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

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Date of Decision: 14.03.2024

+ CRL.M.C. 2647/2021, CRL.M.As. 8219-20/2023

BIJENDER SINGH LATHER

..... Petitioner

Through: Mr.Naresh Kaushik, Sr. Adv. with
Mr.Ajayinder Sangwan, Mr. Neeraj
Khapra, Mr. Vardhaman Kaushik,
Mr. Smit Singh, Mr. Summinder, Mr.
Rohan Sharma and Mr. Anand Singh,
Advocates.

versus

GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Mukesh Chauhan, PS EOW,
Mandir Marg and SI Ravi Narwal, PS
Moti Nagar.
Mr. Sunil Dalal, Sr. Advocate with
Mr. Sandeep Choudhary, Mr. Nikhil
Beniwal, Ms. Manisha Saroha, Mr.
Navish Bhati and Mr. Vikram Singh
Dalal, Advocates for R2/complainant.

+ CRL.M.C. 132/2022, CRL.M.A. 515/2022, CRL.M.A. 517/2022

RAM NIWAS LATHER

..... Petitioner

Through: Mr.Aditya Wadhwa and Mr.Siddharth
Sunil, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Mukesh Chauhan, PS EOW,
Mandir Marg.



Mr. Sunil Dalal, Sr. Advocate with
Mr. Sandeep Choudhary, Mr. Nikhil
Beniwal, Ms. Manisha Saroha, Mr.
Navish Bhati and Mr. Vikram Singh
Dalal, Advocates for R2/complainant.

+ CRL.M.C. 14/2022, CRL.M.A. 67/2022, CRL.M.A. 69/2022
JOGINDER SINGH LATHER Petitioner
Through: Mr. Aditya Wadhwa and Mr. Siddharth
Sunil, Advs.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Mukesh Kumar, APP for State
with SI Mukesh Chauhan, PS EOW,
Mandir Marg.
Mr. Sunil Dalal, Sr. Advocate with
Mr. Sandeep Choudhary, Mr. Nikhil
Beniwal, Ms. Manisha Saroha, Mr.
Navish Bhati and Mr. Vikram Singh
Dalal, Advocates for R2/complainant.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

% **J U D G M E N T**
ANOOP KUMAR MENDIRATTA, J (ORAL)
CRL.M.C. 14/2022 & CRL.M.C. 132/2022

1. (i) Crl.M.C 14/2022 has been preferred under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') by petitioner Joginder Singh Lather for setting aside of orders dated 28.10.2021, 02.11.2021 and 30.11.2021 passed by learned CMM, North District in FIR No. 059/2019 P.S.: EOW. Vide aforesaid orders dated 28.10.2021 and 02.11.2021, NBWs



are stated to have been issued by learned CMM during the course of investigation at request of prosecution and thereafter, vide order dated 30.11.2021, proceedings under Section 82 Cr.P.C. were initiated.

(ii) CRL.M.C. 132/2022 has been preferred on behalf of Ram Niwas Lather under Section 482 Cr.P.C. for similarly setting aside of orders dated 28.10.2021, 02.11.2021 and 30.11.2021 whereby NBWs and process under Section 82 Cr.P.C were initiated against him.

2. At request of learned counsel for the petitioner CRL.M.C. 14/2022, titled as *Joginder Singh Lather vs. State of NCT of Delhi* is treated as a lead case for purpose of CRL.M.C. 14/2022 & CRL.M.C. 132/2022 (i.e. *Ram Niwas Lather vs. State of NCT of Delhi*)

(i) Learned counsel for petitioners Joginder Singh Lather and Ram Niwas Lather, submits that chargesheet in the present FIR has since been filed on 29.04.2022 after the petitioners had joined the investigation and were reflected as 'not arrested' in the aforesaid chargesheet. It is also pointed out that pursuant to the filing of the chargesheet, after taking of cognizance, the summons were issued by the learned Trial Court vide order dated 11.08.2023, against which a revision petition has been preferred by the petitioners, wherein stay has been granted vide order dated 14.09.2023 by the court of Sessions.

(ii) It is urged that prior to filing of the chargesheet, the petitioners had duly joined the investigation on various dates. However, during pendency of investigation vide order dated 24.02.2020, NBWs were initially directed to be issued against petitioner Joginder Singh Lather (petitioner in CRL.M.C. 14/2022) and proceedings under Section 82 Cr.P.C. were initiated vide order



dated 16.10.2020. The aforesaid proceedings were challenged on behalf of the petitioner vide CRL.M.C. 217/2021 and the proceedings under Section 82 Cr.P.C. have since been set aside vide order dated 19.11.2022 passed by Coordinate Bench of this Court,

(iii) It is further submitted that during pendency of CRL.M.C.217/2021, again NBWs were issued by the learned MM vide order dated 28.10.2021 and 02.11.2021. Further, proceedings under Section 82 Cr.P.C. were initiated vide order dated 30.11.2021. The second set of proceedings have been challenged by way of present CRL.M.C. 14/2022, wherein stay was granted vide order dated 06.01.2022.

3. Learned counsel for the petitioner emphasizes that proceedings vide order dated 28.10.2021, 02.11.2021 and 30.11.2021, are bad in law since even the earlier proceedings under Section 82 Cr.P.C. have been set aside by this Court in CRL.M.C. 217/2021 vide order dated 19.11.2022. It is also pointed out that the proceedings under Section 82 Cr.P.C. were again initiated by prosecution during pendency of CRL.M.C. 217/2021. Further, the chargesheet since stands filed on 29.04.2022 and even the summons issued pursuant to the chargesheet have been stayed in the revision petition preferred by the petitioners, which is pending before the Court of Sessions.

4. Petitions have been vehemently opposed by learned APP for State as well as learned counsel for the complainants.

As per the case of prosecution, complainants had booked flats in residential project namely “PDM Hi-tech Homes” situated in Sector 3A, Bahadurgarh, Distt. Jhajjar (Haryana) launched by M/s. Prabhu Shanti Real Estate Pvt. Ltd. of which petitioners are Directors. Further the accused



company has collected more than Rs. 155 Crores from innocent homebuyers/complainants and subsequently siphoned off the same for their other projects in furtherance of dishonest intention and did not utilize the same on earmarked project. As such the company has not been able to hand over the possession of the flats to complainants.

It is submitted by learned APP that the petitioners Ram Niwas Lather and Joginder Singh Lather had joined the investigation only during the period they had been granted protection orders after the filing of the applications for anticipatory bail, but the aforesaid proceedings under Section 82 Cr.PC had been initiated after the dismissal of the bail applications.

5. I have given considered thought to the contentions raised.

In CRL.M.C. 132/2022 and CRL.M.C. 14/2022, the earlier set of coercive proceedings under Section 82 Cr.P.C. initiated vide order dated 16.10.2020, have been set aside vide order dated 19.11.2022 passed by Hon'ble Ms. Justice Anu Malhotra.

The observations made in paragraphs 3 to 5 in order dated 19.11.2022 may be noticed for reference:

“3. Apparently, the purpose of proceedings under Section 82 of the Cr.P.C., 1973 is to compel a person to put in appearance before the Court concerned and joining of investigation which the petitioner admittedly did even it be pursuant to the interim protections granted to him, it cannot be overlooked that offence punishable under Section 406/420/120B of the Indian Penal Code, 1860, do not fall within the ambit of Section 82(4) of the Cr.P.C., 1973.

4. *In these circumstances, the proceedings under Section 82*



of the Cr.P.C., 1973 initiated against the petitioner vide proceedings dated 16.10.2020 are set aside.

5. The petition and all the accompanying applications are disposed of accordingly.”

6. Admittedly, the chargesheet in the present case has been thereafter filed by the prosecution against the accused with the only difference that accused/petitioner Bijender Singh Lather (in CRL.M.C. 2647/2021) did not join the investigation after initiation of proceedings under Section 82 Cr.P.C. on 21.08.2021 and declaration on 12.10.2021, till the filing of chargesheet. However, petitioners/accused Ram Niwas Lather and Joginder Singh Lather joined the proceedings though after the protection orders were issued by this Court. It has already been noticed vide order dated 19.11.2022 by the Coordinate Bench of this Court in CRL.M.C. 132/2022 that the very purpose of proceedings under Section 82 Cr.P.C. is to compel a person to put in appearance before the Court concerned and join investigation. It cannot be overlooked that the chargesheet against the accused/petitioners stands filed.

7. Considering the facts and circumstances, since the investigation in the aforesaid case has already concluded qua aforesaid Ram Niwas Lather and Joginder Singh Lather, this Court is of the opinion that proceedings initiated vide orders dated 28.10.2021, 02.11.2021 and 30.11.2021, be set aside.

Petitions are accordingly disposed of.

CRL.M.C. 2647/2021 & CRL.M.A. 8219/2023

1. CRL.M.C. 2172/2021 was earlier preferred by Bijender Singh Lather for setting aside order dated 21.08.2021 whereby initiation of proceedings under Section 82 Cr.P.C. was challenged. The same was disposed of as



infructuous by Hon'ble Mr. Justice Yogesh Khanna vide order dated 28.02.2023 since the proceedings under Section 82 Cr.PC were completed in the meantime, declaring petitioner as a proclaimed offender.

2. Thereafter, CRL.M.C. 2647/2021 was preferred on behalf petitioner Bijender Singh Lather for setting aside of order dated 12.10.2021 passed by learned M.M under Section 82 Cr.P.C., whereby petitioner was declared as *proclaimed offender*. The aforesaid order dated 12.10.2021 passed by learned M.M against Bijender Singh Lather, declaring him as proclaimed offender has been modified vide order dated 28.02.2023 by Hon'ble Mr. Justice Yogesh Khanna in CRL.M.C. 2647/2021 preferred by petitioner holding that the petitioner shall be treated as *proclaimed person* instead of proclaimed offender.

3. Thereafter, CRL.M.A. 8219/2023 has now been preferred in CRL.M.C. 2647/2021 for recalling order dated 28.02.2023 passed by this Court and for setting aside the proclamation orders issued by learned CMM.

4. Mr. Naresh Kaushik, learned Senior Advocate for petitioner Bijender Singh Lather in CRL.M.C. 2647/2021 submits that the proceedings in respect of the applicant, who is the brother of petitioners/accused in CRL.M.C. 132/2022 and CRL.M.C. 14/2022 was separately listed without being aware of the orders passed in the concerned cases, which were listed before a Coordinate Bench of Hon'ble Ms. Justice Anu Malhotra while the present case was listed separately. It is submitted that the petitioner had also similarly joined the proceedings during investigation and also challenged the order of summoning passed by learned Trial Court, which has been stayed by learned Court of Sessions.



5. On the other hand, learned APP for the State assisted by learned counsel for complainant submits that so far as petitioner Bijender Singh Lather is concerned, he failed to join the investigation during the relevant period. Further, the application for anticipatory bail filed on behalf of petitioner Bijender Singh Lather stood dismissed by the Hon'ble Apex Court on 13.01.2021. It is also pointed out that accused Bijender Singh Lather as per chargesheet failed to join the investigation and proceedings against him stand concluded under Section 82 Cr.P.C.

6. So far as accused Bijender Singh Lather is concerned, vide order dated 28.02.2023 passed by this Court, the proceedings against him under Section 82 Cr.P.C. have been upheld, with only modification of treating him as proclaimed person instead of proclaimed offender. The case of petitioner is not at parity with co-accused since he failed to join the investigation after the anticipatory bail application was rejected by the Hon'ble Supreme Court of India vide order dated 13.01.2021. Present application is devoid of any merits and is accordingly dismissed. Pending applications, if any, also stand disposed of.

7. Nothing stated herein shall tantamount to expression of opinion on the merits of the case, for purpose of bail applications, if any pending or preferred on behalf of respective accused.

A copy of this order be forwarded to learned Trial Court for information and be kept in connected petitions.

ANOOP KUMAR MENDIRATTA, J

MARCH 14, 2024/akc