown/informed to members of the society.** The contents of the MOU dated 13.10.2015 and that of the minutes of meeting dated 09.12.2015 are somewhat different. In the minutes of meeting nothing was disclosed that payment will be released to the alleged company.

7. As first General Body meeting was held on 23.04.2016 and in the minutes of meeting (23.04.2016) nothing regarding engagement of land facilitator/Khushi Properties and others is mentioned. This shows that nothing was disclosed to the members of the society.

8. The second GBM held on 04.12.2016 and as per minutes of meetings again nothing regarding engagement of land facilitator/Khushi Properties is mentioned. However, appointment of Auditor is mentioned.

9. The third GBM held on 06.01.2018 and as per minutes of meetings again nothing regarding engagement of land facilitator/Khushi Properties is mentioned. The appointment / renew appointment of the Auditor is mentioned. The society is paying remuneration (in thousands) to the auditors and the same is mentioned in the minutes of meetings but nothing about engagement of Khushi Property is mentioned despite the facts crores of rupees has been released to it. This somewhere shows that a release of funds of the society was intentionally not disclosed to the members.

10. As per the minutes of meeting of the 3rd AGM the land measuring **1.31 acre could not be completed because members did not make the payment in time in spite of repeated requests, while till 06.01.2018 the society had released Rs 6.32 Crores to M/s Khushi Properties and Developers Pvt. Ltd for purchase of 1.3 acre land. Office bearers did not disclose this to members and continued to raise money from them** and also continued to release money to the alleged company.

11. Summary of Audit Report for the financial year 2015-16 was incorporated in the minutes of meeting held on 04.12.2016, it was mentioned in the minutes of meeting that "purchaser second piece of land measuring 1.31 acre in also in advance stage and a major amount of land cost has already been paid" but they did not disclose that money was paid to M/s Khushi Properties and Developers Pvt. Ltd. They also didnt disclose that they had engaged M/s Khushi Properties as land facilitator.

12. The **4th AGBM was held on 12.01.2019. This is the first time that anything about M/s Khushi Properties is mentioned in the minutes of the meetings. Wrong/False information was conveyed to the members in General Body Meetings (Dt. 12.01.2019) that 5.04 acre land has been purchased through M/s Khushi Properties, while only 1.9 acre land was purchased** till date.

13. In the meeting dated 17.02.2019, [Page No. 3048] it was informed that due to technical issues related to earlier dispute, the land measuring 3.14 acre got first registered in the name of the Khushi properties on 04.01.2019 in accordance to clause at para 4 of the MOU Dt. 12.04.2018. The mutation of the land is under process and likely to be completed by the end of February, 2019. Thereafter, the land would be getting registered in the name of Society. But actually no land was purchased by Khushi Properties and clause at para 4 also does not suggests the same.

14. The Audit Reports/ Balance Sheet of the society for 31.03.2016, 31.03.2017, 31.03.2018 were also shared with the members over email. In the balance sheet advance payments is shown but nothing is mentioned to whom the payments was made. However, under receipts and payment account name of M/s Khushi Properties and Developers Pvt. Ltd. is mentioned in brackets but nothing is explicitly mentioned regarding the role of Khushi Properties. **The MOU dated 12.04.2018 was executed with the alleged company, which was struck off in 2017. In the MOU dated 12.04.2018 nothing is mentioned regarding 1.3 acre land which was claimed to be purchased. Further the company M/s Khushi Properties and Developers had been struck off and dissolved by ROC on 07.06.2017, despite this the then office bearers entered into the agreement with this company.**

15. The entry of Rs 46 lacs in cash in the sale deed of 1.9 acre of land was accepted by the then office bearers of the society while society has released the money to the alleged company through bank account only.

16. The payment details mentioned in the sale deed of 1.9 acre land clearly reveals that some of the payment was made by the society and some of the payments were made by M/s Khushi Properties and Developers Pvt. Ltd., if society could have made direct payment to the land owner why the society release funds to the Khushi Properties. This clearly shows that Office bearers of the society deliberately released the funds of the society.

17. **DDA has not issued any license or approval to any housing project including Utkarsh Vihar under land pooling policy in Dwarka or any other land pooling zone** nor authorized any developer/builder/ society/ company including Eminent Officer Welfare Society to offer any flat/plot in the name of DDA under land pooling policy as on date, while on perusal of the pamphlets it is clear that society was alluring the people to become member in the society by offering flats.

> 18. Many of the members of the GB stated that their signatures were taken later on.
>
> 19. DDA clearly mentioned that any DE/consortium shall only be able to take booking from public for any housing project under land pooling policy after the issue of the licenses and layout/ building plan approvals issued by DA.
>
> 20. **RERA clearly mentioned that Eminent Officers Welfare Society is not registered till date** and not applied for registration in RERA Delhi."
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> (Emphasis supplied)

12. It is to be further noted that there are specific allegations against the petitioner herein and specific role has been attributed to him by the prosecution, the details of which are mentioned in the supplementary chargesheet, and the same read as under:

> "**Role of Ashok Kumar Kharya**
>
> 1. He was the **President of the Eminent Officers Welfare Society**. **He let the Secretary and Treasurer of the society release payment to M/S Khushi Properties and Developers Pvt. Ltd from the funds of the society** without any reconciliation.
>
> 2. He **participated (headed) in the meeting** of Governing body held on 9th December 2015, **where M/S Khushi Properties and Developers Pvt. Ltd. was approved as the Property Dealer/Consultant and advance payment of Rs 50 lacs to M/s Khushi Properties and Developers Pvt. Ltd was also approved** while in the proposal sent to the members it was clearly mentioned that the land will be directly purchased from the farmers/ existing owners.
>
> 3. He **attended (chaired) the General Body meeting on 23.04.2016 and concealed that MOU dated 13.10.2015 had been executed with M/S Khushi Properties and Developers Pvt. Ltd.** and payment will be made to M/S Khushi Properties and land will be purchased through this consultant/ property dealer.
>
> 4. As per him, he never read the MOU dated 13.10.2015 executed between the society and alleged M/S Khushi Properties

and Developers Pvt. Ltd. which shows that he had fully supported the secretary in siphoning the funds of the society.

5. As per the (Balance Sheet) Receipt and Payment Account for the Period from 01.04.2015 to 31.03.2016 of the society, **Advance for land was shown in the name of the M/s Khushi Property and Developers Pvt. Ltd and the report is signed by Ashok Kumar Kharya.** It is evident from these documents that he was aware that the payment was not made to the land owners directly.

6. He participated in the meeting of Governing body held on 9th December 2015, where M/S Khushi Properties and Developers Put. Ltd. was approved as the Property Dealer/Consultant and advance payment of Rs 50 lacs to M/S Khushi Properties and Developers Pvt. Ltd. was also approved.

7. Summary of Audit Report for the financial year 2015-16 was incorporated in the minutes of meeting held on 04.12.2016, it was mentioned in the minutes of meeting that "purchaser second piece of land measuring 1.31 acre in also in advance stage and a major amount of land cost has already been paid "**but he did not disclose that money was paid to M/s Khushi Properties and Developers Pvt. Ltd instead of land owner**.

8. As per the (Balance Sheet) Receipt and Payment Account for the Period from 01.04.2017 to 31.03.2018, land cost (Rs 9.89 Crore) was shown in the name of the M/s Khushi Property and Developers Pvt. Ltd and the report is signed by him. **However society had purchased only 1.9 acre land for Rs 7.13 Crore. Now, it can be deduced that he did not reconcile the advance payments and further let the Secretary and Treasurer release the funds of the society**.

9. He **attended (chaired) the General Body meeting on 06.01.2018**, where the then Secretary informed **that 1.31 acre land could not be purchase due to non payment of members, while society had released Rs 6.32 Crore till that date for purchase of 1.31 acre land.**

10. He **attended (chaired) the General Body meeting on 12.01.2019**, in which it was informed that total 5.04 acre of land had been purchased, while only 1.9 acre land was purchased for the society."

(Emphasis supplied)

iii. Examining the Material on Record

13. In the present case, the petitioner herein was the President of EOW Society which had been formed in July, 2015 and in September, 2015, it had finalized to develop a housing project namely 'Utkarsh Vihar Housing Project' in the L-Zone of Delhi under Land Pooling Policy of DDA, and the Society, represented by its office bearers, had decided to buy approximately 5 acres of land for the purpose of construction of society, for which it had engaged the services of Khushi Properties. The allegations against the petitioner and other co-accused (officer bearers of the Society) are that they had induced the people at large on pretext of offering the units/flat in the Society and then had made them members and obtained money from them. It is the case of prosecution that the Society through its office bearers had represented to the victims that it would directly purchase land from farmers/land owners. It is also alleged that they had engaged the services of Khushi Properties to buy land of admeasuring 4.4 acres at rate of about Rs.3.85 crore per acre, however, as on 13.10.2015, the account balance of the Society was Rs. 1.10 lacs only and thus, they had already pre-decided the manner in which they would drain the money out from the innocent members of the Society. It is further alleged that the petitioner being the President of the Society along with other officer bearers who have been chargesheeted, were the custodian of the money/funds which they had received from the members of the Society, however, they had released the funds without due precaution and had not bothered to reconcile the payment made to Khushi Properties. Further, they

had continued to release funds in favour of Khushi Properties despite being aware of the fact that no land had been purchased except 1.9 acre. It is also alleged that the said accused persons had falsely declared and misrepresented in one of the Annual General Meetings of the Society that 5 acre land had been purchased. They had also failed to adhere to the terms of the MOU dated 13.10.2015 as they were to obtain the receipt of payment from the dealer/consultant. It was also discovered during the investigation that DDA had not given authorization to anyone to raise funds in name of allotment of flats and further that the 'EOW Society' had neither been registered with RERA nor any application in this regard was pending.

14. Thus, on the aforesaid allegations of releasing the money entrusted by the members to the office bearers of the Society without any reconciliation and rather misrepresenting to the members, and causing wrongful loss to the complainants and wrongful gain to Khushi Properties, and committing such acts in pre-designed manner to drain out the hard-earned money of the victims, the chargesheet was filed against these accused persons under Sections 406/409/420/120B of IPC.

15. In light of such allegations contained in the supplementary chargesheet against the petitioner herein and the material collected during investigation, this Court cannot come to a conclusion that no offence as alleged is *prima facie* made out against the petitioner. Neither are the allegations against the petitioner so improbable or absurd that such acts could have not taken place or that the petitioner,

being the President of the Society, would have not been aware of the commission of acts as alleged by the prosecution.

iv. Challenge to Filing of Supplementary Chargesheet

16. Learned counsel for petitioner vehemently argued that supplementary chargesheet could not have been filed by the prosecution without prior permission of the learned Trial Court.

17. To appreciate the contentions raised on behalf of petitioner, it shall be appropriate to consider the precedents of the Hon'ble Apex Court in relation to filing of supplementary chargesheet. In ***Luckose Zachariah v. Joseph Joseph*** *2022 SCC OnLine SC 241,* the Hon'ble Apex Court had discussed the position of law qua filing of supplementary chargesheet, and the relevant observations are as under:

> "10. In the judgment of this Court in Vinay Tyagi (supra) it has been held that a further investigation conducted under the orders of the court or by the police on its own accord would lead to the filing of a supplementary report. The supplementary report, the Court noted, would have to be dealt with "as part of the primary report" in view of the provisions of sub-Sections 3 to 6 of Section 173.
>
> 11. Section 173(8) specifically provides as follows:
>
> > "(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

12. In terms of sub-Section 8 of Section 173, in the event of a further investigation, the report has to be forwarded to the Magistrate upon which, the provisions of sub-Sections (2) to (6) shall (as far as may be) apply in relation to such report or reports as they apply in relation to a report forwarded in sub-section (2). In this backdrop, while interpreting the above provisions, in Vinay Tyagi (supra) this Court held thus:

> "42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code."

13. The decision in Vinay Tyagi (supra) was noticed together with other decisions of this Court in the judgment of a three-Judge Bench inVinubhai Haribhai Malaviya v. State of Gujarat. This Court held:

> "42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440], Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365], Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557], and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92:(2014) 2 SCC (Cri) 86];Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate

an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding..."

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16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence..."

18. In ***Vinubhai Haribhai Malaviya v. State of Gujarat*** *(2019) 17 SCC 1*, the Hon'ble Apex had observed as under in relation to the scheme of Section 173 Cr.P.C:

"15. The erstwhile Code of Criminal Procedure, 1898 did not contain a provision by which the police were empowered to conduct a further investigation in respect of an offence after a police report under Section 173 has been forwarded to the Magistrate. The Forty-First Law Commission Report (The Code of Criminal Procedure, 1898) forwarded to the Ministry of Law in September 1969 (hereinafter referred to as the "Law Commission Report"), therefore, recommended the addition of sub-section (7) to Section 173 as it stood under the Code of Criminal Procedure, 1898 for the following reasons:

> "23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the 17 magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the magistrate. Copies concerning the fresh material must of course be furnished to the accused."

16. What is interesting to note is that the narrow view of some of the High Courts had placed a hindrance in the way of the investigating agency, which can be very unfair to the prosecution as well as the accused.

17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Mrs. Maneka Gandhi v. Union of India & Anr. (1978) 1 SCC 248, be "right, just and fair and not arbitrary, fanciful or oppressive" (see paragraph 7 therein). Equally, in Commissioner of Police, Delhi v. Registrar, Delhi High Court, New Delhi (1996) 6 SCC 323, it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the 18 procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see paragraph 16 therein).

18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

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31. Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors. (2004) 5 SCC 347 is an important judgment which deals with the necessity for further investigation being balanced with the delaying of a criminal proceeding. If there is a necessity for further investigation when fresh facts come to light, then the interest of justice is paramount and trumps the need to avoid any delay being caused to the proceeding. The Court therefore held:

> "11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth. 12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted. 13. In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322: 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper

investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

19. Having discussed the position of law, this Court notes that in the main chargesheet dated 13.11.2020 which was filed against co-accused persons Mukesh Kumar Singh and Neelam Singh, it was categorically mentioned that the role of other alleged persons was being investigated and after completion of investigation, a supplementary chargesheet would be filed. The relevant portion of main chargesheet dated 13.11.2020 reads as under:

"Accused Mukesh Kumar Singh was arrested on 18.08.2020 and he is presently running in Judicial Custody. Accused Neelam Singh joined the investigation and cooperated with the investigation. No recovery is to be affected at her part; hence she was not arrested. Role of the other alleged persons is under probe. Supplementary final report u/s 173(8) Cr.P.C. will be submitted in the Hon'ble Court in due course of time."

20. In the FIR itself, the complainants had specifically named *(1)* Vimal Kumar (Secretary, EOW Society), *(2)* Pradeep Kumar Thakur (Treasurer, EOW Society), *(3)* Mukesh Kumar Singh (Director, Khushi Properties), *(4)* Neelam Singh (Director, Khushi Properties), and *(5)* Other governing body members. While the initial chargesheet was filed only against Mukesh Kumar Singh and Neelam Singh, the

investigating agency had informed the concerned Court that the role of other accused persons was being probed and a supplementary chargesheet qua them would be filed after completion of investigation in their respect.

21. Therefore, though the main chargesheet had only been filed against two directors of Khushi Properties, cognizance of which was taken by the learned Trial Court in the year 2020, the supplementary chargesheet was filed in this case only against other accused persons including the petitioner, who were the officer bearers of the EOW Society and the role of these persons had become clear after conducting further investigation. The specific role of each of the accused person has been mentioned in the supplementary chargesheet, which has already been discussed in the preceding paragraphs.

CONCLUSION

22. In view of the foregoing discussion, this Court is of the opinion that there are specific allegations against the petitioner herein that he being the President of EOW Society, alongwith co-accused (some other officer bearers) had formed the Society and allured the innocent victims to invest money on pretext of developing a housing project. There are further allegations that the accused persons including the petitioner had executed an MOU with Khushi Properties for purchasing land, however, despite receiving more than Rs.16 crores from the members of the Society, only 1.9 acre of land was purchased and it was misrepresented to the victims that about 5 acre

had been purchased. At the behest of accused persons chargesheeted in the supplementary chargesheet, the co-accused persons Mukesh Kumar Singh and Neelam Singh, both directors of Khushi Properties, had siphoned off approximately Rs. 12 crore. There are further allegations that neither any approval of DDA had been obtained for the housing project nor had the Society been registered with RERA.

23. Thus, this Court finds no reasons to quash either the supplementary chargesheet or the summoning order dated 03.03.2022 passed by the learned Trial Court against the present petitioner.

24. Accordingly, the present petition alongwith pending application stands dismissed.

SWARANA KANTA SHARMA, J

AUGUST 16, 2023/zp

(Corrected & uploaded on 19.09.2023)