

(2025) 04 SC CK 0346

In the Supreme Court Of India

Case No : Criminal Appeal No. 1856 Of 2025 (Arising Out Of Special Leave
Petition (Criminal) No. 6917 Of 2024)

Hyeoksoo Son Authorized Representative For Daechang Seat
Automotive Pvt. Ltd

APPELLANT

Vs

Moon June Seok & Anr

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482Indian Penal
Code, 1860 — Section 34, 120B, 406, 408, 409, 418, 420

Citation : (2025) 04 SC CK 0346

Hon'ble Judges : Sanjay Karol, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Sidharth Luthra, Achal Shekhar, Aayushi Pandey, Parul Shukla,
Shubhangi Pandey, Saday Mondol, Rajiv Shakhder, Poornachandrian R., Sivani
K.m.s., Lakshmikamth G., Sunil Kumar S., Pai Amit, V. N. Raghupathy,
Raghavendra M. Kulkarni, Mythili S, M. Bangaraswamy, Venkata Raghu
Mannepal, Shiv Kumar, Vaishnavi

Final Decision : Allowed

Judgement

Sanjay Karol, J

1. Leave granted.

2. This appeal is at the instance of the complainant-Company aggrieved by the final judgment and order dated 19th February, 2024 in Criminal Petition No.5599 of 2023 passed by the High Court of Karnataka at Bengaluru, whereby under its inherent powers, the Court quashed the criminal proceedings as well as the chargesheet in C.C.No.8373 of 2023 which, in turn, was registered as a result of Crime No.287 of 2022 at Sanjay Nagar Police Station for offences punishable under Sections 406, 408, 409, 418, 420, 120B read with 34 of the Indian Penal Code, 1860, pending on the file of III Additional Chief Metropolitan Magistrate, Bengaluru.

Factual Background & Proceedings leading up to this Appeal

3. The instant case pertains to the alleged fraud having been committed by the respondent while in the employment of Daechang Seat Automotive Ltd. "the Company" The present appellant is the authorized representative of the said Company. The main business of this company is to manufacture seat related equipment for cars of the 'KIA' make. The services of Mr. Nikhil K.S. of M/s. N.K. Associates were engaged as Chartered Accountants and Financial Advisors. Over time, a close relationship developed. The substance of the dispute is that the Company was informed that it had wrongly claimed input tax credit amounting to Rs.9,73,96,225.80p., by N.K. Associates. It was further said that the said amount owed to the Goods and Services Tax Department and failure to pay the same entails serious consequences. N.K. Associates then informed the Company that it is the standard practice in India for tax amounts payable to be transferred to the financial advisors who would then pay it onward to the concerned department. In furtherance of the same, the Company, after some internal transfer of money from one account to another, made a transfer from its Indian Overseas Bank Account, which was used for payments, statutory or otherwise, totaling to Rs.10,18,54,894.80p. The complaint, which is appended as Annexure P-3 to the paperbook, provides the following breakup of payments :

S.No.

Date

NEFT UTR

Beneficiary

Beneficiary a/c

Amount

1.

01-04- 2022

NEFT-UTIB-IOBAN22091590159

TERMINUS

917020081077149

5760505

2.

01-04- 2022

NEFT-KARB-IOBAN22091590236

N.K. ASSOCIATES

120200010009370

1900988

3.

01-04- 2022

NEFT-UTIB-IOBAN22091490315

TERMINUS

917020081077149

2150988

4.

03-04- 2022

NEFT-UTIB-IOBAN22093412543

TERMINUS

917020081077149

4481412

5.

03-04- 2022

NEFT-KARB-IOBAN22093412570

N.K. ASSOCIATES

120200010009370

1000000

6.

03-04- 2022

NEFT-KARB-IOBAN22093412628

N.K. ASSOCIATES

120200010009370

4185800

Extracted hereinbelow is the portion of the said complaint, which describes the discovery of the alleged deceit perpetrated by N.K. Associates :

"13. In the month of October, 2022, the management of the shareholders of the Company in Korea was enquiring into the state of finances of the Company including statutory payments. It was noticed that huge payments such as the

aforesaid had been made, and the reason for such payments was sought from the Indian employees. After enquiry and discovery, the Company and its shareholder discovered the following shocking facts :

- (a) The GST portal itself has all the information related to GST payments by the Company;
- (b) Rs.7,26,25,840/- was due for GST as suggested by the report Issued by NK & Associates dated 5th March 2022;
- (c) On 03.04.2022, GST payment of Rs.7,26,25,840/-was made by adjusting the input tax credit already available with the Company;
- (d) There was no mismatch of input tax credit showing on the GST portal;
- (e) There was excess credit available with the Company;
- (f) From March to October, 2022, the Company had paid GST through cash/bank (i.e. without utilizing credit) of only Rs.1,10,662/-; and
- (g) The amounts paid by the Company to NK & Associate and Terminus were never paid by them to the GST Department.

14. The Company was shocked to learn the above facts. The Company then made enquiries and discovered that :

- (a) The registered address of Terminus is the very same as the office address of NK & Associates, No.36, 1st Floor, Jaganath Arcade, 4th Main Road, New NEL Road, Bengaluru-56094;
- (b) Terminus is not having any sign Board or Steel plate having details of the company at their above mentioned registered office;
- (c) The directors of Terminus are Ms. Anushka Singh and Mr. Vinay Babu Venugopal;
- (d) Anushka Singh is also the designated partner of NKS Corporate Services LLP;
- (e) Form No.AOC-4 of Terminus for the year 2018-2019 and also the capital Increase document of the Company have been signed by Mr. Ritesh Mergu as their auditor on 10th March 2020 and July 2022 respectively;
- (f) Mr. Ritesh Mergu had a relationship with Terminus even before joining the Company;
- (g) Mr. Ritesh Mergu has been acting as an independent chartered accountant for the aforesaid entities despite being a full-time employee of the Company;
- (h) All the aforesaid Individuals are intimately connected and working in concert with each other.

15. I submit that the aforesaid persons have made the Company to trust. and believe them as financial advisors and employee. The aforesaid persons have

caused the Company to make payment of a huge sum of 10,18,54,894.80/- to them in the manner aforesaid by making false statements. The said amounts were entrusted to them by the Company, and said amounts have been dishonestly misappropriated and converted to their own use. They were entrusted with the hard-earned sums of the Company also in the capacity of banker, agent, employee etc. and breached the trust of the Company in the manner aforesaid. All the said amounts have been swallowed by them. Mr. Nikhil KS and Mr. Ritesh Mergu have created a web of deceit by abusing their position as trusted persons. Mr. Vinay Babu Venugopal and Ms. Anushka Singh are not only beneficiaries of the above, they share the same common Intention as Mr. Nikhil KS and Mr. Ritesh Mergu, and have conspired and agreed to commit illegalities by illegal means. They are all co-conspirators sharing a common evil design, and have together, and for mutual benefit defrauded the Company.

16. The Company has lost a huge sum of Rs.9,62,80,189.00/- owing to the aforesaid offences by the aforesaid persons."

4. The FIR came to be registered on 11th December 2022, subject matter of the present appeal. In the course of investigation, a detailed statement of the accused was recorded on 30th December 2022. It has come forth in the said statement that the complainant was the successor of the respondent herein as the Chief Financial Officer and upon taking over such position and inspecting the records of the Company, he found that money had been debited from the Company's account(s) on account of 'GST payment', but the same had not been credited to the concerned authority. Chargesheet dated 18th March 2023 was filed before the III Additional Chief Metropolitan Magistrate, Bengaluru City, being No.287/2022.

5. Cognizance was taken by the concerned Court on 6th April 2023.

6. The present respondent, namely, Moon June Seok, who is accused No.5 before the Trial Court, approached the High Court under Section 482 of the Code of Criminal Procedure, 1973 'Cr.P.C.'. Amongst other grounds it has been urged that some of the Sections in which the charges have been drawn up against the accused are not met, even superficially; the respondent is not named in the FIR 'Pg. 127 Memo of Appeal before High Court'; he has been made an accused only on the basis of the statement of a co-accused which, it has been submitted by placing reliance on *Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence* (2018) 8 SCC 271, is impermissible in law. There is also an allegation that the respondent herein received a sum of money being Rs.1,80,00,000/-, which the High Court has referred to as Rs.1,80,000/-.

7. The High Court in its impugned judgment recorded as under :

"7.....There is no prima facie material placed on record for framing charge against the petitioner-accused No.5 for having received money from the main accused, he is the salaried person obtaining salary from the company. The petitioner has explained that he has received some money from the Korean National as a loan

and he said to be received some Indian money from the persons going to Korea and he used to pay Korean currency in their country. Except to the voluntary statement, there is nothing recovered by the police to show he has received money as a bribe from the accused No.1. The accused Nos.1 to 4 received Rs.10 crores towards the payment of GST, but accused Nos.1 to 4 misappropriated the same. If at all the petitioner received any bribe, definitely it will not be for meagre amount of Rs.1,80,000/-.

8 That apart, he was the only person who was forwarding the file to the Managing Director for approval. The main bills are prepared and advised by the accused Nos.1 to 4. He was only forwarding agent working on behalf of the company.

The Managing Director is the final authority to approve the bills for releasing the amount. The Managing Director was not an accused who has actually released the fund to accused No.1. There is no role to play by this petitioner, except forwarding the bills to the Managing Director. Therefore, without any material evidence collected against the petitioner that the contention of the learned counsel for respondent that the petitioner has conspired with accused Nos.1 to 4 and misappropriated nearly Rs.10 crores, cannot be acceptable."

Submissions of the Parties

8. It is in the aforesaid backdrop that the complainant is before us. We have heard Mr. Siddharth Luthra and Mr. Rajiv Shukdher, learned Senior Counsel for opposing parties as also Mr. V.N. Raghupathy, learned counsel appearing for the respondent-State.

8.1 Submissions on behalf of the appellant, chiefly can be recorded as under :

i) The inherent power of the High Court ought to be exercised sparingly and an endeavour cannot be made to examine the reliability or genuineness of the allegations made in the chargesheet.

ii) The Court cannot conduct a 'mini trial' or engage in an inquiry, testing the veracity of the allegations. The allegations have to be taken at face value and it is to be examined whether a prima facie case is to be made out or not. The truth or falsity in the allegation can only be determined upon trial. Reference is made to *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra* (2021) 19 SCC 401; *Priti Saraf & Ors. v. State of NCT of Delhi & Ors.* (2021) 16 SCC 142; and *Kaptan Singh v. State of U.P.* (2021) 9 SCC 35.

iii) It is submitted that the amount of bribe received by the respondent was Rs.1,80,000/-, as considered by the High Court, and the quantum received as bribe, be it high or low, cannot be a ground for quashing. Reliance is placed on *Niranjan Hemchandra Sashittal v. State of Maharashtra* (2013) 4 SCC 642.

iv) As the Chief Financial Officer, the respondent was in control of the finances of the Company and the other co-accused persons were brought into the fold of the

operations, at his behest, therefore, he is not at liberty to state that he is only a forwarding agent. In fact, it is submitted, he is a vital link in the chain.

v) In continuation of the above, it is submitted that the respondent No.1 was not able to justify the recovery of Rs.9,69,000/- from his residence. Moreover, accused No.1 and the respondent, both, in their statements have acknowledged the receipt of Rs.1,80,00,000/- in identical instalments, on the same dates and locations– clearly establishing the latter’s role as co-conspirators.

8.2 Per contra, Mr. Rajiv Shakdher, the learned Senior Counsel appearing for respondent No.1 submitted as follows:

i) The High Court’s observation that there was no direct evidence against respondent No.1 is correct.

ii) The appellant is under the wrong assumption that as ‘CFO’ he had control over the Company’s fund(s), when, in fact, his role was administrative due to language barriers.

iii) Section 409 of the Indian Penal Code, 1860 ‘IPC’ is not applicable to the respondent since he is not a public servant, banker, agent or merchant. He is only an employee with no dominion or entrustment of property.

iv) Voluntary statement of co-accused cannot form the sole basis of conviction. Reliance is placed on CBI v.V.C. Shukla (1998) 3 SCC 410; Dipakbhai Jagdishchandra Patel v. State of Gujarat & Anr. (2019) 16 SCC 547; and Karan Talwar v. State of Tamil Nadu 2024 SCC OnLine SC 3803.

v) There is an unexplained delay of 8 months in lodging the FIR. That, along with the incorporation of Section 409 IPC, without prior intimation to the jurisdictional Court, casts doubt on the veracity of the allegations.

Our View

9. The short question that this Court is to consider is, whether the High Court was justified in quashing the proceedings against respondent No.1 in the manner that it did so.

10. The contours of exercise of the powers under Section 482 Cr.P.C. have been expressed in various judgments. In the well-known case of State of Haryana v. Bhajan Lal 1992 Supp (1) 335 this Court, while recognizing that it would not be possible to account for all possibilities, detailed seven circumstances where the exercise would be justified. Pandian J., held thus :

“102...

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Consistently, this case stands followed. In *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra* (2021) 19 SCC 401, these principles, while followed, were further expanded and clarified. [See: Para 13] [See also: *P.M. Lokanath v. State of Karnataka* 2025 SCC OnLine SC 301; *Karuppudayar v. State* 2025 SCC OnLine SC 215; and *Naresh Aneja v. State of U.P.* (2025) 2 SCC 604]

11. What is, therefore, to be seen is whether, in the present facts, any of the seven circumstances/situations mentioned in *Bhajan Lal* (supra) are justifiably met. One of the submissions advanced on behalf of respondent No.1 was that reliance solely on the statement of the co-accused is not justified. We find this submission to be incorrect for presently, respondent No.1’s own statement also presents some corroboration for the statement of accused No.1. The relevant extracts from both statements are as follows :

Statement of Moon Juneseok-Respondent No. 1

“One day in May, 2022 Nikhil Kumar Singh came to Bellary Road near Hiranandani Villa, where I live, and gave me a sum of Rs.1,00,00,000/- in cash. Then one day in June, 2022 when I went to the Gold Pinch hotel, Nikhil Kumar came in a car outside the hotel and gave me a sum of Rs.80,00,000/-in cash. When I was texting Nitesh Merugu on the Kakao app on my mobile phone, I sent

the message by mistake to the HR & Admin Group, which includes our company's HR & Admin and Finance Officers. The message was seen by the HR Manager and others in that group and I deleted it before everyone could see it. Since then I have been suspicious in our office and I have been maintaining myself in such a way that nothing has happened.

Nikhil Kumar Singh has given me around Rs.1,80,00,000/-in cash and out of that money, I have led luxurious life and the remaining money has been kept in my house No.346, at Hiranandani Villa, Devanahalli where I live. The Samsung mobile phone through which I had sent the message to the HR and Admin Group is with me and I will produce it."

Statement of Nikhil Kumar Singh- Accused No. 1

"Mr. Moon Juneseok, the CFO of Daechang Seat Automotive Private Limited Company had transferred a sum of rupees thirteen crores. In may 2022, I went to Hiranandani Villa, near Bellary Road, where Mr. Moon lives, and gave him a sum of Rs.1,00,00,000/- by way of cash. In the month of June 2022, I went to the Gold Pinch Hotel to give Mr. Moon a sum of Rs.80,00,000/- in a car outside the hotel."

12. When his own statement acknowledges the possibility that he had received money from accused No.1, which the latter has also alluded to, there prima facie appears to be a connection. This, however, is not the only connection between these two persons. It was on accused No.1's recommendation that respondent No.1 'appointed' one Ritesh Merugu, who is accused No.2, as Accounts Manager. Furthermore, we are surprised by the fact that the CFO of a company and an alleged chartered accountant, both readily agreed to not put ink to paper to formalise this relationship between them, and sans the same found it completely alright to share all financial details and books of accounts.

13. Well, let it be proven in a trial that there is no evidence against Respondent No.1 and he, as such, deserves to be acquitted. At this stage, we are unable to convince ourselves that coming to such a conclusion would be just, reasonable, and proper, more so, keeping in view the large amounts of money involved. The rule of law has a responsibility to protect the investments of foreign investors, while at the same time ensuring that any person accused of mishandling such funds is really and fully protected by the power of the phrase 'innocent till proven guilty'. The appeal is, therefore, allowed.

14. The judgment, referred to in paragraph one, is set aside, and the proceedings under C.C.No.8373 of 2023 are revived and restored to the file of III Additional Chief Metropolitan Magistrate, Bengaluru. The parties are directed to appear before the said Court on 16th April 2025. The Registry is to communicate a copy of this judgment to the Court concerned for necessary action.

15. Pending applications, if any, shall stand disposed of.