(2018) 02 DEL CK 0621

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4842 Of 2017

Tarun Kumar & Anr APPELLANT

Vs

State Of Nct Of Delhi & Ors RESPONDENT

Date of Decision : 26-02-2018

Acts Referred:
Indian Penal Code, 1860 — Section 120B, 406, 420

Citation : (2018) 02 DEL CK 0621

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sunil Fernandes, Arnav Vidyarthi, Anju Thomas, Nupur Kumar, Amit Gupta, Shri Singh, Maneka Khanna

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By this petition, the petitioners Tarun Kumar and Narender Kumar both directors of M/s. DD Global Capital Pvt. Ltd. inter-alia seek quashing of

FIR No. 53/2017 under Sections 406/420/120B IPC registered at PS EOW Mandir Marg Complex, New Delhi.

2. Learned counsel for the petitioner contends that a bare perusal of the FIR shows that there is no allegation of inducement against the petitioners.

The FIR is an abuse of the process of the law, lodged belatedly and a result of the family dispute inter-se the complainants who are the close relatives

of Sanjay Gambhir and Reena Gambhir. A civil suit has been filed by the complainant No.1 in the FIR i.e. Kailash Devi Khanna wherein the

petitioners have not been impleaded as defendants, thus no case for fixing criminal liability is made out against the petitioners. Further vicarious liability

cannot be fixed on the petitioners merely because they are the Directors of the accused No.2 company M/s. DD Global Capital Ltd. In the entire FIR

there is no allegation that the petitioners made any inducement and the allegations if at all are against Rajiv Gambhir or Sanjay Gambhir or that money

was transferred to the accounts of Reena Gambhir.

3. Learned APP for the State on the other hand contends that the allegations in the FIR in question are serious in nature. Petitioners were additional

Directors of M/s. DD Global Capital Pvt. Ltd. since 2nd March, 2009 and 1st November, 2008 respectively and were made Directors on t4h

September, 2009. Thus, the period when investments were made in the company, petitioners were the Directors and responsible for functioning of the

company. For any breach of trust or misappropriation of the property of the complainant by the company, the petitioners are liable as its Directors.

4. The above-noted FIR was registered on the joint complaint of Smt. Kailash Devi Khanna, Vivek Khanna and Upasana Khanna wherein they

named M/s. DD Sales Corporation along with its partners; M/s. DD Global Capital Ltd.; Sanjay Gambhir partner DD Sales Corporation; Rajiv

Gambhir brother of Sanjay Gambhir; Tarun Kumar Director of M/s. DD Global Capital Ltd.; Vipin Kumar Additional Director of M/s. DD Global

Capital Ltd.; Narender Kumar Aggarwal Director of M/s. DD Global Capital Ltd and Dinesh Giani and Associates auditors of M/s. DD Global

Capital Ltd. as the accused.

5. Allegations of the complainants in the above-mentioned FIR in nutshell are that Surender Kumar (father of Sanjay and Rajiv Gambhir), Sanjay

Gambhir and Rajiv Gambhir approached the complainants in the year 2005 representing themselves to be the partners of firm M/s. DD Sales

Corporation and that they were having business of finance, real estate, car dealership and other allied businesses, requesting the complainant to invest

in M/s. DD Sales Corporation. The three of them i.e. Surender, Sanjay and Rajiv showed very rosy and exaggerated picture of their business and

informed that they were earning huge profits from the business and that they had the requisite skills, technical knowledge and experience to venture in

the business of real estate. They assured lucrative return of 21% per annum compounded quarterly on the amount invested by the complainants. On

the said inducement complainants invested ☐ 1.58 crores through cheques in M/s. DD Sales Corporation between the year 2005 to 2007 from the accounts of Kailash Devi Khanna, Vivek Khanna, M/s. Associated Garments, M/s. Great Eastern Sourcing Company and M/s. Upasana Exports all belonging to the complainants. Initially the accused gave certain returns on the investment @ 12% per annum contrary to the promised rate of 21% per annum on the assurance that it would be regularized later on.

6. In the month of January and February 2012 Sanjay Gambhir along with his wife Reena Gambhir again approached the complainants stating that there were disputes in the firm M/s. DD Sales Corporation and they were not getting sufficient returns, thus they were diversifying the business to a newly floated company namely M/s. DD Township Limited (now known as M/s. DD Global Capital Pvt. Ltd.) which was entirely and exclusively under their control. They were induced into further investment stating that the entire amount will be returned after about a period of one year. An amount of ☐ 1.13 crores were returned in various installments to show their bona-fides and got reinvested. It was later revealed that the amount was actually transferred to the personal account of Reena Gambhir, wife of Sanjay Gambhir instead of firm M/s. DD Sales Corporation. Further they suppressed from the complainants that FIR No.43/2011 at PS EOW had been registered against the company M/s. DD Township Pvt. Ltd. Believing the misrepresentation and inducement complainants deposited a sum of ☐ 1,17,59,854/- in M/s. DD Global Capital Pvt. Ltd. through various cheques after Reena Gambhir paid to the complainants. It is alleged, that after taking the said amounts no documents were executed and only certain installments were paid and thereafter the accused stopped paying the installments complainants and also failed to return the amount. It is alleged that Sanjay Gambhir, Reena Gambhir and Rajiv Gambhir in connivance with other Directors of M/s. DD Global Capital Pvt. Ltd. namely Narender Kumar and Tarun Kumar cheated the complainants.

7. The main plank of the arguments of the learned counsel for the petitioners is that merely because of being the Directors of the company no vicarious liability can be fastened on them and Secondly, there being no allegation of inducement against the petitioners no case for proceeding against the petitioners is made out.

8. Arguments of learned counsel for the petitioners ignores the fact that the above-noted FIR has been registered not only for offence punishable

under Section 420 IPC but for offences punishable under Sections 406 and 120B IPC. As per the investigation carried out on the inducement of

Sanjay Gambhir, Rajiv Gambhir and Reena Gambhir investments have been made in the companies and thereafter the sums misappropriated have not

been returned to the accounts of the victim.

9. A flow chart has been filed as an annexure with the status report showing transfer of amounts between the various concerns of the Gambhirs and

the same amount being rotated from the accounts of Reena Gambhir to that of the complainants firm M/s. Associate Garments Manufacturing, M/s.

Great Eastern Sourcing Company, Upasana Exports and then being taken in M/s. DD Township Limited. The allegations of criminal breach of trust

being there and admittedly the petitioners being the Additional Directors from 2nd March, 2009 and 1st November, 2008 respectively and Directors

from 4th September, 2009, FIR qua them cannot be quashed on the ground that there is no allegation against them. The company and its Directors are

yet to account for the misappropriated amount and the criminal conspiracy is required to be unearthed.

10. This Court in Crl.M.C. 403/2011 titled as â??Shoukat Rai Malhotra & Anr. Vs. Dellatora Enterprises Ltd. & Anr.â?? decided on 17th April, 2012

dealing with the liability of the directions of the company held as under:

â??6. The Petitioners have been summoned for offences punishable under Sections 406/420 IPC read with Section 120B IPC. In a case of

criminal conspiracy each and every participant need not necessarily commit every overt act. Court has to infer from the circumstances

whether there is meeting of minds or not. In the present case the first tranche of subscription which is a substantial amount of USD

5,50,000/-was received in the company when the Petitioners were the only Directors. The Petitioners cannot claim ignorance thereof and

wash away their liability on account of the fact that they were no more Directors after 15th February, 2007. At this stage only a prima facie

view of the matter is to be taken. From the facts stated above, it is evident that prima facie there is evidence on record that the Petitioners

were conspirators with the accused No.1 their son and thus there is no illegality in the order summoning the Petitioners for the offences as

stated above.â??

11. In view of the discussion aforesaid this Court finds no ground to quash the FIR No. 53/2017 under Section 406/420/120B IPC registered at PS

EOW Mandir Marg Complex, New Delhi even qua petitioners at this stage.

12. Petition is dismissed.

