

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 7th April, 2022**

Pronounced on: 10th June, 2022

+ CRL.M.C. 2349/2014 & CRL.M.A.7900/2014

YOGESH JAGIA

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Advocate
with Mr. S.K. Chaturvedi, Mr. Amid
Sood, Mr. Nishi Ranjan Singh, Mr.
Santosh Pandey and Mr. Bhim
Shankar Thakur, Advocates

versus

JINDL BIOCHEM PVT LTD

..... Respondent

Through: Mr. June Choudhary, Sr. Advocate
with Mr. Vikas Kakkar, Mr. Amit
Dubey, Mr. Dilip Rana, Ms. Sneha
Choudhary and Ms. Anshika Dubey,
Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed on behalf of the petitioner seeking following prayer:-

"(i) Pass an order allowing present petition and quashing the summoning order dated 27.11.2013, qua the petitioner,

*issued in complaint case No. 149/1/12 by Ms Purva Sareen,
Metropolitan Magistrate-01/south/ Saket Court, New Delhi..."*

FACTUAL MATRIX

The Brief facts of the case leading to the filing of instant petition are as follows:

2. The Petitioner is a practicing Advocate enrolled with Bar Council of Delhi since 1991 and the Respondent/Complainant is a real estate development company.
3. In 2005, four promoters of complainant company, namely, Rajinder Kumar Jindal, Attar Singh, Kartar Singh and A.P. Singh, jointly promoted 'V4 Infrastructure Pvt Ltd' (hereinafter "V4"). Prior to incorporation of V4, to avail opportunity to bid commercial plot of land at Karkardooma, all the four referred promoters contributed funds in complainant company and acquired a commercial plot of land at Karkardooma Community Center, Delhi from DDA, which was subsequently developed by V4 in terms of development agreement dated 24th February, 2005.
4. In 2008, certain disputes arose between the promoters and consequently, two of the promoters exited the V4, selling their equity shares to the remaining promoters, that is, Rajinder Kumar Jindal and Attar Singh. Thereafter, Rajinder Kumar Jindal also exited V4 and sold his shares to Attar Singh. Share purchase agreements were drawn up and as part of settlement, part of commercial property located at Plot No. 228, Sector - 9, Dwarka, developed by V4, was agreed to be sold to complainant company for an agreed consideration for which two separate space buyer agreements were executed between the complainant and V4, both dated 7th October,

2009. For execution of the agreements, the petitioner herein was appointed. For the settlement of disputes, two conveyance deeds, one in favour of V4 for property at Karkardooma, as per development agreement dated 24th February, 2005, and another for part of Dwarka property as per space buyer agreements dated 7th October, 2009 by V4 in favour of complainant company, were executed. Both the said entities on verbal request created an escrow account with the petitioner.

5. V4 subsequently agreed to hand over possession letters for Dwarka property in escrow account but same were not deposited due to non-compliance by complainant Company of the agreed terms, though complainant alleged that same were handed over but illegally released by Petitioner herein to Accused no.2 and 3.

6. In 2010, the complainant confirmed the creation of escrow account vide letter dated 23rd July, 2010 and the petitioner admitted the documents mentioned in the referred letter except the possession letters. The documents kept in the escrow account were reconfirmed by the complainant in its letter dated 21st May, 2011.

7. It is the case of the complainant that the accused no. 1, petitioner herein, in collusion with accused no. 2 and 3 made alterations in the space buyers agreement and the petitioner committed breach of trust and made improvements to the detriment of the complainant in the documents handed over.

8. The complainant, subsequently, filed police complaint against the petitioner on 5th January, 2011 with Police Station Safdarjung Enclave and before the EOW, Delhi, alleging that despite of receiving entire agreed sale consideration Accused no. 2 and 3, being directors of V4, failed to execute

sale deed and the Petitioner in connivance released documents out of escrow account to accused no. 2 and 3, thereby committed criminal breach of trust under Section 409 of the Indian Penal Code, 1860 (hereinafter “IPC”).

9. Application under Section 156(3) of the Cr.P.C. was also filed by the complainant, and vide order dated 30th June, 2011, the same was dismissed. However, cognizance was taken upon the complaint of the complainant and he was asked to lead pre-summoning evidence, in which the CW1 to CW4 were examined and all supported the story of the CW1, Rajender Kumar Jindal.

10. The complainant thereafter, approached the learned Additional Sessions Judge against the order of dismissal of application under Section 156(3) of the Cr.P.C. and the same was also dismissed vide order dated 12th December, 2011.

11. After examination of evidence, and consideration of other material on record, the petitioner was summoned by the learned Metropolitan Magistrate-01, South Saket, New Delhi, vide the impugned order dated 27th November, 2013, and the petitioner is now before this Court assailing the said order.

SUBMISSIONS

On behalf of the Petitioners:

12. Mr. Ramesh Gupta, learned senior counsel appearing on behalf of the petitioner submitted that Complainant has failed to make out *prima facie* case of commission of any offence under Section 409 of the IPC.

13. It is submitted that the complainant and its director, Rajinder Kumar Jindal, have made multiple complaints on the same issue, that is, complaint before P.S. Safdarjung Enclave dated 5th January, 2011, complaint before EOW New Delhi dated 6th January, 2011 and captioned Complaint filed under section 200 Cr.P.C along with application under section 156(3) Cr.P.C dated 28th March, 2011 with ulterior and mala fide motives. It is submitted that in each of the said complaints, the complainant made contradictory statements and deliberately concealed material facts. It is submitted that the learned Trial Court completely ignored the contradictory contentions raised by the complainant in the said complaints and the pre-summoning evidence led by them.

14. It is further submitted that learned Trial Court has erred in law and facts in issuing the impugned summoning order by ignoring the status reports dated 23rd April, 2011 and 29th June, 2011 wherein the Police has noted that the complainant did not have any documentary evidence to prove his allegations. Learned Trial Court issued impugned summoning order without conducting mandatory inquiry under Section 202 of the Cr.P.C. Moreover, the learned Trial Court also did not appreciate the order passed by its predecessor Court dated 30th June, 2011, whereby the application of complainant under Section 156(3) of the Cr.P.C was dismissed.

15. It is submitted that the learned Trial Court has not assigned any reason or basis while observing that the petitioner has committed an offence under Section 409 of the IPC and such an observation was in contradiction to and ignorance of the evidence available on record before the learned Trial Court.

16. It is submitted that the documents were deposited by the complainant and other promoters with petitioner in escrow account, which could not have been released without the joint consent of both the parties. Moreover, these documents were submitted with this Court in interpleader CS(OS) 1445/2011, as has also been noted in the order dated 13th February, 2014 passed by a coordinate bench of this Court.

17. Learned senior counsel for the petitioner submitted that the learned Trial Court failed to appreciate that the complainant miserably failed to prove that the petitioner had appropriated the alleged value of security for personal gain, which in itself is a pre-requisite to make out an offence under Section 409 of the IPC. In this reference, the complainant has failed to bring on record any material fact or document in either the first complaint or even the instant matter before this Court.

18. It is submitted that the issue and dispute between the complainant and V4 is of purely civil nature, wherein the petitioner has been intentionally dragged and the same is also pending in arbitration proceedings.

19. The learned senior counsel for the petitioner, in light of the above made arguments submitted that impugned order, issuing summons to the petitioner, has been passed without proper appreciation of the material on record and without there being a case made out against the petitioner under the provisions of the IPC. Hence, the same is liable to be set aside.

On behalf of the Respondents:

20. Mr. June Chaudhary, learned senior counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that

there is no error or illegality in the impugned summoning order dated 27th November, 2013, since the order has been passed upon finding sufficient grounds for proceeding against the petitioner under Section 409 of the IPC. It is submitted that the pre-summoning evidence as well as the other material on record were well appreciated by the learned Trial Court and all of the material supported the case of the complainant.

21. It is submitted that when the dispute arose between the Jindal group and the Attar Singh group, and both the groups decided to part their ways, the Jindal Group agreed the exit the company and sell its shares to the Attar Singh group. The petitioner took upon the responsibility of implementing the said settlement as escrow agent and was to hold all the documents of the two groups relating to the settlement in trust and hand them over to the respective groups only once both the groups had fulfilled all their obligations under the settlement.

22. It is submitted that in complete breach of trust, the petitioner in collusion with the other two accused, handed over the complainant's documents to the other group, that is, the Attar Singh Group, without ensuring compliance by them. Moreover, the petitioner did not hand over the complainants the original space buyer agreement value of Rs. 7.75 Crores, the possession letters relating to 2nd floor and ground floor (3 shops) of the Dwarka property and the settlement document (Brief History) Dated 22nd August 2009, depriving the respondent /complainant of Rs. 1 crore towards their goodwill share. It is further submitted that the petitioner also altered the terms and conditions of the space buyers' agreements.

23. It is submitted that at the time of summoning what was required to be seen was as to whether there were sufficient grounds to summon the

petitioner as accused, and for this purpose the averments made in the complaint and pre summoning evidence were to be only taken as it is and the version of the petitioner/accused was not to be considered. The learned Trial Court had, only after properly considering the aforesaid allegations made in the complaint and in the pre-summoning evidence, led in support of the said allegations, found sufficient ground for proceeding and summoning the petitioner. Reliance was placed upon the judgement of ***Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr, (2012) 5 SCC 424.***

24. It is submitted that even petitioner would get chance to cross examine the complainant's witnesses at two stages i.e, post summoning evidence and post charge evidence and will get ample opportunities to raise his defences at appropriate stages and learned Trial Court will be within its rights to frame charges or discharge the petitioner after completion of said stages and giving opportunities to the parties of being heard. The stages of charge will be appropriate stage for the petitioner to raise his defense/points before the concerned magistrate which cannot be appreciated at this stage.

25. Learned senior counsel further submitted that learned Trial Court has discretion in the matter of summoning the accused which has been judicially exercised by her in the present case, which ought not to be interfered with.

26. It is submitted that the Hon'ble Supreme Court in celebrated judgment of ***State of Haryana vs. Bhajan Lal ,(1992) SCC (Cri) 426,*** has broadly outlined the exigencies where the High Courts should exercise its inherent powers and quash the proceedings. One such test has been if the allegations and evidences which has surfaced in the complaint even taken

on its face does not constitute an offense, then the High Courts should rightly come to rescue of the party, complaining abuse of process of the Court. In the given case, respondent has in its complaint and pre-summoning evidence has made out a *prima facie* case warranting summoning of the petitioner and other accused persons. It is submitted that the petitioner is well within his right to claim his defences, which he has chosen to raise here in this Court, at the time of framing of charge.

27. It is strongly urged that there are specific allegations, instances of concealment and misappropriation of complainant's documents by the petitioner and same will be proved by the respondent only after leading evidence. Moreover, vide order dated 16th May, 2014 the summoning order has been confirmed by this Court while dismissing the similar petitions of other two accused, Sanjay Pal and Attar Singh, who were also summoned vide same summoning order by the learned Trial Court on the same basis and on same set of material and pre-summoning evidence, oral as well as documentary. The contentions being raised by the petitioner cannot be considered at the stage of summoning and as such, the present petition is wholly misconceived and liable to be dismissed with costs.

ANALYSIS AND FINDINGS

28. I have carefully considered the rival contentions and also perused the impugned order as well as material on record.

29. The relevant portion of the impugned order dated 27th November, 2013 passed by the Court of Metropolitan Magistrate-01/South/ Saket Court, New Delhi is reproduced herein below:-

"... 3. Both the parties on 22.08.2009 signed die

undertakings which was retained by accused no.1, pursuant to which all the shares, certificates, transfer deeds etc were handed over to the accused no.1 by the complainant under good faith that the same shall be returned to the complainant. After making entire payment mentioned in the agreement, the complainant made payment of Rs.7.75 Crores through cheques and receipt of the same were also retained by the accused no.1.

4. To the utter shock and surprise of the complainant, in collusion with accused no.2 and 3, accused no.1 made alteration in space buyers agreement dt.22.08.2009. Accused no.1 who had been appointed by both groups and was entrusted with safe interest of the valuable securities of the complainant, committed breach of trust and made improvements to detriment of the complainant in the documents and handed over all the documents to the accused no.2. The complainant requested to handover valuable securities to him but it was all in vain.

5. Application u/s 156(3) CrPC was dismissed. However, cognizance was taken upon the complaint of complainant and he was asked to lead pre summoning evidence. In pre-summoning examination, the complainant firstly examined CW1 Rajender Kumar Jindal who reiterated the facts of the complaint.

Complainant further examined CW2 Shashi Kant Tiwari, CW3 Narender Kumar Khare and CW4 Rajeev Kumar who also supported the version of CW1.

6. Thereafter, pre summoning evidence was closed and matter was listed for arguments on summoning. Arguments addressed by the counsel for the complainant.

7. After going through the averments of of the

complainant and documents on record, I came to the following conclusion:-

(i) Accused no.1 retaining the valuable securities has committed the breach of trust being an agent as he was entrusted with the property of the complainant.

(ii) Accused no.2 and 3 have committed cheating upon the complainant by intentionally depriving him for his hard earned money.

8. I am of the opinion that prima facie offence under section 409 IPC against accused no.1 and prima facie offence under section 420/34 IPC against accused no.2 and 3 are made out. Accordingly, accused persons be summoned on filing of PF returnable by 31.01.2014."

30. As per the complaint filed by the complainant, there are no allegations that the documents deposited in escrow account have been utilized by the petitioner for his personal gain and advantage which is one of the essential ingredients of Section 409 of the IPC which facts proves that no case is made out against the petitioner under Section 409 of the IPC.

31. Section 409 of the IPC necessitates commission of breach of trust with respect to a property that a person, in his capacity of a public servant or in the way of his business, is entrusted with. The necessary elements constituted in the offence must be strictly proved by the prosecution. It is true that prosecution need to prove the actual mode of misappropriation and once entrustment of all dominion over the property is established, then it would be for the accused to explain as to how the property was dealt with. In the instant case, the Court below while issuing summons against the petitioner has overlooked the facts that no material on the record to

establish any misappropriation of the money of the escrow account and therefore, the Court below has passed the impugned order without application of mind.

32. In proceedings initiated on the criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection; it should be exercised to see that the process of law is not abused or misused.

33. The Hon'ble Supreme Court has enumerated the cases where an order of the Magistrate issuing process against the accused can be quashed or set aside as under :

- i. In the case of *Nagawwa v. Veeranna Sivalingappa Konjalgi*, **1976 3 SCC 736**, the Hon'ble Supreme Court has made the following observations on the issue at hand:-

“6. Applying these principles to the facts of the present case it seems to us that the present case is not one in which the High Court should have quashed the proceedings. To begin with, the order of the Magistrate dated February 11, 1975 issuing process against Respondents 1 and 2 is a very well reasoned one which takes into consideration the allegations in the complaint as also the evidence adduced in support of it. The Magistrate clearly applied his mind and has analysed the evidence into three categories— (i) those witnesses who have deposed as eyewitnesses regarding the actual occurrence and the part attributed to Respondents 1 and 2. The Magistrate then refers to other witnesses who corroborated the evidence of the complainant; and thirdly the Magistrate relied on the evidence of witnesses who were admittedly signatories to the dying declaration and had clearly stated on oath that the names of Respondents 1 and

2 were mentioned in their presence by the deceased but were not recorded by the police patel in the dying declaration and in spite of the protest by the witnesses they were made to sign the dying declaration as attesting witnesses under threat and duress. On a consideration of this evidence the Magistrate was satisfied that a prima facie case against Respondents 1 and 2 was made out and he accordingly issued process against them. It was not a case where the Magistrate had passed an order issuing process in a mechanical manner or just by way of routine. The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Section 202, has held that the order of the Magistrate was illegal and was fit to be quashed. In the first place the High Court ought not to have considered the documents filed by Respondents 1 and 2 in the previous revision without obtaining the permission of the court and particularly when the High Court itself gave no directions whatsoever to the Magistrate to consider those documents. In fact the Magistrate considering the question as to whether process should be issued against the accused or not cannot go into the materials placed by the accused and therefore the High Court could not have given any such directions while disposing of the previous revision. The impugned order of the High Court proceeds on the basis that it was incumbent on the Magistrate to have considered the documents and their effect on the truth or falsehood of the allegations made by the complainant. This was an entirely wrong approach. As we are clearly of the opinion that the Magistrate was fully justified in completely excluding the documents from consideration, we refrain from making any observation regarding the effect of those documents. In fact the documents filed by the respondents

were mere copies and they were, therefore, not admissible. At any rate, at the stage of Section 202 or Section 204 of the Code of Criminal Procedure as the accused had no locus standi the Magistrate had absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused who could be present only to watch the proceedings and not to participate in them. Indeed if the documents or the evidence produced by the accused is allowed to be taken by the Magistrate then an inquiry under Section 202 would have to be converted into a full dress trial defeating the very object for which this section has been engrafted. The High Court in quashing the order of the Magistrate completely failed to consider the limited scope of an inquiry under Section 202. Having gone through the order of the Magistrate we do not find any error of law committed by him. The Magistrate has exercised his discretion and has given cogent reasons for his conclusion. Whether the reasons were good or bad, sufficient or insufficient, is not a matter which could have been examined by the High Court in revision. We are constrained to observe that the High Court went out of its way to write a laboured judgment highlighting certain aspects of the case of the accused as appearing from the documents filed by them which they were not entitled to file and which were not entitled in law to be considered.”

- ii. In ***Indian Oil Corpn. v. NEPC India Ltd., 2006 6 SCC 736***, the Hon'ble Supreme Court observed as under:-

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 :

1995 SCC (Cri) 1059] , *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

34. The gist of the offence under Section 409, criminal breach of trust by public servant, or by banker, merchant or agent-whosoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts

of the said offence. The first involves the fact of entrustment wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

35. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The complainant has to bring on record material to support his allegations in the complaint to have criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is the silent spectator at the time of recording of preliminary evidences before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

36. It is settled law that the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

CONCLUSION

37. Keeping in view the facts and circumstances as well as allegations in the complaint, in my view, the basic essential ingredients of criminal breach of trust are missing. Criminal proceedings are not shortcut for other remedies. The petitioner is a practicing advocate and he has given his professional services to the parties and there is no material on record to establish *prima facie* that he has committed any offence as alleged in the complaint. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the necessary ingredients of Section 409 of the IPC are missing and the Magistrate concerned while passing the summoning order dated 27th November, 2013 has certainly not considered the facts of the case in a proper manner and also not assigned any reason for summoning the petitioner, the summoning order dated 27th November, 2013 and the complaint qua the petitioner is liable to be quashed.

38. Accordingly, the instant petition under Section 482 of the Cr.P.C. is allowed, the impugned order dated 27th November, 2013 passed by Metropolitan Magistrate-01, South, Saket Courts, New Delhi is set aside and the complaint is also quashed qua the petitioner.

39. Pending application, if any, also stands disposed of.

40. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 10, 2022

dy/ms