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**(2020) 01 RAJ CK 0308**

**In the Rajasthan High Court**

**Case No :** Criminal Miscellaneous Petition No. 3878 Of 2011, 159 Of 2013

Vinod Zutshi And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 31-01-2020

**Acts Referred:**

Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 471

Code Of Criminal Procedure, 1973 — Section 321

Jaipur Development Authority Act, 1982 — Section 54(1)

**Citation :** (2020) 01 RAJ CK 0308

**Hon'ble Judges :** Sanjeev Prakash Sharma, J

**Bench :** Single Bench

**Advocate :** K..K. Sharma, Alankrita Sharma, V.R. Bajwa, S.S. Hora, Rajesh Maharshi, Udit Sharma

**Final Decision :** Allowed

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## **Judgement**

1. These Criminal Misc. Petitions are pending before this Court since 2013 and have been taken up for final arguments.

2. Learned counsel for the petitioners as well as learned Additional Advocate General, appearing for the State are in agreement that the proceedings, which have been initiated against the petitioners in FIR No.160/2010, registered at Police Station, Brahmpuri, Jaipur of which cognizance was taken for offence under Sections 420, 409, 120B IPC, cannot continue in view of the judgment passed by the Supreme Court in Jal Mahal Resorts Private Limited Vs. K.P. Sharma and others (Civil Appeals No.4912, 4913 & 4914 of 2014, decided on 25/04/2014, reported in (2014) 8 SCC 804.

3. It is an admitted position that the FIR was lodged at the instance of Bhagwat Gaur at Police Station, Brahmpuri, Jaipur bearing No.160/2010 under Section 420, 467, 471 and 120B IPC wherein, after investigation conducted three times by different Investigating Officers, final report was submitted in negative form with result that offences alleged have not made out, cognizance, however, was

taken on the basis of the Protest Petition filed by Bhagwat Gaur and arrest warrants were issued by the learned Magistrate.

4. The petitioners preferred revision petitions against the cognizance order dated 09/09/2011 which were rejected by the learned Additional District & Sessions Judge No.5, Jaipur Metro, Jaipur vide order dated 05/01/2013.

5. Petitioner- Vinod Zutshi in Criminal Misc. Petition No.159/2013; petitioner-Hridesh Kumar Sharma in Criminal Misc. Petition No.157/2013 and petitioner-Navrattan Kothari in Criminal Misc. Petition No.659/2013 have challenged the revisional order dated 05/01/2013 as well as the cognizance order dated 09/09/2011 and it has been submitted on their behalf that the cognizance has been taken solely on the basis of the complaint of the complainant-Bhagwat Gaur. It is further submitted that with regard to the same issue, DBCWP (PIL) No.6039/2011 (K.P. Sharma Vs. State of Rajasthan); DBCWP (PIL) No.5039/2010 (Dharohar Bachao Samiti, Rajasthan Vs. State of Rajasthan) and DBCWP (PIL) No.4860/2010 (Heritage Preservation Society Rajasthan Vs. State of Raj.) were filed before the High Court wherein the Division Bench of the High Court passed judgment on 17/05/2012 and was pleased to cancel the Environment and Monument Improvement/Preservation and Tourism Development Project at Jaipur declaring it as illegal which was awarded to Jal Mahal Resorts Private Limited by global tender floated in 2003. It was further directed under the said orders of the Division Bench to bear costs in restoration of the original position.

6. It has been pointed out by the petitioner-Vinod Zutshi that he had joined as Secretary (Tourism), Government of Raj. on 19/01/2004 and was given the charge of Chairman, Rajasthan Tourism Development Corporation on 28/02/2004 whereas the process regarding initiation of the grant of lease was started way back in July, 2003 when the petitioner was not at all in the picture or in any way connected with initiation of the grant of lease. The petitioner, no doubt, was a Member of the Committee on 09/02/2004 with 15 other Members of Indian Administrative Service (IAS) but that clearly was a collective decision taken by the Committee. Yet allegedly, he alone has been made an accused although, the Committee consisting of 15 IAS officers took the decision regarding the grant of lease, which Committee was presided over by the Chief Secretary and the case has been lodged against the petitioner although he was not the whole and sole authority in the decision making process.

7. Similarly, the petitioner-Navrattan Kothari, who is one of the partners of M/s. KGK Enterprises and had been allotted the work of the project being the highest bidder, has submitted that as the Supreme Court has already held that M/s KGK Enterprises satisfied the qualification criteria and technical requirements, there was no occasion to initiate criminal proceedings as against him and the cognizance taken by the learned Magistrate requires to be set aside.

8. The petitioner-Ramesh Saini, who was appointed as Managing Director of

RTDC on 23/02/2005, after the Letter of Intent had been issued to M/s KGK Enterprises on 30/09/2004, submitted that he too has been wrongly made to face criminal proceedings and the cognizance taken of offences as against him, is clearly unwarranted and the same deserves to be quashed.

9. Similarly, the petitioner-Hridesh Kumar Sharma submitted that he was an RAS Officer and was transferred vide order dated 14/07/2005 as Executive Director of RTDC and joined his duties on 20/07/2005 under the orders of the Government. All his actions were in consonance of the directions issued by his superior officer and in the course of his official duties.

10. Learned counsel for the petitioners submitted that the judgment passed by the Division Bench came up before the Supreme Court in Jal Mahal Resorts Private Limited Vs. K.P. Sharma and others (supra) and in terms of this judgment passed by the Supreme Court, the cognizance taken by the concerned Magistrate on the basis of the complaint filed by some persons with regard to the same project of restoration of Jal Mahal and nearby historical monuments, development of the Man Sagar Lake and recreational tourism components at the lake precincts, has to be quashed and the petitioner-Vinod Zutshi, who had been given the additional charge as Chairman, RTDC on 28/02/2004 and is an IAS Officer as well as the petitioner-Hridesh Kumar Sharma, who was the Executive Director of RTDC from 09/02/2004 and is an RAS Officer, were discharged from their duties as Government servants and as per the instructions issued to them from time to time by the State Government and once the project, which was floated and NITs were invited thereto prior to the petitioners joined their post, could not have been singled out and the cognizance for offence under Section 420, 409, 120B IPC deserves to be quashed.

11. Mr. Rajesh Mehrishi, learned Additional Advocate General & Public Prosecutor submits that as the order of cognizance has already been upheld by the learned Additional District & Sessions Judge in Revision, the application for withdrawal of prosecution under Section 321 Cr.P.C., cannot be made, however, he fairly admits that in view of the clear findings of the Supreme Court in Jal Mahal Resorts Private Limited Vs. K.P. Sharma and others (supra), the proceedings as against the petitioners deserve to be dropped.

12. Learned Additional Advocate General & Public Prosecutor also submitted that in a recent case in Rekha Murarka Vs. The State of West Bengal & anr. (Criminal Appeal No.1727 of 2019), decided on 20/11/2019, the Supreme Court has observed as under:-

8. In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to

assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial."

13. Mr. AK Jain, learned counsel for the respondent no.2- complainant appeared and stated that he has been instructed by his client that he would not appear on his behalf in this Court. No other counsel has put in appearance on behalf of the respondent no.2-complainant.

14. Heard learned counsel for the petitioners and learned Additional Advocate General & Public Prosecutor.

15. The Supreme Court in Jal Mahal Resorts Private Limited Vs. K.P. Sharma and others (supra) has considered at length the allegations levelled in the PIL regarding the petitioners siphoning of the valuable properties and the illegal manner in which the Project was handed over to the concerned bidder namely; M/s. KGK Enterprises. The Supreme Court, in the aforesaid judgment, has discussed at length the aspects and observed as under:-

"107. Cumulatively, it was submitted that the JDA under Section 54 (1) has the power to allot land vested in it for the purposes of the JDA 1982 subject to rules by the Government of Rajasthan. It was submitted that obviously allotment of land to implement the Master Plan of the JDA Act 1982, Rule 18 gives Government of Rajasthan power to exempt State Department from paying cost of the land when land from the JDA is allotted. Exemption by the Government of Rajasthan in favour of RTDC acting on behalf of Department of Tourism as an agent from paying cost of the land is traceable to power vested under Rule 18 read with Government of Rajasthan decision dated 9.2.2004. Hence for all these reasons, non-gazetting under Section 54 (3) was not a requirement.

113. It was, therefore, submitted that on a perusal of this detailed decision making process undertaken by the Government of Rajasthan during the regime of successive Chief Minister after which the government contested the PIL petitioner before the High Court as also before this Court through the Attorney General, there is no doubt that the decision taken to approve the project and execution of Lease Deed was a bona fide decision for the general and overall betterment of the project meeting the area around the Jal Mahal and, therefore, no fault can be found in regard to the decision even if certain procedural relaxations were granted for approving the project. In sum and substance, it was submitted that in so far as the relaxation granted in concerned, the action of the State Government was bona fide approved by the previous and subsequent government of Rajasthan which was bona fide and cannot be called unfair or illegal in any manner.

116. The thrust of the aforesaid case law cited is to reinforce the submission that when there is substantial compliance of the terms of tender, the government is entitled to waive any non-essential term in the tender for the bona fide reasons and in public interest. In any case, since the project in terms of the RFP had to be executed through a SPV and the appellant being as such SPV, then the vehement insistence by the respondent that the lead member must be a company is not a violation of a substantial condition of the tender. In conclusion therefore it had to be held that there was no mala fide in the decision making process and the finding given by the High Court is perverse and cannot be sustained and deserves to be set aside.

139. In a matter of the instant nature, where the policy decision was taken way back from 1976 followed by Master Plans to develop a particular chunk of land by adopting the mode of private/public partnership method and a global tender was floated, obviously the private players were bound to participate specially in an age when private partnership is not an anathema. In that view of the matter when a particular policy decision was taken to develop a particular project supported by extensive research and study by the experts in the field who prepared the project report relying upon the three successive Master Plans of the city of Jaipur and the global tender was floated for development of land for tourism adjoining the lake area, entertaining PIL petition on the ground that the area in question is a wet land without substantiating the same in any manner, i.e. neither from the revenue record nor any other material, the perception of PIL Petitioners without factual basis cannot be allowed to prevail over the decision of the entire group of experts which was finally accepted by the State Government through the Project Development Report of a State Agency which got the detailed project report (DPR) prepared and nothing could be brought to the notice of the Court that the DPR was not fit to be relied upon or that it was prepared in a clandestine manner. In our considered view unless the Detailed Project Report, Master Plan of Jaipur, Revenue Record indicating the nature of land that the project was fraught with risk of environmental degradation which could establish with facts & figures that the decision is not in public interest, interference by the Court adopting an over all view smelling foul play at every level of administration is bound to make the governance an impossibility. Therefore, the courts although would be justified in questioning a particular decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of a State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by the reliable Expert Agency of a State after which the State Project or private and public partnership project is sought to be given effect to."

16. The Supreme Court, in the aforesaid judgment, further directed as under:-

"148. It is further held that since the land which is a part of the lease hold area barring 2 chunks viz. 8.65 acres equivalent to 13 Bighas 17 Biswas of land and

14.15 acres of land approximately 22 Bighas 10 Biswas, in all 35 bighas and 27 biswas equivalent to 22.80 acres, the Wetland Rules of 2010 shall not apply to the project since environment clearance had already been issued under PIA 2006 prior to commencement of the project. In any view the lease hold area barring the land equivalent to 35 bighas and 27 biswas having not been held as wetland or lakebed as per the revenue record as also the fact that it was available for development way back from 1982 which gets established from the various Master Plans of Jaipur and the historical background referred to hereinbefore, no dispute relating to application of the Wetland Rules 2010 shall be allowed to be raised hereinafter with retrospective effect in regard to the lease hold area of the land which has been granted for development of the project and could not be proved to be wetland barring 22.80 acres equivalent to 35 bighas and 17 biswas. It is further clear by now that the project comprising the lease hold land is not in conflict with the development of lake area or Jal Mahal monument so as to raise issues or concern regarding the lake area or environment degradation as restoration and maintenance of Jal Mahal cannot possibly disturb the monument or lead to environmental degradation. In any view, the dispute being confined to the lease hold area for development of the project which we have now resolved, we direct that the appellant/lessee shall be entitled to re-start the project forthwith subject to what we have recorded hereinbefore."

17. Keeping in view above, the allegations, which have been levelled as against the officers, who have been posted for certain period alone in the Project, could not be subjected to criminal process and the offence under Section 420 IPC for cheating and under Sections 409 and 120B IPC are not made out as against the petitioners-Vinod Zutshi, Rakesh Saini, Hridesh Kumar Sharma and Navrattan Kothari.

18. The ingredients of the said offences are totally absent once there is a seal of approval of the entire Project, which was initiated from 2001, as noticed by the Supreme Court. The petitioners- Vinod Zutshi, Rakesh Saini and Hridesh Kumar Sharma have only joined subsequently in 2004 after the letter of intent was already issued. So far as the petitioner-Navrattan Kothari is concerned, merely because he has participated in the global tender and the Project was awarded to his firm, namely; M/s. KGK Enterprises, it cannot be said that he has committed any act within the definition of Offence under Section 420, 406 or 120B IPC. Moreover, in view of what has been quoted above, the Supreme Court has even upheld awarding of the contract and has further directed the Project to continue.

19. The stand taken by the learned Additional Advocate General & Public Prosecutor is appreciated. Unnecessary criminal proceedings ought not be allowed to continue.

20. Keeping in view above, the order of taking cognizance impugned herein dated 09/09/2011 passed by the Additional Civil Judge (Sr. Div.) and Additional Chief Judicial Magistrate No.4, Jaipur City, Jaipur is quashed & set aside and the subsequent criminal proceedings initiated pursuant thereto are also quashed and

set aside. The order impugned dated 05/01/2013 passed by the learned Additional Sessions Judge No.5, Jaipur Metropolitan, Jaipur in Criminal Revisions filed by the petitioners-Vinod Zutshi, Hridesh Kumar Sharma and Navrattan Kothari is also quashed and set aside.

21. The Criminal Misc. Petitions are accordingly allowed. All pending applications also stand disposed of.