



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

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Reserved on: 21st January, 2025

Pronounced on: 24th April, 2025

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CRL.M.C. 1167/2018 & CrI. M.A.4251/2018

MINOTI BAHRI

Former Non-Executive Director,

M/s Unitech Ltd.

R-87, Greater Kailash-I,

New Delhi-110024.

.....Petitioner

Through: Mr. Pawan Narang, Senior Advocate
with Mr. Abhishek Kumar, Ms.
Twinkle Kataria & Ms. Aishwarya,
Advocates

Versus

1. ANISH HANDA

S/o Late Dr. S.K. Handa,
R/o B-3/1001, Parsvnath Exotica,
Golf Course Road, Sector-53,
Gurgaon-122001.

2. POOJA HANDA

W/o Mr. Anish Handa
R/o B-3/1001, Prsvnath Exotica,
Golf Course Road, Sector-53,
Gurgaon-122001.

.....Respondents

Through: Mr. Hitesh Vali, Additional Public
Prosecutor for State with Inspector
A.K.Singh, EOW

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CRL.M.C. 3805/2018 & CrI.M.A.28987/2018

MINOTI BAHRI

D/o Dr. Gandharv Raj Bahri

R-87, Greater Kailash-I,

New Delhi-110024.

.....Petitioner



Through: Mr. Pawan Narang, Senior Advocate
with Mr. Abhishek Kumar, Ms.
Twinkle Kataria & Ms. Aishwarya,
Advocates

Versus

1. **STATE OF NCT OF DELHI**
2. **VIDYA BHUSHAN DHAR**
R/o Flat No.D-1005, Vijaya Apartments,
Ahimsa Khand-II, Indirapuram,
Gaziabad-201014.
3. **SNEH DHAR**
R/o Flat No.D-1005, Vijaya Apartments,
Ahimsa Khand-II, Indirapuram,
Gaziabad-201014.

.....Respondents

Through: Mr. Hitesh Vali, Additional Public
Prosecutor for Respondent No.1-
State with Inspector A.K.Singh, EOW

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Petitions are being decided together as they involve the same question.
2. In the aforesaid two Petitions under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*) Petitioner/Minoti Bahri, has sought quashing of the aforementioned two Complaints; and Order dated 02.06.2017 and 02.06.2018 *vide* which she has



been summoned for offences under Section 420/409/120-B/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*).

3. In the Petition bearing No. **CrI. M.C. 3805/2018**, additionally, seeking *quashing of the Order dated 30.07.2018 whereby Non-Bailable Warrants were issued against the Petitioner*, is also sought.

4. **Briefly stated**, Petitioner/Minoti Bahri has asserted that she *is the former Non-Executive Director* of the Company M/s Unitech Ltd., and was chiefly involved in running Shikshantar School, Gurgaon, Haryana and attended the Meetings of *M/s Unitech Limited* as a Non-Executive Director.

5. **On 06.04.2017, the Respondents/Anish Handa and Pooja Handa filed CC No. 4045/2017 under Section under Section 200 CrPC**, before learned ACMM against *M/s Unitech Ltd.* and its Directors including the Petitioner for offences under **S. 420/409/120-B/34 IPC**. The averments made in the **Complaint** were that the accused Company, *M/s Unitech Ltd.* launched a Group Housing Project called "*Unitech Cascades*" on Plot No.8, Sector Pi-II (Alistonia Estate) Greater Noida, Distt. Gautam Budh Nagar, Uttar Pradesh, in 2005.

6. In 2006, the Complainants entered into an Agreement to Sell to purchase the Apartment No. 502, Tower-2 of approximately 1537 sq. ft., from Mrs. Dr. Anju Chadha, wife of Sh. Gagan Chadha, the '*original Allottee*' for a sale consideration of the Apartment is Rs. 36,26,694.00/- which includes basic price, PLC amount, lease rent and parking space. The original Allottee had made a payment of Rs.13,37,188/- to the accused Company till the date of transfer of allotment of Apartment, in favour of the Complainants. The Complainants paid to the original Allottee all the amount



deposited by him with the accused Company till the date of signing of Agreement along with the premium. They also agreed to pay the outstanding dues to the accused Company payable till possession.

7. On completion of the prescribed formalities, the accused Company endorsed the Agreement dated 14.11.2005 in favour of the Complainants. The accused Company promised the Complainant that possession of the Apartment shall be handed over latest by 31.03.2008. Also, in case of delay, they would pay to the Complainant a penalty @ Rs.5 per sq. ft. of super area per month, for the delay in offering the delivery of said Apartment. Complainant made a total payment of Rs.34,88,604/- plus interest of Rs.45,516/- for delayed payment, to the accused Company through the original Allottee and also paid Rs.21,40,199/- directly to the accused Company.

8. Despite having made all the payments, the accused Company failed to deliver possession of the Apartment even after a lapse of almost 9 years from the date of the agreed period. After almost 12 years of booking the Apartment, the Respondents/other Complainants have neither received the possession nor the accused Company is in a position to deliver the same.

9. Further, the Company with an intention to cheat the Complainants, neither paid the *delay penalty amount* nor did they offer any alternative property or refunded the amount with simple interest, as had been agreed. Such acts clearly shows the mala fide intention of the accused Company to cheat the complainant.

10. Thus, the accused Company *vide* letter dated 29.12.2005, allotted Flat bearing No. 1002, on 10th floor, Tower 2, having super area of approx. 1537



sq. ft. for a total sale consideration of Rs.34,77,207.00/-, to the Respondents. Despite receiving more than 95% of the total sale consideration, the accused Company have neither offered to give the possession, nor paid the penalty amount of the said delay.

11. It was claimed in the Complaint that Accused No. 2 to 5 being Whole Time Director, Managing Director and Director respectively of accused Company, were fully aware of the fact that they are not going to deliver the possession on time and will misappropriate the money, but they induced the Complainant to make the payment. All the promises and assurance of the accused Company, were false and misleading as till date the accused have not made any effective efforts to complete the Project.

12. The Complainants served Legal Notice to the accused, despite which they failed to pay the money. On 10.03.2017, the Complainants also filed a Complaint to the SHO PS Saket, New Delhi, but no action was taken.

13. **CC No. 2583/2018** on similar grounds, Complaint **was filed by the Respondents/Vidya Bhushan Dhar and Sneh Dhar on 11.09.2017**, under Section 200 CrPC read with Section 420/403/406/409 IPC against the accused Company/M/s Unitech Ltd. and its Directors including the Petitioner/Minoti Bahri.

14. The Respondents thus, filed the respective Criminal Complaint under *Section 200 CrPC for offences under Sections 420 /406 / 409 IPC read with Section 120-B and Section 34 IPC.*

15. Learned ACMM summoned all the accused persons including the Petitioner Minoti Bahri under Sections 409/420/120B/34 IPC, *vide* Order



dated 02.06.2017 and under Sections 420/403/406/409 IPC, *vide* Order dated 02.06.2018, in the two Complaints.

16. Aggrieved by the summoning Orders dated 02.06.2017 and 02.06.2018 in both the Complaints, the present Petitions have been filed.

17. *The Petitioner have sought quashing of* the summoning Orders on the grounds that she has not been named individually nor is there any averments specifying her role in in conduct of business and her responsibility towards day-to-day affairs and management of the Company. There cannot be any vicarious liability fastened upon the Petitioner for the offences committed by the accused Company.

18. The Petitioner further contends that admittedly, the Allotment Letters/Agreements dated 03.06.2006 and 14.11.2005 (for Anish & Pooja Handa) were not signed by the Petitioner. She was merely a *Non-Executive Director* when the alleged payments were made as well as on the date the Complaint was filed. She was neither a Managing Director nor a Whole-time Director. Form No. MGT-7 of M/s Unitech Ltd. clearly and unimpeachably establishes that the Petitioner was merely a *Non-Executive Director* of the accused Company. This fact is also substantiated through the details of M/s Unitech Ltd. on National Stock Exchange and Bombay Stock Exchange. Further, the Petitioner has resigned as a *Non-Executive Director* of the Company, w.e.f. 11.12.2017.

19. Furthermore, the Respondents have tried to give a criminal colour to a civil dispute, which is not tenable in law.

20. Reliance has been placed on the case of *Sunil Bharti Mittal vs. CBI*, (2015) 4 SCC 609 whereby the Apex Court has held that a Corporate entity



is an artificial person which acts through its Officers, Directors, Managing Directors, Chairman, etc. and if such Company commits an offence involving *mens rea*, it normally would be the intent and action of that individual who would act on behalf of the Company. It is the cardinal principle of criminal jurisprudence that there can be no vicarious liability unless the statute specifically provides so. Furthermore, an individual who has allegedly perpetrated the commission of an offence on behalf of a Company can be made accused along with the Company if there is sufficient evidence of his active role coupled with criminal intent.

21. Apex court held that where a jurisdiction is exercised on a Complaint filed in terms of Section 156(3) or Section 200 CrPC, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or Directors of the Company when the accused is the Company.

22. Similar observations have been made in Maksud Saiyed vs. State of Gujarat, (2008) 5 SCC 668; Ravindranath Bajpe vs. Mangalore SEZ Ltd. & Ors., (2021) SCC OnLine SC 806; GHCL Employees Stock Option Trust vs. India Infoline Ltd., (2013) 4 SCC 505; Sunil Bharti Mittal vs. CBI, (2015) 4 SCC 609; Shiv Kumar Jatia vs. State of NCT of Delhi, (2019) 17 SCC 193; Birla Corporation Ltd. vs. Adventz Investment & Holding Ltd., (2019) 16 SCC 610; Kanarath Payathiyath Balraj vs. Raja Arora; (2017) 2 DLT (CrI.) 695; Bhardwaj Thirvenkata Venkatavaraghavan vs. PVR Ltd., (2019) 258 DLT (CN 17A) 17; Har Sarup Bhasin vs. Origo Commodities Pvt. Ltd., 2020 SCC OnLine Del 10; Pooja Ravinder Devidasani vs. State of Maharashtra & Anr., (2014) 16 SCC 1; Ram Jas vs. State of Uttar



Pradesh, 1970 (2) SCC 740; *Jayapraksh vs. The State*; MANU/TN/2062/2014; *In Re Cognizance for extension of limitation order* in Misc. Application No. 665/2021; *Indian Oil Corporation vs. NEPC India Ltd. & Ors.*, (2006) 6 SCC 736; *Randheer Singh vs. State of UP & Ors.*, (2021) SCC OnLine SC 942; *Sunita Palita vs. Panchami Stone Quarry*, 2022 SCC OnLine SC 945.

23. The Respondents initially had been appearing through Counsel but subsequently failed to appear despite due Notice. The Respondents have neither placed their Reply on record nor have addressed any arguments in Court.

24. **Submissions heard and record perused.**

25. In both the Complaints, the averments made were that the Complainants, acting upon inducement of the accused Company, paid almost the entire sale consideration, despite which possession has still not been handed over after lapse of more than 10 years.

26. The moot point for consideration is ***whether the Petitioner/Minoti Bahri was a Non-Executive Director and not involved in the day to day affairs of the accused Company.***

27. The **summoning Order dated 02.06.2017 in CC No.4045/2017, relevant part, reads as under:-**

“ *Arguments on summoning heard.*

... *The project is still at its initial stage and only a bare structure has been constructed since then. They have been fraudulently cheated and money paid by them has been misused and diverted towards other projects.*

...

From the perusal of the complaint and pre-summoning evidence adduced by complainants, a prima facie case of commission of offences punishable U/s 409/420/120-B/34 IPC is made out against all the six accused persons



and there are sufficient grounds for proceedings against them. Accordingly, all the six accused persons be summoned on filing of list of prosecution witnesses and PR Processes be served through SHO, PS Saket.”

28. The relevant paragraph of the **summoning Order dated 02.06.2018 in CC No.2583/2018** w.r.t. the Petitioner (accused No. 5), reads thus:

“ ... Issue fresh summons to accused no. 5 on filing of PF.”

29. At the outset, it is pertinent to observe that the Magistrate while summoning the accused, must examine the nature of allegations made in the Complaint and the evidence both oral and documentary led in support thereof, to ascertain whether these would be sufficient for the Complainant to succeed in bringing home the offence against the accused, as has been observed by the Apex Court in the case of Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749.

30. Further, the grounds for proceeding against the accused must be stated in the Order itself. *If no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused, the order is liable to be set aside, as has been stated in the case of Lalankumar Singh vs. State of Maharashtra, 2022 SCC OnLine SC 1383.*

31. The first aspect is that there is no such averment in the two Complaints of the Petitioner being involved in the day to day functioning of the Company. Omnibus statements are made that accused Nos.2-5 being Whole-Time Director, Managing Directors and Director respectively of the accused Company, were fully aware that they would be unable to give the possession timely. Furthermore, the ‘accused’ denied to pay the



compensation amount as well despite receiving the full payment. Thus, general assertions are made with regard to role of the directors. *There is no averment whatsoever against the Petitioner nor is there any averment about any specific role of her participation in the day to day affairs of the Company.*

32. Merely being a Director in a Company, cannot be deemed to be *in-charge and responsible for conduct of the Company's business*. Mere designation as a Director is not sufficient to hold him vicariously liable under Section 141 NI Act, 1881 unless specific role and responsibility is established in the Complaint, as held by the Apex Court in the case of *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla*, (2005) 8 SCC 89.

33. No averments what so ever has been made in the two Complaints nor does the Summoning Order reflects any mention of the involvement of the Petitioner in the affairs of the Company. The summoning Orders dated 02.06.2017 and 02.06.2018, reflect that the Petitioner has been summoned with a cryptic Order without any findings about the role of the Petitioner in regard to the affairs of the Company; there are only general averment in the Complaint against the Directors. In the absence of any averments, no vicarious liability of the Directors of a Company unless the Statute specifically provides for making them vicariously liable.

34. *Another aspect that may be considered is that the Petitioner has asserted that she is the Non-Executive Director in the Company, who submitted her resignation on 11.12.2017.* This contention is also substantiated through Form No. DIR-12 (*Particulars of appointment of directors and the key managerial personnel and the changes amongst them*).



35. Petitioner's status as a non-executive director finds corroboration from the Company's Annual Returns for the Financial year 2014-15, which documents the '*Corporation Information*' and '*Board Report*' of M/s Unitech Ltd. which explicitly state that the Petitioner is a *Non-Executive Director of the Company*. Additionally, the information available on the National Stock Exchange and the Bombay Stock Exchange also lists the Petitioner as a *Non-Executive Director* on the Company's board.

36. A reference be made to **Section 2(47) Companies Act, 2013** which states that an "*independent Director*" means an independent Director referred to in sub-section (6) of Section 149.

37. **Section 149(6) Companies Act, 2013**, defines that an independent Director is a director who is **not** a *Managing Director, Whole-Time Director, or Nominee Director*, and who meets specific criteria related to integrity, expertise, who has / *had no pecuniary relationship, other than remuneration as such Director, and independence from the Company's promoters and Management*.

38. By the very definition of Independent Director and also from the lack of any particulars in the Complaint, the Petitioner's involvement in the day to day affairs of the Company being a Non-Executive Director, is not even *prima facie* established.

39. This aspect was considered in the case of *Pooja Ravinder Devidasani vs. State of Maharashtra*, (2014) 16 SCC 1, the Apex Court while assessing the Complaint of dishonor of cheque, *held that a non-Executive Director is not involved in the day-to-day affairs of the Company or in the running of its business*.



40. The Supreme Court in Shiv Kumar Jatia vs. State of NCT of Delhi, (2019) 17 SCC 193 reaffirmed its views in the case of Sunil Bharti Mittal (supra), where it was *inter-alia* held that Individual Directors can be made accused **only** if there is sufficient material to prove their active role coupled with criminal intent. The criminal proceedings were quashed against the accused who was a *Managing/Non Independent Executive Director*.

41. Similar observations have been made by the Apex Court in the case of K.S. Mehta vs. M/s Morgan Securities and Credits Pvt. Ltd., 2025 INSC 315 wherein the Complaint lacked specific averments that would have established a direct nexus between the Appellants and the financial transactions in question or demonstrate their involvement in the company's financial affairs and the documents on record confirmed the non-executive status of the Appellants/Directors, underscoring their limited role in governance without any Executive decision-making authority, it was held that merely because the Appellants/Directors attended Board Meetings does not automatically translate into control over financial operations. Hence, unless direct involvement of the Directors is established, they cannot be held vicariously liable under the Act, 1881.

42. Such direct involvement of the Directors was considered in the case of S.K. Alagh vs. State of U.P. & Ors., AIR 2008 SC 1731 by the Apex Court wherein it went to the extent of even exonerating the Managing Director, where the averments were that that the Bank Drafts in said case were drawn in the name of the Company. It was observed that in the absence of any provision laid down under the statute, a Director of a Company or an



employee cannot be held to be vicariously liable for any Offence committed by the Company itself.

43. Similarly, in the case of Ravindranath Bajpe, (supra), where the accused persons were the Chairman, Managing Director, Deputy General Manager (Civil & Env.), Planner & Executor, Chairman and Executive Director. In the absence of any specific allegations and the specific role attributed to them, the Supreme Court upheld the Order of High Court quashing the summoning Order against the accused persons for offences under Sections 427, 447, 506 and 120B read with Section 34 IPC.

44. ***Thus, essentially the fundamental principle which is well settled, is that a Director of a Company cannot be arrayed as an accused without a specific assertion in the Complaint that the said accused as Director was involved in the day-to-day functioning and affairs of the Company. Liability depends on the role one plays in the affairs of a Company and not on designation or status alone.***

45. There is not an iota of averment that on the date of execution of Agreements or date of receiving of payments, the Petitioner was specifically responsible for the acts of the Company. The documents of the Company clearly define the Petitioner's status as a Non-Executive Director.

46. Therefore, given the lack of specific allegations against the Petitioner in the Complaints and in view of the aforesaid observations, the summoning Order dated 02.06.2017 and 02.06.2018; and the proceedings emanating against the Petitioner in CC No.4045/2017 and CC No.2583/2018 against the Petitioner are hereby, quashed.

2025:DHC:3002



47. The Petitions are allowed and thereby accordingly disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)

JUDGE

APRIL 24, 2025

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