

**IN THE COURT OF SH. PUNEET PAHWA,
CHIEF METROPOLITAN MAGISTRATE, DISTRICT SOUTH,
SAKET COURTS COMPLEX, NEW DELHI**

CR Cases 1059/2019

STATE Vs. M/S UNITECH LIMITED AND ORS.

FIR no.685 /2016

PS Saket (EOW)

U/s 406/420/34 IPC

11.04.2023

Present: Sh. Arun Kumar Singh, Ld. Addl. PP for the State.
None for accused persons.
Accused Sanjay Chandra and Ajay Chandra not produced from
JC.

ORDER

1. Vide this order, the Court shall decide the application moved on behalf of applicants/ accused persons Ravinder Singhania, Anil Harish, Sanjay Bahadur, Minoti Bahri and P. K. Mohanty (Accused no.6 to 10) seeking discharge from the present matter.

2. It is stated that aforesaid accused persons were associated with accused no. 1 company as Non-Executive / Non-Executive Independent Directors. Accused No.6 & 7 were Directors upto 23.05.2015, when they resigned from the accused no.1 company. As per the application, accused no.8, 9 and 10 resigned on 23.02.2016, 07.12.2017 and 13.08.2014 respectively. None of the accused persons were named as an accused, either in the complaint filed by the complainant or in FIR No. 685 of 2016. However, they are impleaded as accused in the Final Report ("final report")

wrongly. The accused persons have been arrayed by the Investigating Officer in the FIR merely on the basis that (i) at some point of time they were independent director of the accused Company and in such capacity attended board meetings of the accused no.1 company; and (ii) that they received sitting fee from the accused Company.

3. Ld. Counsel for accused persons no.6 to 10 has relied upon the judgments i.e. (i) **Kanarath Payattiyath Balraj Vs. Raja Arora (2017 2 DLT (Cri) 695;** (ii) **Sunil Bharti Mittal vs. Central Bureau of Investigation (2015) 4 SCC 609;** (iii) **Shiv Kumar Jatia vs. State of NCT of Delhi AIR 2019 SC 4463;** (iv) **Pooja Ravinder Devisasani vs. State of Maharashtra (2014) 16 SCC 1;** (v) **Ram Jas vs. State of Uttar Pradesh 1970 (2) SCC 740;** (vi) **Jayapraksh vs. The State (Manu/TN2062/2014; Crl OP 16109 of 2010 decided on 15.10.2014;** (vii) **Maksud Saiyed vs. State of Gujarat (2008) 5 SCC 668;** (viii) **Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4;** (ix) **Vikram Johar vs State of Uttar Padesh (2019) 14 SCC 207;** (x) **R. Ramachandran Nair vs. Deputy Superintendent, Vigilance Police (2011) 4 SCC 395;** and (xi) **Har Sarup Bhasin vs. Origo Commodities Pvt. Ltd. (2020) SCC Online Del 10, Crl MC 1868/2019 decided on 07.01.2020.**

4. The facts as mentioned in the charge-sheet qua the accused no.6 to 10 are reproduced hereinbelow:

- a. that accused Ravinder Singhanian was independent Non-Executive Director of alleged company M/s Unitech Ltd. and on perusal of record of alleged company, it was revealed that during 2007-2015, he obtained commission/

bonus of Rs.70 lacs along with sitting fee of Rs.7.60 lacs. Though, Independent Non-Executive Directors do not have any material pecuniary relationship or transactions with the company and appointed by the company to protect the interest of share-holder as per Section 149 of the company Act yet it has been mentioned that he was participating in the meetings of board and AGMs in which all vital/ policy decisions of company were supposed to be taken. He has got sitting fee for the same. He is also holding shares of the alleged company. He had resigned from the post on 23.05.2015.

- b. that accused Anil Harish was Independent Non-Executive Director of alleged company M/s Unitech and on perusal of records of alleged company, it was revealed that during 2007-2015, he obtained commission/ bonus of Rs.70 lacs along with sitting fee of Rs.2.60 lacs. Though, Independent Non-Executive Directors do not have any material pecuniary relationship or transactions with the company and appointed by the company to protect the interest of shareholders as per Section 149 of the Companies Act yet but it has been mentioned that he was participating in the meeting of board and AGMs in which all vital / policy decisions of company were supposed to be taken. He had got sitting fee for the same. He is also holding shares of the alleged company. He had resigned from the post on

23.05.2015.

- c. that accused Sanjay Bahadur was Independent Non-Executive Director of alleged company M/s Unitech and on perusal of records of alleged company, it was revealed that during 2007-2015, he obtained commission/ bonus of Rs.70 lacs along with sitting fee of Rs.6.80 lacs. Though, Independent Non-Executive Directors do not have any material pecuniary relationship or transactions with the company and appointed by the company to protect the interest of shareholders as per Section 149 of the Companies Act yet it has been mentioned that he was participating in the meetings of board and AGMs in which all vital / policy decisions of company were supposed to be taken. He had got sitting fee for the same. He is also holding shares of the alleged company. He had resigned from the post on 23.05.2015.
- d. that accused Minoti Bahri was Non-Executive Director of alleged company M/s Unitech and on perusal of records of alleged company, it was revealed that during 2007-2015, she obtained commission/ bonus of Rs.9 lacs for attending AGMs. Although, she had submitted that she was unconnected with the day to day management affairs, business, decision making, policy making, acquisition and sales of company yet it has been mentioned that she was participating in the meetings of board and AGMs in which

all vital/ policy decisions of the company were supposed to be taken. She had got sitting fee for the same. She is also holding shares of the alleged company. She had resigned from the post on 11.12.2017.

- e. that accused P. K. Mohanty was Independent Non-Executive Director of alleged company M/s Unitech and on perusal of records of alleged company, it was revealed that during 2007-2015, he obtained commission/ bonus of Rs.70 lacs along with sitting fee of Rs.5.20 lacs. Though, independent Non-Executive Directors does not have any material pecuniary relationship or transactions with the company and appointed by the company to protect the interest of shareholders as per Section 149 of the Companies Act yet it has been mentioned that he was participating in the meetings of board and AGMs in which all vital / policy decisions of company were supposed to be taken. He had got sitting fee for the same. He is also holding shares of the alleged company. He had resigned from the post on 13.08.2014.

5. I have heard arguments addressed by both the parties and perused the record.

6. Ld. Counsel for applicants/ accused no.6 to 10 addressed the following arguments:

- a. that applicants/ accused no.6 to 10 were arraigned in the final

report merely on the basis that at some point of time, they were Non-Executive/ Independent Directors of the accused company. Accused no.6 to 10 were not named in either the FIR No.685 dated 07.11.2016 or the complaint or the order dated 07.11.2016 passed by Ld. ACMM, South, Saket Courts. The accused no.6 to 10 were only named in hurried manner and there are no averments which point out any specific roles of the accused persons no.6 to 10 in the offences alleged in the FIR and the charge-sheet is completely silent over the same. Accused persons no.6 to 10 were associated with the accused company, only in the capacity of Non-Executive/ Independent Directors, having no pecuniary relationship with the accused company whatsoever;

- b. that applicants/ accused no.6 to 10 were only being paid sitting fee and expenses in terms of Section 149(9) and Section 197(5) & (7) of Companies Act, 2013 for attending statutory meetings and were not getting any share in the profits of the Company. Therefore, they cannot be said to be involved in any criminal conspiracy or cheating as alleged in the charge-sheet. Applicants/ accused persons were not involved in the day to day conduct of affairs of the Company. Accused no.9 was not involved in day-to-day conduct of affairs of the Company;
- c. that the IO did not consider the impact of Section 149(6)(c) of the Companies Act, 2013, which provides that only such person can be appointed as an independent director who has or had no

pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial year or during the current finance year;

- d. that IO ignored Section 149(12) of the Companies Act, 2013 which provides that an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. No such averment regarding any specific role of any of the applicants is there in the charge-sheet;
- e. that in terms of Master Circulars dated 29.07.2011 and 02.03.2020 issued by Ministry of Corporate Affairs ("MCA"), all the investigating authorities have been directed not to initiate criminal proceedings against non-executive independent directors in a routine manner, recognizing the pattern that all the directors irrespective of their involvement were mechanically and routinely impleaded in criminal complaints. The said circulars applicable in respect of applicants also.

7. On these grounds, Ld. Counsel for applicants/ accused no.6 to 10 have submitted that the applicants/ accused persons herein have been vicariously impleaded in the present case without there being any mens rea on their part and without ascribing any specific role being played by the applicants herein. It has further been submitted that in two cases against the

same set of accused persons wherein the facts / offences alleged were exactly similar in nature, though complainants were different, the present applicants have already been discharged. Hence, it has been prayed that accused no.6 to 10 be discharged in the present case.

8. Ld. APP for the State has argued that the applicants have not disputed the commission of the alleged offence. The only plea of the present applicants is that they were merely non-executive / independent Directors of the company and they were never involved in day to day conduct / affairs of the accused company. It has been clearly mentioned in the charge-sheet that the applicants were involved in the criminal conspiracy hatched amongst the members of Board of Directors of the accused company. The applicants attended the annual general meetings of the accused company and also attended the board meeting in which material decisions were taken. Further, it is also on record that accused persons have attended the meetings of Board of Company and also received commission in addition to sitting fee. Further, there are several judgments passed by Hon'ble Supreme Court of India that it is the duty of company to prove the fact that as to by whom the day to day business of the company was being carried out. Ld. APP for the State has relied upon the judgment of Hon'ble Supreme Court in **S.P. Mani & Mohan Dairy Vs. Dr. Sneh Lata decided on 16.09.2022 in Crl Appeal No. 1586 of 2022** and also in **Ashutosh Ashok Paras Rampuria Vs. M/s Gharrkul Industries decided on 08.10.2021 in Crl. Appeal No.1206 of 2021** and argued that prima-facie charge under Sections 406/420/34 IPC is made out.

9. In the light of rival contentions put forth by the parties and on the basis of chargesheet and annexed documents, the Court shall decide whether there

are grounds for presuming that accused no.6 to 10 have committed an offence (240 Cr.P.C) or the charge against accused persons/ applicants herein is groundless (239 Cr.P.C).

10. This Court is conscious of the scope of Sections 239 & 240 Cr.P.C. which postulate the 'standard of consideration' for discharge or to frame charge against an accused. The criteria to be taken into account at the stage of charge has been discussed in **State of Orissa Vs. Debender Nath Padhi, AIR 2005 SC 359** wherein the Court observed that Section 239 Cr.P.C. requires the Magistrate to consider '*the police report and the documents sent with it under Section 173 Cr.P.C.*' and if necessary, examine the accused and after giving an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is entitled to be discharged by recording reasons thereof.

11. Duty of the Court at the stage of framing of charge is to see whether the *ingredients of offence* are available in the material produced before the Court (Reference can be made to **Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijjay, (1990) 4 SCC 76** and **Union of India vs. Prafulla Kumar Samal, AIR 1979 SC 366**). Contradiction in the statement of witnesses or sufficiency or truthfulness of the material placed before the Court cannot be examined at the stage of framing of charge. For this limited purpose, the Court can sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offence and not for the purpose of arriving at a definite conclusion. A case for framing of charge is made out only if the Court comes to a conclusion, on the basis material on

record that commission of offence is a probable consequence.

12. The accused persons have been charge-sheeted under Section 406/420/34 IPC. For the purpose of framing charge qua the offence of cheating punishable u/s 420 IPC, it is necessary for the prosecution to show the existence of '*deception from inception*' in the conduct of accused to raise 'grave suspicion of commission' of alleged offence. For the purpose of Section 406 IPC, there has to be an entrustment which is a sine qua non so as to attract the provision of Section 406 IPC.

13. In the present case, it has been alleged that the accused no.1 company through its authorized representative approached the complainant with seemingly lucrative proposal in terms of allotment of profitable space in a project launched by them under the name Unitech Habitat to be developed on plot at Sector Pi-II, Greater Noida UP. The accused no.1 company through its representative induced the complainant to initially deposit Rs.6,69,000/- and further induced the complainant to keep on paying the money after various intervals and on their assurance paid Rs.68,80,982/- in total to the accused Company. However, despite payment of considerable amount of money, the accused company failed to deliver possession of the allotted space promise by them which was to be done within three years. Hence, it has been alleged that the accused company and its representatives i.e. all the accused persons mentioned in the charge-sheet are liable to be prosecuted under the Sections 406/420/34 IPC.

14. The entire charge-sheet is silent as to the exact role being played by accused no.6 to 10. Bare perusal of the charge-sheet shows that it has been specifically mentioned that accused Ravinder Singhania, Anil

Harish, Sanjay Bahadur and P. K. Mohanty were independent non-Executive Directors whereas accused Minoti Bahri was a non-Executive Director. The allegations against these accused persons are only to the extent that they received commission / bonus along with sitting fee and they also participated in board meetings and AGM in which all vital / policy reasons of the company was supposed to be taken. The word “supposed” plays a very important role so far as criminal liability of the applicants herein is concerned. It means that even the IO was not sure as to whether any important decision was actually taken or not in those meetings which were attended by the applicants herein.

15. As per Section 420 IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 IPC. Therefore, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. In the present case, there is no allegation at all against accused persons no.6 to 10 of any inducement by them to deceive. Nor there is any specific allegations against these accused persons that they ever dealt with the complainant or that there was any kind of entrustment by the complainant to these accused persons.

16. It is well settled that concept of vicarious liability is alien to the criminal jurisprudence and thus, directors cannot be held vicariously liable for the acts of the company unless there are categorical allegations of individual role of director in the alleged offence. Reliance may be placed on **Maksud Saiyed vs. State of Gujrat, (2008) 5 SCC 666; Sharad Kumar**

Sanghi vs. Sangita Rane, (2015) 12 SCC 781 and Sushil Sethi vs. State of Arunachal Pradesh, (2020 3 SCC 240. In the absence of any clear/ specific allegations against any of the directors, there is no reasonable ground to raise presumption of commission of any offence by the directors even on the standard of 'suspicion', let alone 'grave suspicion'.

17. Merely being a director of the company and receiving commission / bonus / sitting fee is not sufficient to attract criminal liability that too vicarious liability of the Directors of the company. So far as the accused no.6 to 10 are concerned, the allegations against them appear to be bald and vague. The entire complaint as well as the charge-sheet is totally silent as to the roles being played by the accused no.6 to 10 so as to attract any criminal offence.

18. Ld. Addl. PP for the State has argued that the judgments being relied upon by the Ld. Counsel for applicants are not applicable in the present case under consideration as most of the judgments are with respect to the offence under Section 138 Negotiable Instruments Act. I have gone through the judgments cited by Ld. Counsel for the applicants as well as by Ld. APP for the State. In fact, most of the judgments being relied upon by Ld. APP for the State are also with respect to the offence under Section 138 of the Negotiable Instruments Act. Ld. APP for the State has very heavily relied upon the judgment of Hon'ble Supreme Court in **S.P. Mani & Mohan Dairy Vs. Dr. Sneh Lata** decided on 16.09.2022 in Crl Appeal No. 1586 of 2022 and in **Ashutosh Ashok Paras Rampuria Vs. M/s Gharrkul Industries** decided on 08.10.2021 in Crl. Appeal No.1206 of 2021. I have gone through both the judgments and there is no dispute about the law being laid down by the

Hon'ble Supreme Court, however, in the considered opinion of this Court, the said judgments support the case of the applicants more than the prosecution as it was held by the Hon'ble Supreme Court that "*vicarious liability can be imposed on the partners of a firm/ Directors of the company when specific averments are made in the complaint against them*". Whereas in the present case as already observed above, there is nothing on record against the applicants herein i.e. accused no.6 to 10 so as to frame charge against them.

19. On the basis of discussion in the preceding paragraphs, it is concluded that there is nothing on record which could make out the case against the accused no.6 to 10. The material is not sufficient to raise suspicion, much less to raise 'grave suspicion' of commission of such 'offence' by accused no.6 to 10.

20. In these circumstances, accused no.6 to 10 cannot be convicted even if evidence brought on record by State remains unrebutted which is basic criteria for framing charge against accused persons as per established law.

21. In these circumstances, I am of the view that accused no.6 to 10 namely accused persons Ravinder Singhanian, Anil Harish, Sanjay Bahadur, Minoti Bahri and P. K. Mohanty are entitled to be discharged in present case and are accordingly discharged.

22. The application stands allowed. Bail Bonds and Surety Bonds of accused persons Ravinder Singhanian, Anil Harish, Sanjay Bahadur, Minoti Bahri and P. K. Mohanty shall remain in force for 06 more months from

today u/s 437A Cr.P.C.

23. Put up for arguments on charge qua remaining accused persons on **11.05.2023**.

24. Copy of this order be given dasti.

(PUNEET PAHWA)
CHIEF METROPOLITAN MAGISTRATE
DISTRICT SOUTH, SAKET COURTS COMPLEX

Announced in the open Court
On 11th April, 2023