$~75

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

\+ CRL.M.C. 6970/2024 & CRL. MA 26620/2024

STATE (NCT OF DELHI) .....Petitioner

Through: Mr. Laksh Khanna, APP for State with Inspector Nikesh Kumar PS EOW

versus

SANDEEP MADAN .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

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

% **04.09.2024**

1. By way of the present petition, the petitioner/State seeks to assail the order dated 20.10.2023 vide which the learned Sessions Court has set aside the summoning order passed against the respondent**,** namely, *Sandeep Madan.*

2. Pertinently, the present FIR came to be registered on 03.04.2017 under Sections 406/409/420/120B IPC on a complaint of one *Tanmay Sharma* and others. After investigation, charge-sheet came to be filed in the present case. In the complaint, it was alleged that *Mr. Dipender Kumar Singh* and *Ms. Mamta Kale*, who were the Directors in DEF Housing Pvt. Ltd. induced the complainants to invest in a group housing scheme floated by them. It is stated that about 57 persons invested their respective amounts in the said scheme. It is further stated that the most of the payment was collected within a period of 15 days of floating the said scheme. The entire money came in the account of M/s DEF Housing Pvt. Ltd.

3. As per the investigation conducted, the amount of Rs.1,74,38,000/-

was stated to be received in the account of M/s Dypen, a proprietorship concern of the accused *D.K. Singh*. The further payments were received in the account of M/s DEF Housing Pvt. Ltd. It is the case of the prosecution that *Mr. D.K. Singh* has thereafter incorporated another company by the name of M/s Air Armada Constructions Pvt. Ltd. on 13.08.2012. The respondent *Sandeep Madan* was appointed as a Director on 17.08.2012. The prosecution alleges that, after incorporation of M/s Air Armada Constructions Pvt. Ltd., a sum of Rs.2.516 crores was siphoned off by Mr. *D.K. Singh* from M/s DEF Housing Pvt. Ltd. to M/s Air Armada Constructions Pvt. Ltd. and shown it as a loan. However, there was no Board Resolution authorizing the same transaction. The charge-sheet came to be filed against three accused persons i.e., M/s DEF Housing Pvt. Ltd., *Mr. D.K. Singh* and *Ms. Mamta Kale*. Ms. Mamta Kale was kept in column no.12. Besides issuing summons to the accused persons, the Trial Court also directed the issuance of summons against the respondent *Sandeep Madan*. The relevant part of the order dated 10.11.2022 is extracted hereinbelow:

> *"…In the present case, accused Dipender Kumar Singh had induced approximately 57 persons to invest money on the promise of allotting them houses/ plots on a land admeasuring 2 Acres. As per the record, Rs.1.73 Crores was received in his Proprietorship concerned M/s Dypen. Subsequently, he incorporated M/s D.E.F Housing Private Limited on 16.08.2012. In this company, Mamta Kale was the second Director apart from accused Dipender Kumar Singh. Approximately Rs.7 Crores was received from Investors upto December 2013 in this company.*
>
> *Subsequently, accused Dipender Kumar Singh incorporated yet another company by the name of M/s Air Armada Constructions Private Limited in which Sandeep Madaan was the second Director apart from accused. An amount of Rs.2.5 Crores was*

> *transferred from M/s D.E.F Housing Private Limited to the account of this company. No construction was ever raised as promised to the innocent investors.*
> *There is sufficient material record to show prima facie that offence U/s 409/420/406/120B IPC has been committed by accused Dipender Kumar Singh in connivance with Smt. Mamta Kale & Sandeep Madaan and by company M/s D.E.F Housing Private Limited and M/s Air Armada Constructions Private Limited.*
> *Cognizance taken accordingly….”*

4. The said order came to be impugned by the respondent before the learned Sessions Court, which while setting aside the same vide order dated 20.10.2023 observed that no specific act of cheating of criminal breach of trust has been attributed to the respondent. Though allegations pertain to *Mr. D.K. Singh* for diversion of funds, respondent could not be impleaded on account of vicarious liability.

5. Insofar as summoning an accused who is not sent for trial is concerned, the position stands well-settled in terms of the decision in Raghnbans Dubey *v.* State of Bihar, reported as **AIR 1967 SC 1167** and the same was further reiterated in decision dated 16.03.2022 in Nahar Singh *v.* The State of Uttar Pradesh & Anr. [Crl. Appeal No.443/2022]. However, for such summoning, the order must reflect application of mind and the material against such a person.

6. In the present case, neither there is any material cited against the respondent in the charge-sheet nor there is any other reason except the fact that siphoning off money has travelled to a company in which respondent is a Director. Even the impugned order records that the transfer was without a Board resolution of M/s DEF Housing Pvt. Ltd. It is not the prosecution case

that the respondent was ever associated with M/s DEF Housing Pvt. Ltd. Or induced any of the complainants.

7. Even during the course of hearing, on a specific query as to whether any money has travelled from M/s DEF Housing Pvt. Ltd to the personal account of the respondent *Sandeep Madan*, the answer received is in negative.

8. As noted above, there is no allegation in the entire charge-sheet that the investors have ever met with respondent *Sandeep Madan* or were being induced by him for parting with the money.

9. Considering the aforesaid, I find no ground to interfere with the impugned order. The petition is accordingly dismissed along with pending application.

MANOJ KUMAR OHRI, J

SEPTEMBER 4, 2024/*rd*