

(2013) 10 DEL CK 0034
In the Delhi High Court
Case No : Criminal M.C. 2746 of 2010

Amod Kumar Kanth

APPELLANT

Vs

Association of Victims of Uphaar Tragedy and Another

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Cinematograph Act, 1952 — Section 14
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 197, 200, 319, 468
Delhi Police Act, 1978 — Section 140
Penal Code, 1860 (IPC) — Section 304, 304A, 337, 338, 36

Citation : (2013) 10 DEL CK 0034

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Amrendra Sharan and Mr. A.K. Singh, for the Appellant; K.T.S. Tulsi, Mr. A. Faraz Khan, Advocate for Respondent No. 1 and Ms. Sonia Mathur for CBI, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—On 13th June, 1997 fifty-nine persons lost their lives and over 100 received serious injuries while watching a movie in the balcony of Uphaar cinema in Green Park area of New Delhi. All that happened when inside the hall during the ongoing matinee show (3 p.m. to 6 p.m.) of the movie BORDER firing was going on between Indian soldiers and Pakistan army actual fire broke out outside the cinema hall due to malfunctioning of the electrical transformer installed in the transformer room at the parking area of the cinema and toxic gases had entered into the hall which became the cause of deaths and serious injuries to so many people. In respect of that incident of fire CBI had conducted the investigation and during the course of investigation it went into the cause of the fire in the transformer in the evening of 13th June, 1997. It was found that in the morning also that day there was some fire in the transformer but the officials of the electrical department had repaired the transformer but that was not done properly which caused fire for the second time in the evening. CBI found that

three officials of the DESU/Delhi Vidyut Board who had repaired the transformer in the morning had committed the offence punishable u/s 304 r/w 36 of the Indian Penal Code ("IPC" in short). For the incident of 13th June six persons from the management of the Uphaar cinema were also found to have committed the offence u/s. 304 r/w 36 IPC. CBI also carried out investigation to find out as to how so many persons watching the movie in the balcony lost their lives and suffered grievous injuries while watching the movie due to the fire which had taken place in the transformer room and not in the main cinema hall. The result of that investigation was that owners of the cinema hall as well as many officials of different departments of the Government were found to have carried out structural deviations in the cinema hall from time to time and particularly in the balcony which illegal deviations had obstructed the escape of the persons watching the movie in the balcony and that had caused the deaths of 59 persons due to asphyxia caused by inhalation of toxic gases and serious injuries to over hundred persons. So, according to the CBI they had committed the offences under Sections 304A/337/338/36 IPC. After completing the investigation CBI submitted a charge sheet in the Court of the Metropolitan Magistrate concerned on 15th November, 1997 against sixteen persons, including two owners of Uphaar, Gopal Ansal and Sushil Ansal.

2. During the trial, the trial Court went into the events which had taken place from time to time from 1973 onwards till the date when fire had broken out in Uphaar cinema on 13th June, 1997, and after trial the learned Additional Sessions Judge convicted 12 accused for the commission of different offences vide judgment dated 20th November, 2007 and vide order dated 23rd November, 2007 awarded different sentences to the accused. Four accused had died during the trial.

3. The background facts stated in the charge-sheet filed by the CBI against the sixteen accused persons, which only are relevant for the purpose of disposal of this petition u/s 482 of the Code of Criminal Procedure, 1973("Cr.P.C." in short) filed by the petitioner, who was the Licencing Authority for sometime during February, 1979 and May, 1980 and who has now in the year 2010 been summoned as an accused by the Court of the Metropolitan Magistrate for the commission of offences under Sections 304A/337/338 IPC in respect of the same incident of fire in Uphaar cinema on 13th June, 1997 because of some decision taken by him on 24th December, 1979 favouring the owners of Uphaar cinema, were noticed in the judgment dated 20th November, 2007 of the trial Court. Regarding the cause of fire on 13th June, 1997 the learned trial Judge noticed that:

89. DVB transformer was the source of fire on 13.6.97, firstly, in the morning and then, in late afternoon at 5 p.m. on account of improper repair carried out by B.M. Satija, Inspector DVB, A.K. Gera, Inspector DVB and Bir Singh, Senior Fitter. In the morning, all the three DVB officials repaired the DVB transformer without proper equipments like crimping machine which resulted in loose fitting/

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90. As per the investigation, closure of right side gangway in the balcony and the closure of the exit gate on the right side portion of the balcony, the non working condition of public address system, no provision of emergency lights, non-availability of fire alarm systems, non availability of proper fire safety measures in the car parking area and such other deviations from structural, fire safety and means of escape point of view had contributed to the death of 59 persons and injury to about 100 persons. These deviations were in the knowledge of Sushil Ansal and Gopal Ansal, Ex-Directors of Uphaar Cinema who continued controlling the management and affairs of the said cinema hall which amounts to criminal negligence on their part resulting in the death of 59 persons and injuries to 100 persons.

91. As per the investigation, S.S. Sharma and N.D. Tiwari, Administrative Officers of Municipal Corporation of Delhi had also contributed to the death by their criminal negligence of having issued No Objection Certificates for renewal of temporary permits of Uphaar Cinema by the licensing authority.

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93. S.N. Dandona, Executive Engineer (Since expired) had also contributed to the said incident by his criminal negligence by recommending approval of installation of eight seater box on the right side top portion of the balcony in 1978 which had resulted in the closure of right side gangway and right side exit gate in the balcony in 1979, though, the approval of 100 additional seats was cancelled by Delhi Administration vide Notification in view of which the licensee should have been directed by S.N. Dandona to remove the seats and provide right side gangway and exit gate in the balcony and his acts of allowing installation of 15 more seats in 1980 making the total seats in the balcony to be 302 seats which required four exit gates, but he allowed only three exits to be provided which caused obstruction in easy exit of the patrons.

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STRUCTURAL DEVIATIONS

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6. As per the orders of Hon"ble High Court, Shri Amod Kanth, DCP (L)(the present petitioner) alongwith Shri S.N. Dandona, Executive Engineer, PWD, Chief Fire officer and Executive Engineer inspected Uphaar cinema and 37 additional seats were allowed to be retained in the balcony out of 43 seats, as per orders dated 24.12.1979 Ex. PW 29/DR..

7. On 29.7.1980, accused Gopal Ansal wrote a letter Ex. PW 110/AA7 to Deputy Commissioner of Police (Licensing) for installation of 15 additional seats which was duly allowed on 4.10.1980 as per the orders of Shri A.K. Sinha, Deputy

Commissioner of Police (Licensing) Ex. PW 29/DS.

At this stage, it will be appropriate to take note of seating plans of balcony at Uphaar cinema as the patrons sitting in the balcony have died. There are four seating plans on record in respect of balcony as has been shown in Ex. PW 95/B1 to B4 which are dated 10.4.1973, 30.9.1976, 24.12.1979 and 4.10.80. I reproduce the seating plans and which are as follows:-

The first seating plan dated 10.4.1973 shows that seating plan was in accordance with Delhi Cinematograph Act and Rules, 1953, since, it provides for Exits on both sides and along back thereof. It also provided the minimum space of gangways of 44 and the plan reflects that the gangways have been provided at the interval of not more than 25".

The second plan is dated 30.9.1976 shows that the right side gangway was closed and 16 seats were added by closing the right side gangway. The second gangway near the middle entrance gate was also closed and 16 seats were added in place of this second gangway over and above the middle entrance/exit. On the top back row, 11 seats were added i.e. one seat on right side, eight in the middle and two seats on the left side. By closing two right side vertical gangways, one middle gangway was provided. The exit was provided on the top without providing gangway of minimum width of 44". This was not in consonance with the rules. The patrons who were sitting on the right side could not reach to the exit easily. Such a seating plan to my mind is not in consonance with Delhi Cinematograph Rules which insisted for gangway of 44" and exits on both side of the balcony and in the middle and providing for two or more thoroughfares or open space from where there is free means of access for rapid dispersal.

The third seating plan is dated 24.12.1979 which shows that right side exit was closed and on its place, one eight seater box was provided which resulted in closure of exit on the right hand side. Although, there were three exits i.e. one in centre, one on top left side and one exit from below on the left hand side. The effect of closure of right side exit was that the patrons/spectators who were sitting on the right hand side i.e. in seat No. 1 and 2, the exit gate was away from them for more than 25". Thus, even this plan violated the Delhi Cinematograph Rules as the seating capacity is more than 300 seats. No doubt, one exit from top was made on left hand side but such an exit was not in consonance with the Delhi Cinematograph Rules as Rules clarified exit on left side to be at equal distance. It is not in consonance of the patrons sitting on the right hand side of the balcony.

It appears that the Lt. Governor also felt that earlier increase in seats was not in consonance with the Rules and as such, Lt. Governor withdrew the relaxation given vide Notification No. F.2/45/75-Fin. (G) dated 30.9.1976 by issuing another Notification bearing No. F.2/45/75/PPI dated 27.7.79. But Uphaar cinema authorities insisted for seating arrangement as provided in Notification dated 30.9.1976. Against this notification, they filed a Writ Petition and obtained a stay

order from the Hon''ble High Court. After hearing the parties, the Hon''ble High Court ordered that only those seats be retained which are in substantial compliance of the Rules. The order of Hon''ble High Court reads as follows:-

Such of the additional seats which comply substantially with the requirements of the Rules must be allowed to stay and it is only those seats which infringe upon the Rules which may have to be ordered to be removed by the Administration.

In compliance with the orders of Hon''ble High Court, 37 seats were ordered to be retained and six additional seats from Row A to F (Seat No. 9) removed as shown in seating plan Ex. PW 95/B3 dated 24.12.79.

The fourth plan dated 4.10.1980 shows that additional 15 seats were added in the left side of the balcony. This seating plan too is not in consonance with the Delhi Cinematograph Rules which clarified exits on both side and gangways were not provided vertically resulting in little space for patrons sitting on the top of right side. There is no exit on the right hand side of the balcony.

Thus, all the plans shows that the authority responsible for enforcement of rules were in connivance with proprietors which are accused Sushil Ansal and Gopal Ansal. Accused Sushil Ansal and Gopal Ansal and concerned authorities responsible for enforcement of rules and their subordinates who were to inspect the cinema hall before grant of annual license, they all acted in connivance with each other with a view to gain unlawfully at the cost of the public/patrons.

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I have reproduced all the relevant correspondence made between accused Sushil Ansal or Gopal Ansal and licensing authority with regard to seating arrangement. Such correspondence clearly reveals that accused Gopal ansal and Sushil Ansal were directly responsible alongwith the Executive Engineer, PWD Shri S.N. Dandona and Shri K.L. Malhotra, Deputy General Manager (since deceased) by their acts and omissions. Their act of commission and omission were equally responsible for such violation of Rules. Even the team consisting of Shri Amod Kanth, the then Deputy Commissioner of Police (Licensing) alongwith Shri S.N. Dandona, Executive Engineer, PWD, Chief Fire Officer and Executive Engineer are equally responsible for not noticing the non-provision of exit on the right side of the balcony. Gangways were not provided as per the rules. Such violations resulted in death of 59 patrons and injuries to 100 people.

4. In view of the aforesaid highlighted strong observations made in the judgment of conviction to the effect that many high-ups appeared to have been let off by the investigating agency the learned Additional Sessions Judge while sentencing the convicted accused to different punishments passing vide order dated 23rd November, 2007 also directed the CBI to conduct further investigation. Serious concern expressed in that regard was in these words of the learned trial Judge:

Before parting with the case I consider it my solemn duty so that such event is not repeated in any high rise building or public place to direct that there should

This Court had then directed the CBI to complete further investigation by 15th March, 2009.

6. CBI accordingly completed the investigation but did not find involvement of anybody else other than those who had already been charge-sheeted and convicted and accordingly it filed a closure report in the Court of the Metropolitan Magistrate. As far as the present petitioner is concerned, the CBI stated in its Report as under:

16.3 The issues highlighted by the Court for further investigation are summed up as under:

(i) The permission for retention of 37 extra seats in the balcony in violation of Delhi Cinematograph Act by the then DCP(Licensing).

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16.4 With regard to the retention of 37 extra seats in the balcony in violation of Delhi Cinematograph Act by the then DCP(Licensing), the trial court discussed detail about the closure of exit and right hand side gangway of the balcony and other deviations. The court, in the order on sentence dt. 23-11-2007, observed, inter alia, "due duty was not discharged even by Deputy Commissioner of Police (Licensing).

The major deviations mentioned are as under:

(a) Delhi Cinematography Rules clarified exits on both sides and gangways which were not provided vertically resulting in little space for patrons sitting on the top of right side. There is no exit on the right hand side of the balcony.

(b) Two vertical gangways were provided, one exit on the right side was closed and in the middle, entrance/exit was provided due to this change. The Central exit was catering much more people than the norms of the people for middle exit.

(c) The inspection room was converted into 14 seater box against the "sanctioned building plan.

(d) The right hand exit was totally closed and one gangway was reduced to 1'9" instead of 3'8" as required under the rules.

(e) The basement meant for parking of vehicles was covered and let out to M/S East Coast Breweries and Distilleries.

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16.5 The investigation has established that as per the original sanctioned drawing dt. 10.4.1973, the total number of seats in the balcony were 250. Thereafter, seats in 40 Cinema Hall including Uphaar Cinema, were increased vide Notification dated 30-09-1976 by the Administrator of Delhi i.e. Lt. Governor. The Uphaar cinema was sanctioned 100 additional seats including 43 in the balcony which closed the right hand side gangway. In 1978, the exit on the

right hand side portion of the balcony was closed with an 8 seater box. Subsequently in 1979, with the withdrawal of notification dated 30.9.1976, 100 additional seats given to Uphaar cinema were cancelled. Immediately after this notification, Shri Amod Kanth, the then DCP (Licensing), had inspected Uphaar cinema and issued a show cause notice to Uphaar cinema to remove all the 100 seats which violated the provisions of Delhi Cinematographic Rule 1953. In the meantime, the cinema owners went to Delhi High Court. The matter was disposed off by the Hon"ble High Court on 29.11.1979, directing therein that the administration will apply their mind to the additional seats with a view to determine which of them have contravened which Rules and to what extent. They will bear in mind that the compliance of the Rules is to be substantial and not rigid and flexible.

16.6 Shri Amod Kanth, the then DCP (Licensing) along with Shri S.N. Dandona, Executive Engineer, PWD and Shri R.S. Sundaram, Chief Fire Officer, Delhi Fire Service, conducted inspection of Uphaar cinema. After the inspection and hearing the party, Shri A.K. Sinha, the then ACP (Licensing) put up a note stating that 37 seats in the balcony can be allowed and this was approved by Shri Amod Kanth, DCP (Licensing). Accordingly, an order was issued on 24.12.1979 by Shri Amod Kanth for retaining 37 seats in the balcony. Shri Amod Kanth, during investigation, took the stand that he had allowed the retention of 37 seats on the advice of technical officer and that it was the duty of Shri SN Dandona, the then Executive Engineer, to point out that the retention of 37 seats was not in accordance with the rules. Shri S.N. Dandona, who was part of the inspection team, was charge-sheeted by the CBI. However, he died during the course of trial. No action was recommended against Shri R.S. Sundaram, Chief Fire Officer, as he had since retired.

16.7 The documents relating to the increase in the seats have already been exhibited in the court during trial and no witness has stated that these seats were increased against monetary or any other consideration.

7. The learned Magistrate, however, vide impugned order dated 12th August, 2010 rejected the final report qua the present petitioner and he was ordered to be summoned under Sections 304A/337/338 IPC and Section 14 of the Cinematograph Act, 1952.

8. The relevant portions of the impugned order of the learned Magistrate are being re-produced below:

A counter affidavit dated 23.10.1979 was filed by A.K. Kanth, Deputy Commissioner of Police (Licensing) in Civil Writ petition No. 1010/97(reference to which was made in the judgments of the Sessions Court) before the Hon"ble Delhi High Court, which is inter-alia re-produced as under:-

11) That it would be pertinent to mention here that under the cinematograph Rule gangways have to be provided in the cinema houses and these are the prerequisite of a cinema licence. It is submitted that the parallel gangway i.e.

gangways after 10 rows of seats of open towards the exit are definitely required for quick exit of patrons in case of fire or some other emergency. Instances are not difficult to find where due to absence of a gangway and exit hundred of precious lives have been lost. The permission to install additional seats was granted by relaxing the specification to accommodation, sitting and gangways as laid down in the Delhi Cinematograph Rules. It is submitted that the said relaxation was given, at that time, making a detail study and survey about the safety of the patrons and only with a view to compensate the cinema owner's on account of reduction of rates. Besides the said relaxation also contravened the rules.

In reply on merit on the counter affidavit Amod Kanth has stated as following:

5. In reply to paras 13-15 of the petition, it is denied that detailed survey of all the cinema houses was made to determine the number of extra seats. As already stated above, the chief fire officer was initially of the opinion that in case the number of seats were to be increased the same would involve blocking of vertical and parallel gangways reducing the distance between the screen and first row of seats and change in the direction of the passage from the gangways to exit and he was also of the opinion that such changes could certainly jeopardize the safety of occupants of cinema houses in case of emergency. However, subsequently the chief fire officer reviewed his recommendation made earlier and it was decided by the administrator to ensure that the exhibitors do not suffer any loss on account of reduction in rates certain relaxation should be made in the cinematograph rules was issued on 30.9.76.

12. ...As already submitted his report in 1976 was of the opinion that the provision of additional seats in gangway would be fire and health hazards, the said additional seats are also in violation of provision of the act and rules. Even in the annual inspection reports of the public work dept, it has been repeatedly been mentioned that the additional seats are not in conformity with the rules. It is true that existence of additional seats has not resulted in any untoward incident during the last three years, however, the happening of untoward incident cannot be ruled out. No fire had at all taken place in any of the cinema in Delhi in the last about 40 years but it does not mean that there should be any provision of safety to the cine goers and provision of fire-fighting equipment in the cinema houses.

14. ...It is also denied that the existence of additional seats in cinema houses does not violate any provisions of the cinematograph act or Rules. As already stated above, by the provision of additional seats either by reducing width or closing that parallel gangways the egress from the auditorium or the cinema halls through the gangways leading to the exit doors which are proper means of exit have been completely obstructed thus causing hazard in case of any other similar Emergency, the blockade of gangways has increased the travel distance to the exits and also caused inconvenience to the patron in free movement with in the cinema halls. In case of emergency the loss of life and property cannot be

ruled out.

16. ...it would not be out of place to mention here that in case the additional seats are not removed from the cinema houses, the same would be a permanent fire hazard and would cause inconvenience to the cine goers. I would like to draw attention of this Hon"ble Court to the recent incident of tuticorin, where more than 100 innocent life were lost in cinema hall due to the fact that proper precaution had not been taken for swit exit of patrons in the case of fire hazard. The petitioner cannot be allowed to endanger public life for their personal gains.

I have also perused the order regarding retention/removal of additional seats in Uphaar Cinema, passed by A.K. Kanth, DCP (licensing) dated 24.12.1979. It appears from the said order and other materials that cinema hall was inspected by A.K. Kanth, DCP (licensing), Executive Engineer, P.W.D. and Chief Fire Officer on 5.10.1979 and again on 19.12.1979 before passing the said order regarding retaining of 37 additional seats in balcony and one additional seat (seat No. A33) on the back row in hall. As per CBI, Amod Kanth, during investigation, took the stand that he had allowed the retention of 37 seats on the advice of technical officer and that it was the duty of Shri S.N. Dandona, the then Executive Engineer (who as noticed already was one of the 16 accused originally charge-sheeted by CBI but he died during the trial), to point out that the retention of 37 seats was not in accordance with the rule, A.K. Kanth was at that time DCP (Licensing) and he was supposed to pass order regarding retention of the seats in cinema hall as per Cinematograph Act and Rules. He himself had inspected the cinema hall twice. He was an officer of Indian Police Services and at least a reasonable amount of precaution and sensitiveness was expected to be exercised by an officer of such a rank while dealing this type of matter. He has passed said order after personal satisfaction. He was also aware of Cinematograph Act and Rules and possible consequences that his action could have caused as reflected from his counter affidavit, which has not been denied by the CBI. CBI is silent in respect of the said counter affidavit. I am surprised as to why CBI has not discussed about the said counter affidavit of A.K. Kanth, which shows that he was aware of possible consequences that his action could have caused. He himself has filed affidavit before Hon"ble High Court before passing the order and has specifically stated..... that by the provision of additional seats either by reducing width or closing that parallel gangways the egress from the cinema halls through the gangways leading to the exit doors, which are proper means of exit have been completely obstructed thus causing hazard in case of any other similar emergency, the blockade of gangways has increased the travel distance to the exit and also caused inconvenience to the patron in free movement with in the cinema halls and in case of emergency the loss of life and property cannot be ruled out. He has also stated in said affidavit that in the recent incident of Tuticorin, where more than 100 innocent lives were lost in cinema halls due to the fact that proper precaution had not been taken for swit exit of patrons in the case of fire hazard and therefore, the petitioner cannot be

allowed to endanger the public life for their personal gains.

9. Feeling aggrieved by the said order dated 12th August, 2010 passed by the learned Magistrate summoning him as an accused the petitioner on receipt of the summons on 18th August, 2010 straightaway approached this Court on 20th August, 2010 by way of the present petition u/s 482 Cr.P.C. with a prayer for quashing the said summoning order.

10. Mr. Amrendra Sharan, learned senior counsel for the petitioner raised the following points for consideration of this Court:

(i) The petitioner's decision taken on 24th December, 1979 to permit the owners of Uphaar cinema to retain 37 additional seats does not at all constitute offences under Sections 304A/337/338 IPC so as to make him liable for prosecution for these offences on account of the deaths of 59 persons and injuries to 100 odd persons due to the incident of fire which took place in the year 1997, which was about two decades after he had ceased to be the Licencing Authority. It was also submitted that the additional 100 seats, which the Sessions Court in the case of sixteen accused earlier charge-sheeted as well as this Court in the appeals of convicted accused had found to be the real and main cause for so many persons losing their lives and sustaining serious injuries had, in any case, been permitted to be installed not by the petitioner but by his predecessor Licencing Authority against whom no prosecution was launched presumably on the ground that he had acted on the basis of report of one S.N. Dandona, Executive Engineer in PWD (who was charge-sheeted for that report but before he could face full trial he died). So, on the same reasoning the petitioner also could not be said to have committed any offence since he had also acted on the advice of same S.N. Dandona while permitting retention of 37 additional seats in the balcony vide his order dated 24th December, 1979. Similarly, offence u/s 14 of the Cinematograph Act was also not made out against the petitioner, submitted Mr. Sharan.

(ii) The Magistrate could not have in any event taken cognizance against the petitioner for want of sanction for his prosecution u/s 197 Cr.P.C. It was submitted that the petitioner had allowed retention of 37 additional seats in the balcony of Uphaar cinema vide his order dated 24th December, 1979 in good faith while discharging his official function as the Licencing Authority and also in compliance of the directions of this Court in C.W.P. No. 1010/1979 to take a fresh decision regarding retention/removal of additional seats in individual cinemas keeping in mind that compliance of the Rules was to be "substantial" and not rigid. Accordingly 37 seats in the balcony were permitted by him to be retained since after inspection it was found that those seats substantially complied with the Rules framed under the Cinematograph Act. So, sanction u/s 197 Cr.P.C. was essential before any cognizance could be taken against the petitioner. Learned senior counsel also submitted that even respondent no. 1-Association was of the view that the prosecution of the petitioner without sanction u/s 197 Cr.P.C. fail and that is evident from the fact after the filing of the present petition by the

petitioner and his taking this objection this Association itself had approached the Government for according sanction for the prosecution of the petitioner and when no positive response was forthcoming from the Government the Association has already filed a writ petition in this Court (being C.W.P. No. 6238/2011) for necessary directions to the Government to take appropriate decision in the matter which had been kept pending on the ground that the matter was sub judice and the reference was obviously being made to the pendency of the present petition in which the petitioner has sought quashing of the impugned order inter alia on the ground that sanction u/s 197 Cr.P.C. was not there and so cognizance could not be taken in respect of the offences allegedly committed by him.

(iii) Cognizance was even otherwise time barred in view the provisions of Section 140 of the Delhi Police Act and Section 468 Cr.P.C.

(iv) The Supreme Court has after the passing of the impugned order held in its judgment dated 13th October, 2011 passed in Civil Appeal Nos. 7114-15 of 2003, which were filed against the judgment dated 24th April, 2003 of this Court in a writ petition (being C.W.P. No. 4567 of 1999), filed by the legal heirs/relatives of the victims who had lost their lives and those who had survived but had sustained serious injuries in the incident of fire in question for award of compensation, directing different departments of the Government, including the Licencing Department, as well as the owners of Uphaar cinema to pay compensation to the victims of the incident of fire in Uphaar cinema, to the effect that Licencing Department could not be directed to pay any compensation to anybody. Therefore, submitted Mr. Sharan, the Licencing Department having been totally exonerated by the Apex Court no subordinate Court can now come to a contrary conclusion and consequently the prosecution of the petitioner as the Licencing Authority for some time almost two decades before the tragic incident of fire in Uphaar cinema would be an abuse of the process of law.

11. On the other hand Mr. K.T.S. Tulsi, learned senior counsel for respondent no. 1, which is an Association of the relatives/legal heirs of the persons who had lost their lives in the incident of fire in Uphaar cinema as well as the injured persons formed to get justice, submitted that there is no scope for any interference by this Court in the impugned order and all the aforesaid submissions made on behalf of the petitioner by his senior counsel deserved to be rejected.

12. The stand of CBI now is that even though it had come to the conclusion after completion of further investigation that no other person was found to be responsible for the deaths of 59 persons and injuries to over 100 persons except those who were earlier charge-sheeted and convicted but now that the learned Magistrate has disagreed with that conclusion of CBI as far as the petitioner is concerned relying upon the admissions of facts made by him in his affidavit dated 22nd October, 1979 filed in C.W.P. No. 1010/1979 and about which no dispute was being raised by CBI it would respect that decision of the learned Magistrate which was the final authority in law to reject or to accept the report

submitted by CBI after completing further investigation and therefore, this Court should not permit the trial of the petitioner to commence as early as possible by dismissing this petition.

13. From a reading of the judgment dated 20th November, 2001 of the learned Additional Sessions Judge convicting twelve accused persons who were originally charge-sheeted by CBI, relevant portions wherefrom have been extracted in the earlier part of this order, the impugned order passed now by the learned Magistrate as well as the report submitted by CBI after "further investigation" it becomes clear, and which position was not disputed before me from the side of the petitioner, that though the cause of actual fire which broke out on 13th June, 1997 in Uphaar cinema was defective repairing of the electrical transformer in the morning by the officials of DESU/DVB, when also some fire had broken out in the transformer but the cause of so many deaths and injuries to over hundred persons while watching movie inside the cinema hall was found to be the closure of the exit gate on the right hand side of the balcony and construction of eight seater box at that place and also the closure of gangway on the right hand side of the balcony because of additional seats installed there to earn more money by the owners of the cinema hall. Due to those additions/alterations in the balcony persons sitting there and watching the movie on that fateful evening were not in a position to make good their escape in time from the balcony where the smoke having many kinds of toxic gases had entered from different routes. The petitioner had permitted retention of 37 additional seats in the balcony after inspecting the site alongwith officials from PWD and Fire Department and despite the fact that it was found that those deviations could put the lives of patrons in danger in the event of fire he had not ensured that there were exit gates on the right hand side also of the balcony as well as a gangway which ought to have been there as per the relevant Rules and he being the Licencing Authority should have ensured the compliance of the Rules before granting renewal of the licence.

14. It was not disputed on behalf of CBI that the petitioner had filed his own affidavit in C.W.P. No. 1010/79 but that affidavit containing vital admissions on his part which have been relied upon now by the learned Magistrate for summoning him were not taken into consideration by the investigating officer while concluding that no case was made out against the petitioner for charge-sheeting him. So, it cannot be said that no case was made out for summoning the petitioner as an accused. The cognizance of the offences under Sections 304/304A/337/338/36 IPC had already been taken by the Magistrate in the year 1997 and thereafter it was decided by the Sessions Judge as to which accused had to be charged and with what offence. Since before the trial Court the matter is already at the charge stage the petitioner would be at liberty to argue there that no offence is made out against him and he deserves to be discharged and in case he is able to convince the trial Judge there would be no bar, and particularly this decision of this Court not to interfere in the summoning order, for the trial Judge to discharge him.

15. According to the victims of the incident in question who are being represented collectively by their Association formed to get justice for themselves, respondent no. 1 herein, the petitioner should have, in fact, been summoned for the offence u/s 304-II IPC also since his act of granting permission to the owners of Uphaar cinema to retain 37 additional seats and ensuring opening of exit gates on the right side of the balcony and making of a gangway that side after getting the seats installed there removed was not merely a rash and negligence act. He had himself admitted in his affidavit filed in C.W.P. No. 1010/1979 that absence of exit gates and gangway on the right side of the balcony lives of the patrons could be in danger in the event of fire. He had also taken the stand at that time just because there was no incident of fire for many years in the cinema hall that could not rule out any mishap in future also. So, he was fully aware of the consequences of retention of additional seats but just after few days of filing of his affidavit in this Court he allowed the retention of additional seats knowing that the writ petition in which he had filed said affidavit had been disposed of and it had been left open for him as the Licencing Authority to decide as to whether the additional seats were to be permitted to be retained or were to be removed. At the stage of taking cognizance the Court takes cognizance of the offence and then it is decided as to whether the charge-sheeted accused is to be summoned or not. And if the accused is summoned the Court thereafter at the stage of charge decides as to what offence is made out against the summoned accused. So, the question as to what offence actually would be made out against the petitioner or whether no offence is made out should also be left to be examined by the trial Court while passing the order on charge. Just because the Magistrate has mentioned in the impugned summoning order that he was taking cognizance of the offences under Sections 304A/337/338 IPC it cannot be said that at the stage of charge the Court would not be in a position to examine as to what offence is actually made out against the petitioner. Any observation by this Court as to whether offence u/s 304A or 304 is made out may prejudice the case of the petitioner or the prosecution and so I am refraining from expressing any view, not even a prima facie view. As far as the decision of the Magistrate to summon the petitioner is concerned no fault can be found with the same.

16. As far as the submission made on the basis of the observations of the Supreme Court in the compensation matter to the effect that the Licencing Department was not liable to pay any compensation to the injured or the relatives of the deceased persons is concerned the same is liable to be rejected since the Supreme Court itself had observed in para no. 33 of its judgment that "We make it clear that the exoneration is only in regard to monetary liability to the victims." Then in para no. 46 it was observed that "The decisions of the High Court and this Court having been rendered in a public law jurisdiction, they will not come in the way of any pending criminal proceedings being decided with reference to the evidence placed in such proceedings."

17. The objection of the petitioner that the cognizance taken by the learned Magistrate against the petitioner on 12th August, 2010 was time barred in view

of Section 140 of the Delhi Police Act and Section 468 Cr.P.C. is also liable to be rejected. As noticed already, the CBI had filed the challan in Court after completing its original investigation on 15th November, 1997. At that time the Metropolitan Magistrate had taken cognizance of various offences including the one u/s 304 IPC. Undisputedly there is no period of limitation for taking cognizance of the offence punishable u/s 304 IPC. After taking cognizance the Magistrate decides as to against whom process is to be issued. In the present case the Sessions Court had while parting with the case after sentencing the convicted accused persons ordered "further investigation" and not registration of a fresh FIR to find out more offenders responsible for death of 59 persons and injuries to over 100 persons in the incident of fire which took place in Uphaar cinema since the learned Additional Sessions Judge was of the view that more persons were also responsible for those deaths. CBI also carried out "further investigation" in the same case which it had registered originally in the year 1997. Now the Magistrate has found out an additional offender who according to his prima facie view was also responsible for the deaths and injuries to many persons because of his having permitted the owners of Uphaar cinema to retain 37 additional seats in the balcony of Uphaar cinema which according to himself were installed contrary to the Rules and in the event of fire could endanger the lives of cine goers while watching some movie. So, this is not a case where the Magistrate has taken cognizance for the first time in respect of the incident of 13th June, 1997.

18. Now comes the turn of the objection of the petitioner that in any event he cannot be prosecuted and the Magistrate could not have taken cognizance against him without sanction for his prosecution u/s 197 Cr.P.C. It was submitted by Mr. Sharan that even if it is accepted that the petitioner's decision taken almost two decades before the incident of fire to permit the owners of Uphaar cinema to retain 37 additional seats and not to insist upon opening of exit gates and gangway on the right side of the balcony amounted to any offence sanction u/s 197 Cr.P.C. was required as that decision was taken by him while discharging his official duty and in fact he was directed by this Court to take a fresh decision which he did. As far as the question of sanction is concerned, the Supreme Court has been holding in a number of its decisions that the objection regarding sanction 197 Cr.P.C. can be raised at any stage of the criminal proceedings by the accused Government official after cognizance is taken and even at the stage of charge. One such decision is reported as P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, . This judgment and the view taken therein was referred to by the Supreme Court in a subsequent judgment also reported as Romesh Lal Jain Vs. Naginder Singh Rana and Others, The petitioner could raise this objection before the trial Court at first instance instead of asking this Court first to decide that objection in this petition u/s 482 Cr.P.C. So, this objection is also left open to be considered by the trial Court, if it is raised by the petitioner.

19. It was also the submission of the learned senior counsel for the petitioner

that the impugned order is liable to be quashed since it has been passed on the basis of petitioner's affidavit filed in W.P. (C) 1010/1979 which was available with the trial Court as an annexure to the application of respondent no. 1-Association u/s 319 Cr.P.C. which it had filed for summoning the petitioner also as an additional accused but the trial Court had not decided to summon him at that time and therefore, the same very material i.e. the petitioner's affidavit could not be made the basis for summoning him after about two decades of the incident of fire vide impugned order. In my view, however, there is no merit in this submission also because the trial Court had not come to the conclusion that there was no evidence brought on record by the prosecution to summon the petitioner also as an accused but the question of his involvement was left to be examined by the CBI during the course of further investigation which had been ordered. So, it cannot be said that the impugned order has been passed on the same material on which the Sessions Court had declined to summon the petitioner as an accused.

20. The last submission of the learned senior counsel for the petitioner was that since CBI had submitted a closure report the learned Magistrate could not have summoned the petitioner without treating the protest petition filed by respondent no. 1-Association as a complaint and following the procedure prescribed u/s 200 Cr.P.C. and that having not been done the entire proceedings stand vitiated. There is no merit in this submission also since the learned Metropolitan Magistrate stating in the impugned order that he was rejecting the closure report qua the petitioner while in respect of other persons he was accepting the same. So, it cannot be said that the Magistrate had not acted upon the closure report and had decided to summon the petitioner on the basis of protest petition filed by respondent no. 1-Association. Therefore, there was no necessity of following the procedure prescribed u/s 200 Cr.P.C. by the learned Metropolitan Magistrate. This petition is, therefore, dismissed.