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IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 24.02.2025

+ **CRL.M.C. 4025/2019**

OM GUPTAPetitioner

versus

STATE OF DELHI NCT & ORSRespondents

+ **CRL.M.C. 6168/2019**

OM GUPTAPetitioner

versus

STATE & ANR.Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Adit S. Pujari, Mr. Shaurya Mittal
and Ms. Mantika Vohra, Advs.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the
State with Insp. Itarpal Madan, EOW.
Ms. Mamta Wadhwa, Adv. for Mr.
Krishna Kumar Soin (through VC).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petitions are filed challenging orders dated 29.11.2012 and 21.10.2013 (hereafter '**impugned orders**'), passed by



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the learned Additional Sessions Judge ('ASJ'), South East District, Saket Courts, in Criminal Revision Nos. 15/2012 and 64/2013 respectively.

2. By the impugned orders, the summoning order dated 01.03.2011, passed by the learned Trial Court, was set aside *qua* Mr. R.R.K. Tiwari (Respondent No.2 in CRL.M.C. 4025/2019) and Mr. Krishna Kumar Soin (Respondent No.2 in CRL.M.C. 6168/2019) respectively, and they were discharged in the proceedings arising out of FIR No. 420/1995, registered at Police Station C.R. Park.

3. The brief facts of the case are as follows:

3.1. On 28.08.1995, FIR No. 420/1995 was registered at Police Station C.R. Park for offences under Sections 420/406/120B/34 of the Indian Penal Code, 1860 ('IPC'). It is alleged that in December, 1986 and January, 1987, M/s Pushpa Builders Ltd. (hereafter '**the company**') gave certain advertisements in various newspapers for sale of shops in Pushpa Auto Complex. It was also mentioned that the building plan had been approved by DDA. On 25.01.1987, the complainant along with his son went to the office of the company where he met certain officers, directors and employees of the company, including, Mr. R.R.K. Tiwari. It is alleged that the complainant and his son were assured that the building plan has been approved by DDA and the shops will be handed over within one year. Pursuant to the same, the complainant allegedly paid ₹1000/- in cash and ₹17,900/- by cheque for purchasing a shop. It is alleged that the complainant was motivated to purchase the shop by the assurances



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made by the accused persons, including, Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin. The complainant allegedly deposited an amount of ₹1,54,000/- with the company in various installments. Out of the said amount, ₹85,500/- was paid by cheque drawn in favour of the company and ₹68,600/- was paid by cash. It is alleged that the payments by cheque and cash were received by Mr. D.K. Patil on behalf of the company. It is alleged that each time money was demanded by the company, the complainant was assured that DDA had approved the building plan and that the possession of the shops will be handed over to the buyers soon. When the shop was not handed over in the stipulated time, a number of visits were made by the complainant to the office of the company at Greater Kailash where he was assured by the Managing Director and the officers that the possession would be handed over soon.

3.2. It is alleged that the complainant received a letter dated 22.06.1990 from V.K. Soin to deposit all dues immediately on the pretext of a letter received from DDA. It is alleged that the complainant later found out that the company had carried out illegal and unauthorized construction in violation of bye laws and it was not authorized to build the shops at the concerned plots and the same could be used only for the purpose of making workshops. DDA had also directed the company to demolish all unauthorized construction by way of order dated 31.12.1990/08.01.1991. Aggrieved by the demolition order, the company preferred an appeal before the Appellate Tribunal which was also dismissed. The demolition period



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was extended to 22.11.1992. During the extended period, the possession of the unauthorized construction was handed to the buyers stating that all necessary clearance had been given by DDA. Under the pretext of handing over possession, Mr. I.S. Mokhan (employee of the company) allegedly compelled the petitioner and other buyers to sign undated documents stating them as mere licensees.

3.3. In the meantime, aggrieved by the demolition orders passed by the DDA and upheld by the Appellate Tribunal, the company, through its Managing Director, filed Writ Petition No. 3447/1993 before the Hon'ble Delhi High Court, challenging the legality of the demolition directives. However, the Hon'ble High Court dismissed the writ petition. It was later discovered that the subject property had been mortgaged to Bank of India and State Bank of India without the consent or knowledge of either the buyers or the DDA.

3.4. In the FIR, the complainant alleged that the accused persons, including, Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin, had induced him into purchasing the property by making false assurances despite knowing that they did not have the necessary authorisations.

3.5. Chargesheet was filed against Mr. V.K. Soin and Harbans Lal Sain (since deceased) in the year 2000.

3.6. The complainant approached this Court by way of three writ petitions, being, WP (Crl) Nos. 1084/2000, 188/1998 and 2142/2005, in order to ensure proper investigation/monitoring investigation/ask for transfer of investigation etc.



3.7. Thereafter, supplementary charge sheet was filed against Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin in the year 2010.

3.8. The learned Trial Court, by way of order dated 01.03.2011, summoned the said accused persons.

4. The summoning order dated 01.03.2011 was set aside *qua* Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin by the respective impugned orders. The learned ASJ, in the respective impugned orders, observed that from a perusal of the summoning order, it seemed that the learned Trial Court did not feel it necessary to peruse the main charge sheet to find out as to what additional evidence had been found against the said accused persons. It was noted that there was nothing on record to show that the concerned accused persons were directors of the company and there is admittedly, no additional evidence in the supplementary charge sheet. It was also noted that mere relationship between the concerned accused persons and accused V.K. Soin is not sufficient to subject them to undergo the trial. Both the impugned orders have been passed on similar lines. The relevant portion of the impugned order dated 29.11.2012 is as under:

*“12. From the perusal of the impugned order, it appears that Trial Court was not having main charge sheet before it. It shows that apart from supplementary charge sheet, there was only a 'Parcha Yadasht' (Memory slip) meaning thereby, **that trial Court did not even felt it necessary to peruse main charge sheet filed which was filed about 10 years ago to find out as to how the revisionist was placed in the earlier charge sheet and what additional evidence was gathered against him by the IO. Magistrate is required to apply his mind.** To deceive is to be induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. Legal position is well settled*



*that a fraudulent and dishonest intention at the time of commission of the offence or allegation of entrustment has to be attributed to an accused sought to be charged and/or there should be specific allegations that as director, revisionist/accused made any willful misrepresentation or what was his precise role or what he said or did to charge him for conspiracy and **vague allegations that so many persons named in the complaint gave assurances or represented complainant would not suffice.***

13. *Scrutiny of the record shows that there is nothing to indicate that R. R. Tiwari/revisionist was a director of M/s Pushpa Builders Limited. Even the supplementary charge sheet notes that no record from Registrar of Companies (ROC) was found. Further more, R. R. K. Twiari/revisionist was not charge sheeted in the challan filed 10 years earlier. **Admittedly, there is no additional evidence in the supplementary charge sheet against revisionist. The allegations leveled against R. R. K Tiwari/revisionist that he along with other directors and other representatives of M/s Pushpa Builders Limited gave assurances to complainant are vague and omnibus in nature and 'precise role' played by him has not been alleged.***

14. *Significantly, it is clearly mentioned in the charge sheet that no record and documents regarding the details of the directors of M/s Pushpa Builders Limited for the relevant period were found. **It is mentioned in the charge sheet that R. R. K. Tiwari/revisionist was the real brother in law of accused VK. Soin and was in United States. Simply because, he was brother-in-law of other accused, would not suffice to drag him to undergo trial.** It is specifically mentioned in the charge sheet that efforts were made to find out the documentary evidence with regard to R. R. K Tiwari/revisionist and records of Registrar of Companies (ROC), Delhi and Haryana were inspected and it came to light that Registrar of Companies (ROC) had been weeded out. It is the case of prosecution in the charge sheet itself that despite efforts, no record pertaining to the period of commission of alleged offence could be ascertained. Charge sheet categorically notes that no documentary evidence showing the name of R. R. K Tiwari as Director of M/s Pushpa Builders Limited at the time when offence was committed were found. **In the result, prosecution has no material on record to show and it cannot prove that revisionist was a Director of M/s Pushpa Builders Limited. In the circumstances, this Court finds that the impugned order passed by Learned Trial Court, whereby revisionist has been summoned, is erroneous. There being***



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infirmity in the impugned order , it deserves to be set aside as regards Sh. R. R. K. Tiwari/revisionist...”

(emphasis supplied)

4.1. The present petitions were filed by the petitioner in the year 2019.

4.2. The complainant expired in the year 2020. Pursuant to the same, the petitioner was substituted by his wife—Mrs. Radha Gupta in both the petitions.

5. The learned counsel for the petitioner submitted that the impugned orders were passed without affording an opportunity to the petitioner to be heard. He submitted that the petitioner, who was the complainant, was evidently prejudiced by the outcome of the revision petitions and he should have been impleaded in the proceedings as a necessary contesting party.

6. He submitted that the learned ASJ, in exercise of revisional jurisdiction, could have not substituted the findings of the learned Trial Court. He relied upon the judgment of the Hon’ble Apex Court in the case of *Nagawwa v. V.S. Konjalgi : (1976) 3 SCC 736*. He submitted that the scope of interference in revisional proceedings is limited and the same should only be exercised if the decisions under challenge are grossly erroneous.

7. He submitted that there is no requirement for a detailed summoning order and the same should have only been quashed if the allegations in totality did not reveal commission of offence. He placed reliance on the judgment in the case of *Bhushan Kumar v. State*



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(NCT of Delhi) : (2012) 5 SCC 424 to contend that a summoning order under Section 204 of the Code of Criminal Procedure, 1973 requires no explicit reasons to be stated as it is imperative that the Magistrate must have taken notice of the allegations and applied its mind.

8. He submitted that the impugned orders erroneously observe that the allegations regarding the assurances given by the concerned accused persons are vague and that there is no provision for vicarious liability in the Indian Penal Code, 1860 ('IPC'). He submitted that an individual, who perpetrates an offence on behalf of the company, can be made an accused, along with the company. He relied on the judgment in the case of *Sunil Bharti Mittal v. CBI : (2015) 4 SCC 609*.

9. He submitted that active role has been attributed to both R.R.K. Tiwari and Mr. Krishna Kumar Soin in the complaint and subsequent statements to the police regarding their presence in the meetings that the complainant had with the directors/ representatives/ employees of the company.

10. He further submitted that there are clear allegations in the FIR as well as the additional statements of the complainant and his son under Section 161 of the CrPC with respect to having met R.R.K. Tiwari and Mr. Krishna Kumar Soin, among others, in relation to the purchase of the property in question.

11. He further submitted that the complainant had made the required payments relying on the inducements of the accused persons,



including R.R.K. Tiwari and Mr. Krishna Kumar Soin, who had duped the complainant despite knowing that the constructions upon the property in question were unauthorized. He submitted that this points to their complicity in the commission of the offence and the accused persons have amassed huge wealth by cheating unsuspecting innocent buyers.

12. He submitted that the emphasis in the impugned orders on whether the concerned accused persons were in reality directors of the company is unrelated to the criminality being attributed to them in the FIR and the subsequent supplementary charge sheet.

13. He submitted that the present petitions were filed after almost six to seven years of passing of the impugned orders as the petitioner was initially unaware about their existence, and later, he was waiting for the State to mount a challenge. He submitted that the complainant made several representations to officials between the years 2016-2018 to challenge the impugned orders to no avail. He submitted that the complainant was also an aged man and suffering from various ailments.

14. The learned counsel for Mr. Krishna Kumar Soin submitted that the petition should not be entertained due to the extent of delay. She submitted that the name of Mr. Krishna Kumar Soin came in supplementary chargesheet in the year 2010 and he was not a Director of the accused company when the offence was committed.

15. She submitted that the supplementary charge sheet also notes that no record from Registrar of Companies was found. She further



submitted that there is no additional evidence in the supplementary charge sheet against Mr. Krishna Kumar Soin.

16. She submitted that even as per the case of the complainant, when the complainant went to the accused company, he did not meet Mr. Krishna Kumar Soin and the payments were also not made to him.

17. She submitted that Mr. Krishna Kumar Soin is being implicated solely due to him being the brother of the main accused V.K. Soin and the same is insufficient to drag him in the present case.

18. Service of notice to Mr. R.R.K. Tiwari in CRL.M.C. 4025/2019 was effected in the year 2023, despite which, no reply was filed on his behalf.

ANALYSIS

19. At the outset, it is necessary to note that the present petitions have been filed after considerable delay. It is stated that the petitioner was unaware about the passing of the impugned orders initially, and subsequently, he was waiting for the State to challenge the same. It is further stated that the petitioner was unwell and aged, which caused the delay.

20. No specific date is provided as to when the petitioner found out about the impugned orders. Moreover, considering the extent of the delay, this Court finds the reasons stated to not be justifiable. A litigant cannot shift the onus for delay on the State in such circumstances. Insofar as the contention in relation to the petitioner not having the means to approach this Court is concerned, the same is



also not acceptable as it was open to the petitioner to avail the assistance of legal services authorities, as he eventually did.

21. While there is no prescribed period of limitation for filing a petition under Section 482 of the CrPC, however, it is open to this Court to not entertain a petition which is filed belatedly if no reasonable justification is provided.

22. In the case of *Vipin Kr. Gupta v. Sarvesh Mahajan* : 2019 SCC OnLine Del 12349, a Coordinate Bench of this Court had observed that if the Court fails to take into consideration delay and laches before exercising inherent jurisdiction, then there will be no end to litigation. The said principal was reiterated in the case of *Sanyam Bhushan v. State (NCT of Delhi)* : 2024 SCC OnLine Del 4545 by another Coordinate Bench of this Court as well.

23. Courts ought not to disturb the rights or benefits which have been attained by a judicial order. Proceedings should not be reopened after inordinate delay at the instance of a lethargic litigant and no party should be made to suffer the Court proceedings after many years of the closure of the dispute without any fault on their part.

24. Even so, considering the fact that the present petitions have been pending before this Court since the year 2019, this Court deems it apposite to examine the merits as well.

25. It is the case of the petitioner that the summoning order dated 01.03.2011 was erroneously set aside *qua* Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin respectively by the impugned orders. It is argued that the Revisional Court ought not have interfered with the



summoning order unless the allegations did not reveal commission of the alleged offence. It is also argued on behalf of the petitioner that there is no need for a summoning order to be detailed and the learned ASJ ought not to have substituted his own findings for that of the learned Magistrate.

26. A bare perusal of the summoning order dated 01.03.2011 reveals that the learned Magistrate has only noted that he had perused the supplementary chargesheet.

27. While it is correct that a detailed reasoning is not required, however, a non-speaking and cyclostyle order issuing summons is unsustainable and the summoning order must reflect application of mind and it is incumbent on the Magistrate to record his *prima facie* satisfaction as to whether there are sufficient grounds for proceeding against the accused.

28. No such observations have been made in the summoning order dated 01.03.2011. The learned Magistrate has merely noted in the summoning order that it has perused the supplementary charge sheet, but the same is insufficient and does not show application of mind.

29. It is pertinent to note that Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin were not charge sheeted initially in the year 2010. Despite the same, as also appreciated by the learned ASJ, the learned Magistrate made no endeavour to ascertain as to what fresh material had been found by the investigating agency that led to filing of the supplementary chargesheet. It is settled law that it is impermissible for a Magistrate to take cognizance of a supplementary charge sheet, if it



doesn't contain any fresh evidence. The Hon'ble Apex Court, in the case of *Mariam Fasihuddin v. State* : 2024 SCC OnLine SC 58, has held as under:

“38. It is a matter of record that in the course of ‘further investigation’, no new material was unearthed by the investigating agency. Instead, the supplementary chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original chargesheet was filed. The term ‘further investigation’ stipulated in Section 173(8) CrPC obligates the officer-in-charge of the concerned police station to ‘obtain further evidence, oral or documentary’, and only then forward a supplementary report regarding such evidence, in the prescribed form.

39. The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than reevaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the chargesheet under Section 173(2) CrPC. In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the Trial Magistrate's order dated 24.06.2015.”

(emphasis supplied)

30. In the present case, the complainant had sought further investigation on not being satisfied by the investigation carried out by the local police. Even though after transfer of the matter to Economic Offences Wing, permission for further investigation was granted in the year 2003, however, the supplementary charge sheet came to be filed only in the year 2010.



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31. It is noted in the supplementary charges sheet that the complainant was aggrieved by the other accused persons not being charge sheeted. There is mention of Mr. R.R.K. Tiwari being the brother-in-law of main accused V.K. Soin and Mr. Krishna Kumar being the brother of main accused V.K.Soin. It is noted in the supplementary chargesheet that despite efforts to find documentary evidence in relation to Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin being directors of the company, no record pertaining to the relevant period could be ascertained as ROC had weeded out the old records.

32. It is noted that during investigation, the supplementary statement of the complainant was recorded who reiterated the allegations levelled in the FIR that he had purchased the shop on the inducement of the directors, including, Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin, and employees of the company. The statements of the wife and son of the complainant were also recorded.

33. It is also noted in the supplementary chargesheet that the other 'directors', namely, Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin, were also involved in the conspiracy, however, the allegations in respect of the other accused persons named in the FIR could not be substantiated and they were not charge sheeted as they were merely employees rendering services.

34. A bare perusal of the supplementary chargesheet shows that admittedly, no fresh documentary evidence was found against Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin. Insofar as the



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supplementary statement of the complainant and the statements of his family members is concerned, the same admittedly only contains the reiterated allegations as made in the FIR. No fresh fact or allegation came to light in the supplementary statement of the complainant so as to warrant filing of a supplementary charge sheet after a decade. In such circumstances, the Magistrate ought not to have taken cognizance against Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin.

35. Thus, in the opinion of this Court, the learned ASJ was rightly weighed by the fact that there is no additional material in the supplementary chargesheet against Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin.

36. Moreover, it cannot be ignored that it appears that the only reason for singling out Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin from the other named accused persons was the erroneous assumption that they were directors of the company. It does not seem that there is any difference in the evidence present against Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin as against the other named accused persons, who have not been charge sheeted.

37. While it is argued on behalf of the petitioner that Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin represented themselves to be directors and gave inducements to the complainant, however, the said argument is unmerited. It cannot be ignored that the only material against the said accused persons is the statement of the complainant, wherein only vague allegations of inducements have been made. No material to support the said allegations was found.



38. In the absence of any material to show that the said accused persons were the Directors of the company, it cannot be said that they were the beneficiaries of the offence either. It is not the case of the prosecution that the said accused persons received any portion of the cheated amount from the complainant.

39. It is also rightly noted by the learned ASJ that Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin cannot be dragged in the present matter merely on account of their relation to the main accused V.K.Soin.

40. Insofar as the right of the complainant to be heard is considered, it is relevant to note that the impugned orders were passed in the respective revision petitions filed by Mr. R.R.K. Tiwari and Mr. Krishna Kumar Soin. Section 401 of the CrPC stipulates the powers of revision and provides that no order shall be made in exercise of revisional jurisdiction to the prejudice of the accused or other person unless he has had an opportunity of being heard.

41. It is trite law that a victim has the right to be heard at every stage. The Hon'ble Apex Court, in the case of **Jagjeet Singh v. Ashish Mishra @ Monu : (2022) 9 SCC 321**, has held that a victim has unbridled participatory rights post the occurrence of the offence till the culmination of proceedings.

42. Even so, it however cannot be ignored that the impugned orders were passed way back in the years 2012 and 2013 respectively. The complainant, who has been substituted by his wife in the present proceedings, has since expired.



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43. It is also pertinent to note that the petitions were contested by the State. While the same is insufficient by itself to satisfy the right of a victim to be heard, however, in the opinion of this Court, no purpose would be served by remanding the matter to the learned Revisional Court for fresh consideration of the matters as more than a decade has passed and, as discussed above, there is no merit in the arguments agitated on behalf of the petitioner.

44. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned orders.

45. The present petitions are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 24, 2025