2025:PHHC:039793

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-19117-2024 (O&M)
Reserved on: March 6th, 2025
Pronounced on: March 25th, 2025

Randhawa Constructions Private Limited
.....Petitioner

Versus

State of Haryana and others
.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Puneet Bali, Senior Advocate
with Mr. Tushar Sharma
and Ms. Bhagyashri Setia, Advocates
for the petitioner.

Mr. Arun Kumar Singla, Assistant Advocate General, Haryana.

Mr. Kushagra Mahajan, Advocate
for respondents No.3 to 5.

MANJARI NEHRU KAUL, J.

The present petition has been filed by the petitioner challenging the order dated 02.04.2024 (Annexure P-21) passed by the learned trial Court, whereby the application filed under Section 173 (8) of the Cr.P.C. in FIR No.109 dated 03.03.2022 under Sections 120-B, 406, 420, 447, 467, 468 and 471 of the IPC registered at Police Station City Sohna Gurugram, seeking further investigation into the matter was treated as a protest petition and the prayer for further investigation was declined.

BRIEF FACTS OF THE CASE:

2. The case concerns a Collaboration Agreement dated 11.06.2013 executed between the petitioner and respondent Nos.1 to 5,

wherein petitioner, being the owner of approximately 6.85625 acres of land, agreed to collaborate with respondent No.3, M/s HCBS Promoters and Developers Private Limited (for short 'HCBS'), for the development of an affordable Group Housing Colony.

3. In pursuance of the Collaboration Agreement, the parties executed an Escrow Agreement dated 02.02.2015 with YES Bank, stipulating that all funds related to the project would be received exclusively in Escrow Account No.000280200000419. Additionally, a power of attorney dated 12.11.2013 was executed by the petitioner in favour of respondent No.4, Bhupinder Singh, his son and any authorized representative of respondent No.3 HCBS. The scope of the power of attorney was restricted to obtaining permissions such as:

- Change of land use;
- Procuring licences;
- Getting site plan sanction;
- Obtaining necessary approvals for constructions and development;
- Exercising complete rights over sale and receiving sale considerations only for the developer's share in revenue as per Clauses 15 and 16 of the collaboration agreement.

4. As per the approved building plan, 4% of the net plan area with 1.75 FAR was allocated for commercial purposes, and this was to be constructed as a separate building on the plot. However, in 2019, without the knowledge of the petitioner, respondent No.3-HCBS unilaterally shifted the entire commercial component into the stilt area, in violation of the Collaboration Agreement and the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as '1975 Act').

5. On 29.05.2019, respondent No.3 submitted an application for an occupation certificate based on these unauthorized altercations. The petitioner only became aware of this during an inspection conducted by representatives of the Town and Country Planning Department (for short 'TCP Department').

6. Furthermore, respondent No.5, Kuldeep Kumar, while falsely projecting himself as the Director of HCBS, submitted the application to the TCP Department using the name of the petitioner and the stamp of the company. The TCP Department subsequently refused to grant the occupation certificate, leading respondent No.3-HCBS to apply for revision of building and layout plans.

7. To facilitate this revision, respondent No.4, Bhupinder Singh, in connivance with respondent No.5, Kuldeep Kumar, allegedly forged a resolution of the Board dated 22.04.2019 on a forged letterhead of the petitioner company. This fabricated resolution purportedly authorized respondent No.5 to comply with formalities for the revision of building plans. A fake stamp of the petitioner company was also created to make the resolution appear genuine.

8. In contrast, a genuine resolution dated 11.06.2013 had previously been submitted to the TCP Department signed by Smt. Davinder Randhawa, Director of the petitioner company.

9. Upon discovery of the violations, the Senior Town Planner, Gurugram, issued a letter dated 16.07.2019 to the Director General (DG), TCP Department, highlighting that the parking space in the stilt area had already been converted into a commercial component and that the violations were now being sought to be compounded through the revision of building plans.

10. Consequently, on 23.01.2020, the DGTCP issued a memo granting 'In-Principle Approval' for the revised plans and directed objections to be invited from existing allottees. However, since the respondent had fraudulently provided their own address in place of the address of the petitioner, the memo never reached the petitioner.

11. Thereafter, respondents No.4 and 5 submitted an affidavit-cum-undertaking dated 24.02.2020 to the DGTCP, falsely represented it as having been filed by the petitioner through its Director. The stamp papers used for this undertaking were fraudulently obtained in the name of the petitioner company, further demonstrating premeditated forgery by respondent No.4.

12. Upon learning of these acts, the petitioner filed multiple representations with the TCP Department and also challenged the revised building plan dated 02.03.2020, and the occupation certificates dated 04.06.2020 and 03.09.2020, by filing an appeal under Section 10 of the 1975 Act before the Additional Chief Secretary (ACS), TCP Department.

13. The private respondents, in their reply before the ACS, TCP Department, admitted to filing the affidavit-cum-undertaking dated 24.02.2020, but attempted to downplay it as a mere typographical error. They failed to provide any explanation as to:

(i) why the stamp papers were obtained in the name of the petitioner company rather than in the name of HCBS;

(ii) why the stamp paper of the petitioner company was affixed on the document.

14. The appeal was dismissed by the ACS, TCP Department on 26.05.2022, holding that: respondents No.4 and 5 were authorized

through the power of attorney dated 12.11.2013; in terms of the Collaboration Agreement dated 11.06.2013, they were entitled to apply for revised building plan; the petitioner failed to prove forgery of the Board resolution.

15. Aggrieved by this order, the petitioner filed CWP No.20535 of 2022 before this Court, where notice has already been issued.

16. Meanwhile, upon discovering that the respondents had conspired to siphon off funds from the Escrow Account to other account, the petitioner lodged a criminal complaint, leading to the registration of the FIR No.109 dated 03.03.2022 under Sections 120-B, 406, 420, 447, 467, 468 and 471 of the IPC. However, instead of filing a charge sheet, the police submitted a closure report, stating that no offence was made out, relying primarily on the pending proceedings before this Court and the sole arbitrator.

17. The petitioner thereafter filed an application under Section 173(8) of the Cr.P.C. on 07.01.2023 specifically seeking further investigation and recovery of the original forged resolution dated 22.04.2019. This application was dismissed by the trial Court, leading to the present petition.

18. SUBMISSIONS ON BEHALF OF THE PETITIONER:

Learned senior counsel for the petitioner vehemently argued:

(i) that the trial Court gravely erred in dismissing the application for further investigation and treating it as a protest petition.

(ii) that the investigating agency failed to properly probe the issue of forgery and merely relied upon the findings of the ACS, TCP

Department. Undisputedly, the ACS did not have the authority to adjudicate upon forgery of documents and could only determine whether the revised building plan should have been permitted.

(iii) that neither the police nor the trial Court sought to recover the original forged resolution, which was crucial to proving forgery. In support, he drew attention to the impugned order dated 02.04.2024 (Annexure P-21).

(iv). that the Court while passing the impugned order misinterpreted the exchange of emails between the parties to be knowledge of siphoning of funds as in the email communication between the private respondents and the petitioner, certain accounts were merely mentioned by the respondents, which could not be construed to be knowledge on part of petitioner with regard to the transfer of amounts in other accounts rather than the Escrow Account. In support, learned senior counsel drew the attention of this Court to the resolution dated 11.06.2013 (genuine resolution) (Annexure P-6) and resolution dated 19.04.2019 (forged resolution) (Annexure P-5) and argued that ostensibly juxtaposition could be drawn that latter was forged by respondent No.4-Bhupinder Singh, who was neither a Director nor a shareholder in the petitioner company. Yet, the trial Court by way of a non-speaking order bypassed the significance of recovery of the forged document and imputed upon the petitioner the failure to provide any evidence with regard to the alleged forgery.

(v) that the entire case of the complainant/petitioner was dependant upon the recovery of the forged document and admittedly, this document had been placed on record before the ACS, TCP Department. However, the Investigating Officer by being hand in gloves with the accused persons/respondents intentionally carried out a shoddy and cryptic investigation by merely relying upon the findings of the ACS, TCP Department.

19. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

Per contra, learned counsel appearing on behalf of the State as well as the private respondents opposed the submissions advanced by the learned senior counsel for the petitioner by making the following submissions:

(i) that the impugned order did not warrant any interference, as it was passed in the light of a detailed and exhaustive investigation conducted by the investigating agency. The cancellation report was prepared after due consideration of the facts and circumstances of the case, and it was based on the finding that the petitioner/complainant company had prior knowledge of the alleged siphoning of funds.

(ii) that there was no occasion or necessity for the respondent to forge the board resolution, as a General Power of Attorney (GPA) had already been executed between the parties. The existence of this validly executed GPA unequivocally demonstrated that the allegations levelled by the petitioner were baseless and merely an attempt to foist false criminal case upon the respondent with the ulterior motive of deriving wrongful gain.

(iii) to substantiate his submissions, the learned counsel for the respondent drew the attention of this Court to Annexure P-15, which pertained to the Collaboration Agreement between M/s Randhawa Construction Pvt. Ltd. and Bhupinder Singh (acting on behalf of HCBS). Pursuant to this collaboration, a GPA dated 12.11.2013 was executed, thereby delegating various powers to Bhupinder Singh in relation to the project. These powers explicitly included:

- the authority to seek permission for change of land use;
- the power to procure necessary licenses;
- the authority to obtain sanctions for site plan;
- the power to secure all requisite approvals from the competent authorities for the purpose of construction and development of the project; and
- the complete right to sell and receive all sale proceeds attributable to the developers share in revenue, as defined under clause 15 and 16 of the collaboration agreement, in accordance with the terms of the relevant policy.

(iv) that this GPA remained valid to date and had never been revoked or challenged by the petitioner/complainant company. This, learned counsel contended, clearly negated the allegations of forgery and demonstrated that the respondent was legally empowered to act in the manner alleged to be unlawful.

(v) the learned counsel for the respondent also placed reliance on the reply filed on record and emphasized that an arbitration proceeding was already pending between the parties. He submitted that the issue concerning the alleged siphoning of funds was a subject matter of the said arbitration proceedings and, therefore, the interests of the petitioner were already adequately protected under the ongoing arbitral process. The pendency of these proceedings further reinforced the contention that there was no necessity for criminal prosecution, as the disputes between the parties were primarily of a civil and commercial nature, falling squarely within the domain of arbitration.

20. Upon a pointed query put by this Court to the learned

senior counsel for the petitioner, asking how the impugned order adversely affected the rights of the petitioner given that its interests were protected under the arbitration proceedings, the learned senior counsel attempted to argue that the alleged forgery by the respondents resulted in unauthorized alterations to the building plans. Learned senior counsel further submitted that such alterations were made without the consent of the petitioner and in violation of the collaboration agreement, thereby increasing the liability of the petitioner due to illegal construction activities undertaken by the respondents.

21. The learned senior counsel for the petitioner further contended that the scope of the arbitration proceedings was limited to determining the share of profits between the parties and did not encompass the specific dispute regarding the alleged siphoning of funds into accounts other than the designated Escrow Account. He, therefore, asserted that the arbitration proceedings did not offer comprehensive redressal of the grievances raised by the petitioner.

22. In response, the learned counsel for the respondent reiterated that the arbitration proceedings effectively covered the financial aspects of the dispute and that the allegations raised by the petitioner lacked any substantive legal or factual basis. He contended that the present proceedings had been initiated with *mala fide* intent and that the impugned order being well-reasoned and legally sound, required no interference by this Court.

FINDINGS OF THE COURT:

23. I have heard learned counsel for the parties and have carefully examined the material on record.

24. The petitioner has assailed the order dated 02.04.2024

(Annexure P-21) passed by the learned trial Court, whereby his prayer for further investigation under Section 173(8) of the Cr.P.C. was declined.

25. Interestingly, the petitioner has made twofold prayer in his application for further investigation:

(a) To direct the Commissioner of Police, Gurugram, to constitute an SIT headed by high ranking police officials to further investigate the FIR in question and to submit the challan against the accused persons as they have committed the offence under Sections 120-B, 406, 420, 447, 467, 468, 471 IPC.

(b) To direct the S.H.O./I.O. to recover the original document dated 22.04.2019 and to get the same examined as the same has been forged and the duplicate seal of the company has been used.

26. At the heart of the present controversy lies the power of a Magistrate to direct further investigation under Section 173(8) of the Cr.P.C. It is well-settled that after submission of a police report under Section 173(2) of the Cr.P.C., the Magistrate is vested with the following three options:

(i) To take cognizance of the offence(s) disclosed in the report and proceed in accordance with law;

(ii) To decline cognizance and drop proceedings if the material does not reveal the commission of any offence; or

(iii) To direct further investigation under Section 173(8) of the Cr.P.C., if deemed necessary in the interest of justice.

27. Section 193(9) of the BNSS/173(8) of the Cr.P.C. is an

enabling provision that recognizes the principle that investigation is a dynamic process, and further investigation may be necessary even after the final report has been submitted. However, this power is not unbridled and must be exercised in a circumscribed manner.

28. It is imperative to emphasize that investigating agency is the master of the investigation, and it is within its exclusive domain to form an opinion on whether an offence is made out based on the material collected during the investigation. The role of the Magistrate is supervisory in nature, ensuring that the investigation is conducted in a fair, impartial, and comprehensive manner. The Court, while rejecting a police report and ordering further investigation, cannot dictate the manner in which the investigation should be conducted, nor can it compel the investigating agency to arrive at a particular conclusion or to submit a charge sheet when a cancellation report has been filed. However, in cases where the Court discerns that the investigation is incomplete, tainted, biased, or perfunctory, it may direct further investigation to ensure that the truth is unearthed.

29. Therefore, the power of a Magistrate under Section 173(8) of the Cr.P.C. is discretionary and is to be exercised in the context of the specific facts and circumstances of each case.

30. Hon'ble the Supreme Court in its various pronouncements has delineated the contours of the power under Section 173(8) of the Cr.P.C. In ***Vinay Tayagi Versus Irshad Ali alias Deepak 2013 (5) SCC 762,*** it was held that the Magistrate has the power to order further investigation before taking cognizance, as well as after cognizance but before trial commences, provided it is warranted by the facts of the case. Similarly, in ***SLP Criminal No.4360 of 2022*** titled as ***K. Vadivel Versus***

K. Shanthi & Ors., Hon'ble the Supreme Court reiterated that further investigation should be ordered where the initial investigation is found to be defective or incomplete, and not as a matter of routine or at the behest of a party and there must be some reasonable basis to stimulate an application for further investigation.

31. The power under Section 173(8) of the Cr.P.C. is, therefore, discretionary and is to be exercised judicially, based on the specific facts and circumstances of the case. Mere dissatisfaction with the outcome of the investigation is not a ground for invoking this power.

32. Adverting to the instant case, the allegations raised by the petitioner in the FIR (Annexure P-14) broadly fall into two categories:

(a) Allegations of diversion of funds:

(i) The petitioner has alleged that under a contractual agreement, all proceeds from the sale of apartments and other revenue were to be deposited in an Escrow Account, from which the respective shares of the parties were to be disbursed/transferred in accordance with the agreement. The petitioner's company was entitled to 27% of the proceeds, while the company of respondent No.3 was entitled to 73%. However, respondents No.4 and 5 allegedly conspired to divert funds from the sale of apartments to Non-Escrow Accounts of the company of respondent No.3, thereby committing criminal breach of trust and embezzlement.

(ii) The investigating agency, after conducting a detailed inquiry, found no substance in the allegations and consequently submitted a cancellation report. The investigation revealed that respondent No.3 had received approximately ₹203 crore from the sale of residential units, out of which ₹20.8 crore were utilized for GST, VAT, meter charges, and other liabilities; approximately ₹147 crore were expended on construction costs; and ₹43 crore were paid to the petitioner/complainant company.

(iii) The investigating agency also scrutinized email correspondences between the parties. Notably, in an email dated 10.06.2020, the petitioner demanded ₹49.541 crore from respondent No.3. However, in reply, respondent No.3 requested that the petitioner settle outstanding liabilities, including refundable security of ₹31.66 lakh, PMC charges of approximately ₹2 crore, EEC charges of ₹27 lakh and EDC charges of ₹2.60 crore, along with other expenses such as brokerage, advertisement, and marketing costs.

(iv) Additionally, it was revealed that Manish Rajouri, an employee of respondent No.3, had sent an email on 13.07.2016 to Ajay Verma of the petitioner's company, providing an account summary of various bank accounts including:

(i) 0002800000419, YES Bank

(ii) 000283900003755, YES Bank

(iii) 670420110000541, Bank of India, and

(iv) 000283900004113, YES Bank.

Further, vide email dated 25.07.2020, details regarding bank account No.39203444937 of State Bank of India was also communicated to the petitioner. The information regarding the Escrow Account and YES Bank account transactions was shared by the petitioner in an email dated 08.08.2017.

(v) In the light of this evidence, the investigating agency concluded that the petitioner was fully aware of the bank accounts into which the funds were being received and had even provided with account summaries. Thus, the allegation of fund diversion was found to be baseless, as issue pertained only to profit sharing, an aspect already under adjudication in arbitration proceedings in Delhi.

(vi) Significantly, the learned senior counsel for the petitioner failed to rebut these findings. No material was placed on record to demonstrate that the conclusions drawn by the investigating agency were either erroneous or contrary to the factual record. The petitioner also did not furnish the relevant email communications in support of his allegations, for reasons best known to it. Further, in the application under Section 173(8) of the Cr.P.C., the petitioner itself admitted that the investigating agency had obtained the bank statements of all the relevant accounts. Therefore, there appears to be no lapse or omission in the investigation regarding the first set of allegations.

(b) Allegations of forgery of Board Resolution and an affidavit:

(i) As regards the allegations concerning forgery of a Board Resolution dated 22.04.2019 and an affidavit/undertaking dated 24.02.2020, respondent No.4, during the investigation, denied any involvement in the alleged forgery. He asserted that his signatures had been forged and further submitted a Board Resolution dated 11.06.2013, which authorized him to undertake all acts relating to the project on behalf of the company of the petitioner, including acting as its authorized signatory before the Directorate of Town and Country Planning (DTCP). This resolution was admitted by the petitioner.

(ii) Regarding the alleged forgery in the affidavit/undertaking dated 24.02.2020, respondent No.4 clarified that the document contained a clerical error, wherein "Bhupinder Singh s/o Harish Chander, Director, M/s. Randhawa Construction Pvt. Ltd." in collaboration with HCBS Promoters & Developers Pvt. Ltd." was inadvertently mentioned instead of "Bhupinder Singh s/o Harish Chander, Director, HCBS Promoters & Developers Pvt. Ltd. in collaboration with M/s. Randhawa Constructions Pvt. Ltd.".

Furthermore, since it was a clerical error, as revealed during investigation, it did not materially affect the legal standing of the parties.

(iii) Moreover, the ACS, in his decision dated 26.05.2022 (Annexure P-13) observed that the Collaboration Agreement and GPA executed by the petitioner in favour of respondent No.4 were still in force. The findings further indicated that even in the absence of the alleged forged resolution, respondent No.4 was independently authorized to act on behalf of the petitioner concerning the project and to apply for a revised building plan. It would be apposite to reproduce the relevant extract of order dated 26.05.2022 (Annexure P-13), which is as under:

> "*I have heard the rival contentions of the parties and have perused the record carefully. It is not disputed that Collaboration Agreement dated 11.06.2013 and Power of Attorney dated 12.11.2013 were executed by the appellant in favour of the private respondent. It is also not disputed that vide the GPA under reference, Respondent no. 3 I.e Bhupinder Singh was authorized to act on behalf of appeliant. It is also not disputed that the collaboration agreement and GPA are still in force. It is also not disputed that the official respondent, on request of licensee, has power to amend the building plan. It is also not disputed that the revision allowed in the building permissible under the relevant statutory provision. Proceedings before the Arbitrator are also not disputed. So, in view of the above admitted facts the short question for adjudication before this court remains as to whether*

> *the revised building plan can be set aside on the allegation of submission of forged documents by private respondent.* ***The appellant failed to prove forgery of documents by private respondent specifically when in absence of alleged forged documents also the private respondents were entitled to get the building plan revised by virtue of collaboration agreement and GPA referred above. An Email dated 06.08.2019 was written by appellant to respondent wherein revision of share commercial component was stressed on the ground that by re-location of commercial shops construction cost have been saved.*** *The appellants are also enjoying the benefits of orders passed in arbitration proceedings, by way of freezing specific shop no. In the revised building plan as per their share determined in the collaboration agreement. So, from the perusal of E-mail dated 06.08.2019 and order passed in arbitration proceedings it appears that the appellant is trying to un-justifiably obstrücted the private respondent."*

33. Before this Court, the petitioner has been unable to dislodge these findings or demonstrate any material irregularity in the investigation. Consequently, the allegations of forgery lacks substance.

34. This Court finds no legal or factual basis to interfere with the findings of the investigating agency. The investigation in this case has been comprehensive, and no material *lacunae* or bias has been demonstrated. The cancellation report does not suffer from any arbitrariness warranting further investigation. Hon'ble the Supreme Court in *Vinay Tayagi and K. Vadivel's cases (supra)*, has categorically held that a Magistrate cannot compel the investigating agency to file a charge sheet when it has opined otherwise.

35. The reliefs sought by the petitioner – direction for

constitution of a Special Investigation Team (SIT) and filing of a charge sheet are legally unsustainable. To reiterate, a Magistrate, while exercising jurisdiction under Section 173(8) of the Cr.P.C./193(9) of the BNSS, lacks the authority to compel the investigating agency to file a charge sheet or to dictate the manner in which the investigation should be conducted.

36. In view of the foregoing, any such direction would be contrary to settled principles of law.

37. Accordingly, the instant petition stands dismissed.

38. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

March 25th, 2025 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes