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

\+ CRL.M.C. 5342/2022 & CRL. MA 21223/2022, 10084/2023

NITANT VERMA ..... Petitioner

Through: Mr. Adit S. Pujari and Mr Shaurya Mittal, Advocates.

versus

STATE OF DELHI NCT & ANR ..... Respondents

Through: Mr. Nawal Kishore Jha, APP for State Mr. Asim Naeem, Mr. Saurabh Soni, Ms. Cherry Gupta and Ms. Anisa and Mr. Subhani, Advocates.

\+ CRL.M.C. 2684/2023 & 10118/2023

ARJUN CHAUDHARY ..... Petitioner

Through: Mr. Asim Naeem, Mr. Saurabh Soni, Ms. Cherry Gupta and Ms. Anisa and Mr. Subhani, Advocates.

versus

STATE OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Nawal Kishore Jha, APP for State.

Mr. Adit S. Pujari and Mr Shaurya Mittal, Advocates for the respondents.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% **16.05.2024**

1. By way of the present petitions filed under Section 482 Cr.P.C., both parties seek to assail the order dated 16.08.2022 passed by the learned MM, South East District, Saket Courts in CT Case No.726/2016.

2. Notably, the petitions arise out of proceedings instituted under Section 138/142 NI Act and pending between the parties. In the said proceedings,

accused *Nitant Verma* had preferred an application under Section 91 Cr.P.C for production of as many as 14 documents classifying them as 'necessary and desirable' for the purpose of cross-examination of the respondent/complainant. Apparently, after hearing the parties, the learned Trial Court vide the impugned order, partially allowed the said application, thereby directing the respondent/complainant to produce documents which were listed at serial numbers 4, 6 and 7. While the accused has assailed the impugned order to the extent of refusal to direct production of other documents, the respondent/complainant has assailed the impugned order to the extent that he has been asked to produce the documents at serial nos. 4, 6 and 7.

3. Before proceeding further, it is apposite to note that the co-accused-*Jeevesh Sabharwal* has also preferred an FIR being FIR No.665/2016 against the respondent/complainant's brother-in-law namely *Suninder Sandha*. It is informed that in the said proceedings, charge-sheet has been filed, however, an application under Section 173(8) Cr.P.C against the respondent/complainant is pending consideration.

4. It is also pertinent to note that the complainant *Arjun Chaudhary* has maintained the underlying complaint instituted under Section 138 NI Act on the premise that he had forwarded a total sum of Rs.51.50 lacs and that the same was sought to be repaid by the subject cheques, which upon presentation, were dishonoured.

5. As borne out from the records, co-accused *Jeevesh Sabharwal* and *Suninder Sandha* were the Directors of one *M/s Concept Horizon Infra Pvt. Ltd.* (CHIPL). The petitioner, who had joined the said company later on, contends that respondent/complainant was also an employee in the said

company. The respondent/complainant, however, has maintained that he was an employee for only a period of one year, upto April, 2014.

6. The accused *Nitant Verma* had filed the subject application under Section 91 Cr.P.C. seeking the following documents:-

S. No.	Sought from the custody of	Particulars of the document sought	Document sought
1.	Complainant/His related entities	CRM ledger and all other documents maintained by the complainant pertaining to the day to day functioning of the complainant during his employment with CHIPL/HCPL	To establish the role played by the complainant herein the functioning of CHIPL and consequently, the role of the complainant herein siphoning of funds from CHIPL and the accused persons herein. To versions of the CRM were maintained, which was not to the knowledge of CHIPL at the relevant time, and one such version is in the power and possession of the complainant.
2.		List of all buyers from whom cash was collected in CHIPL's/HCPL's name	The same relates to the complainant's interaction with CHIPL and is pertinent to show the amount that was routed/rerouted into various accounts owned by the complainant and his close

			relatives rather than the company accounts where the amount ought to have been duly deposited.
3.		Receipts and any available documentation pertaining to the twenty-five cheques bearing the complainant's signature, to be issued to CHIPL against the sale of units in the project "Orizzonte', which were instead issued to Concept Capital Infra Projects Pvt. Ltd.	Directly indicative of the active role played by the complainant in the siphoning of funds of CHIPL to Concept Capital Infra projects Pvt. Ltd the directors of which company are the close relatives of the complainant ie. Mr. Jasmitter Sandha, Mr. Suninder Sandha, Ms. Dipti Sandha and one Mr. Arjun Singh Rawat who is the additional director.
4.		Income Tax returns for the Financial year 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017.	To ascertain the inflow of money into the Complainant's bank account(s), whether the same indicates suspicious transactions undertaken by the complainant in the nature of rerouting of money owed to CHIPL by buyers into account(s) owned by the complainant.
5.		Proof of deposit of cash taken from buyers in CHIPL's name.	To dispute the factum of the existence of a legally enforceable debt owed to the complainant herein by indicating the fraud/siphoning by the complainant. Cash deposits were not permissible.
6.		Proof of the alleged payment of a sum of Rs. 1,50,000/ from the complainant to CHIPL.	To indicate that the amount that is allegedly owed to the complainant is false and even otherwise, as evinced from a perusal of the complainant's own filings, an inflated figure without any proof of the transactions. Lends credence to the applicant's stand disputing the existence of any legally enforceable debt owed to the complainant and consequently the lack of any cause of action for filing of the subject complaint.
7.		Bank Statement of Account of the complainant at HDFC Bank, NRI Complex, Greater Kailash- IV, New Delhi-110019.	To ascertain the inflow of money into the complainant's into the complainant's bank account(s), whether the same indicates suspicious transactions undertaken by the complainant in the nature of rerouting of money owed to CHIPL by buyers into account(s) owned by the complainant.
8.	Complainant and close relatives of the complainant	Documents related to the employment of the complainant with CHIPL/HCPL	To establish the time period of the employment of the complainant herein in CHIPL and consequently, the role of the complainant herein in siphoning of funds from CHIPL and the accused

			persons herein. The complainant has not even disclosed his relationship with the Horizon Concept group, and also the documents that he has in is power and possession relating to such employment and role.
9.		Documents related to the employment of Mr. Suninder Sandha, Mr. Naveen Chaudhary, Mr. Jasmitter Sandha and Ms. Dipti Sandha while they were handling the affairs of CHIPL/HCPL	The documents relate to complainant's and his close relatives interaction and employment with CHIPL. Will establish the time period and nature of their engagement with CHIPL and consequently corroborate their role in siphoning of funds and fraud on CHIPL and the accused persons herein.
10.		Bank statements of Bank Account No. 913020022627619 which came to be fraudulently opened at Axis Bank, Vikaspuri from the year 2012-2016.	The same relates to the complainant and his close relative's interaction with CHIPL and is pertinent to show the amount that was routed into various accounts owned by the complainant and his close relatives rather than the company accounts where the amount ought to have been duly deposited.
11.		Bank statement of account(s) of Concept Capital Infra Projects Pvt. Ltd. from the year 2012-2016.	Directly indicative of the active role played by the complainant in the siphoning of funds of CHIPL to Concept Capital Infra Projects Pvt. Ltd, the directors of which company are the close relatives of the complainant ie Mr. Jasmitter Sandha, Mr. Suninder Sandha, Ms. Dipti Sandha and Mr. Arjun Singh Rawat who is the additional director.
12.		Bank Statements, Articles of Association, Memorandum of Association, Annual Returns of companies associated with the complainant, and close relatives of the complainant including: a. M/s Concept Capital Infra Projects Pvt. Ltd from the year 2012-2017 b. M/s Concept Infravision Pvt. Ltd from the year	Directly indicative of the active role played by the complainant in the siphoning of funds of CHIPL to various entities owned/controlled/managed by the complainant and his close relatives. Further, it appears that while some of these companies availed a loan from M/s Horizon Concept Infra Ltd., however repaid the loan amount alongwith interest into the account(s) of M/s Concept Infravision Pvt. Ltd. The directors of the companies, the details of which are sought are the close relatives of the complainant or were used to route money by way of loans as a part of the fraud played on CHIPL and the accused persons herein. Pertinently, while the Articles of

		2012-2017; c. M/s Ping Media Pvt. Ltd from the year 2012-2017 d. M/s Scarlett Hospitality from the year 2012-2017; e. M/s Atma Ram Amarnath from the year 2012-2017 f. M/s CFG International Pvt. Ltd from the year 2012-2017; g. M/s Blue Star Buld Prop. Pvt. Ltd from the year 2012-2017; h. M/s Ahuja and Anand Buildwell Pvt. Ltd from the year 2012. 2017/	Association, Memorandum of Association and the Annual Returns pertaining to limited time periods form apart of the public record, being available on the website of the Ministry of Corporate Affairs: - No data is available for M/s Scarlett Hospitality; and - No data is available for M/s Atma Ram Amarnath; and - The Annual Returns available for the other companies are not available for the time period that the information is sought for; and The Bank statements for the companies mentioned are not available.
13.	Investigating Agency	The chargesheet filed by the investigating agency ie. PS: Vikas Puri (Now EOW) before the Ld. CMM, Dwarka Courts, in Cr. Case 6155/2021, arising out of FIR 665/2016.):	
14.		Closure report filed before the Ld. CMM, Gautum Buddha Nagar n FIR No. 1350 of 2018 registered at PS: Noida Sector 20, FIR No. 1350 of 2018 was registered at PS: Noida, Sector 20 on 10.08.2018 u/s 406/420/467/468/471 of the Indian Pencal Code, 1860	To indicate that criminal proceedings have been initiated and are pending qua the complainant herein by investors in projects that were to be developed by some of accused persons herein.

7. The complainant *Arjun Chaudhary* filed a response to the said application in a tabular form, which is extracted hereunder:-

S. No.	Documents	Custody.
1.	CRM ledger and all other documents maintained by the complainant pertaining to the day-to-day functioning of complainant during his employment with CHIPL	In possession of accused no.1.
2.	Related to employment of the complainant with CHIPL.	In possession of accused no.1.
3.	List of buyers from whom cash was collected in CHIPL.	Not in the possession of complainant and complainant not aware of any such documents.
4.	Related to employment of Mr. Suninder Sandha, Mr. Naveen Chaudhary, Mr. Jasmitter Sandha and Ms. Dipti Sanda while they were handling the affairs of CHIPL.	Not in the possession of complainant.
5.	Receipts and any available documentation pertaining to the twenty-five cheques bearing the complainant's signature, to be issued to CHIPL against the sale of units in the project "Orizzonte", which were instead issued to Concept Capital Infra Projects Pvt. Ltd.	Not in the knowledge and possession of complainant.
6.	Income Tax Returns for financial year 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017.	Not relevant as all the payment was made through banking channel, i.e., RTGS & Cheque.
7.	Original electricity bill of House No. 22, NRI Complex, GK-IV, New Delhi, which was used as the address proof to open starlet account.	Not relevant.
8.	Proof of deposit of cash taken from buyers in CHIPL's name.	Not in complainant knowledge.
9.	Proof of the alleged payment of a sum of Rs. 1,50,000/- from the complainant to CHIPL.	Paid through cheque.
10.	Bank statements of account(s) of Concept Capital Infra Projects Pvt. Ltd. From the year 2012-2016.	Not in the possession of complainant.
11.	Bank statements of Bank account no.913020022627619 which came to be fraudulently opened at Axis Bank, Vikaspuri from the year 2012-2016.	Not concern with complainant.
12.	Bank statement of account of the complainant at HDFC Bank, 3 NRI Complex, GK-IV, New Delhhi-110019.	Not relevant. The passbook of complainant's bank account is already filed and is marked as Ex.CW1/1.
13.	Bank statements, articles of association, memorandum of association, annual returns of companies associated with the complainant, and close relatives of the complainant including: a) M/s Concept Capital Infra Projects Pvt. Ltd. From the year 2012-2017. b) M/s Concept Infravisions Pvt. Ltd. From the year 2012-2017. c) M/s Ping Media Pvt. Ltd. From the year 2012-2017. d) M/s Scarlett Hospitality from the year 2012-2017. e) M/s Atma Ram Amarnath from the year 2012-2017. f) M/s CFG International Pvt. Ltd. From the	Not in the possession of the complainant or with accused persons.

	year 2012-2017. g) M/s Blue Star Build Prop Pvt. Ltd. From the year 2012-2017. h) M/s Ahuja and Anand Buildwell Pvt. Ltd. From the year 2012-2017.	
14.	Chargesheet filed by Investigating Agency, i.e. PS Vikas Puri (now EOW) before the Ld. CMM, Dwarka Courts, in C.R. Case 6155/2021, arising out of FIR no. 665/2016.	This is an admitted position that the custody of the said document is with IO or may be in the court.
15.	Closure report filed before Ld. CMM, Gautam Buddha Nagar in FIR No.1350 of 2018 registered at PS: NOIDA Sector 20, FIR No. 1350 of 2018 was registered at PS: NOIDA Sector 20 on 10.08.2018 u/s 406/420/467/471 of the Indian Penal Code, 1860, having been filed by an investor in a project (India) that was to be developed by Mr. Jeevesh Sabharwal/ Accused No.2 and Mr. Naresh Sabharwal/ Accused no. 4 herein.	This is an admitted position that the custody of the said document is with IO or in the court. Accused person knows better the custody of the documents.

8. In State of Orissa *v.* Debendra Nath Padhi reported as **(2005) 1 SCC 568**, it has been observed that:-

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25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary and desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production… When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section… When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and *production is made and the party who makes it, whether police or accused...*

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28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

9. Further, this Court in Sukhmohinder Singh Sandhu *v.* CBI reported as **2010 SCC OnLine Del 2481**, while dealing with Section 91 Cr.P.C. observed:-

"10. This provisions of section 91 Cr. P.C. empower a court to summon or order production of any document which it think necessary or desirable for the purpose of inquiry or trial. The word 'document' through not defined in Cr. P.C., however, has been defined in section 3 of Evidence Act and would mean any matter expressed or described upon any substance by means of letter, figures or makes, or by more than one of those means. The accused under section 91 Cr. P.C. cannot ask the production of documents as a matter of right. However, while making application he has to specify the document and show its relevance. He cannot ask the court to make roving and fishing enquiry as has been done in the applications under consideration. Only when he discloses the nature of document and its relevance, the court to decide if the documents sought to be summoned was necessary or desirable for the just decision of the case."

10. A perusal of the documents sought by accused *Nitant Verma* would show that most of them pertained to the affairs of CHIPL, of which the respondent/complainant was only an employee briefly for a period of one year.

11. Along with the particulars of the documents sought, the accused has

also assigned reasons for seeking the same, a perusal of which would show that the same are more in the nature of a fishing and roving inquiry, and further considering the defence taken by the respondent/complainant that the same are not in his possession, this Court finds no ground to interfere with the said order except to the extent that the respondent/complainant has been directed to be produce the documents at serial numbers 4, 6 and 7.

12. The documents at Serial no.4 relate to income tax returns for the financial years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The premise to seek these documents is that though the respondent/complainant has alleged that he has forwarded the loan of Rs.51.50 lacs through multiple transactions, and while the entry of Rs.50 lacs is documented, the forwarding of remaining sum of Rs.1.50 lacs is not borne out from the records. On the other hand, the respondent/complainant has maintained that the entire sum was transferred through banking channels.

The documents at Serial No.6 again relates to proof of payment of said Rs.1.50 lacs. The accused has not specified any document in this regard except stating that proof be provided.

The documents at Serial No.7 relate to bank statements of the account of the respondent/complainant maintained with HDFC Bank. The reason assigned for asking the said documents is to ascertain the inflow/entry of money into the respondent/complainant's bank account and as to whether it involves suspicious transaction undertaken by him in the nature of re-routing of the money owed to CHIPL by buyers. It appears that the accused is seeking documents in relation to investigation pending against the respondent/complainant's brother-in-law, by way of the application under Section 91 Cr.P.C.

13. Learned counsel for the respondent/complainant states that the complainant will produce the relevant passbooks to prove its case with respect to remaining Rs.1.50 lacs.

14. Considering the scope of Section 91 Cr.PC, the documents sought by the accused are neither necessary nor desirable.

15. In view of the aforesaid, the impugned order is set aside to the extent that the complainant has been directed to produce documents at serial numbers 4, 6 and 7.

16. Both the petitions are disposed of in above terms along with pending applications.

MANOJ KUMAR OHRI, J

MAY 16, 2024/*rd*