

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: March 18, 2009
Decision on: September 3, 2009

CRL REV P No. 224 of 2008 & Crl M A No. 4800/08 (Stay)

SUSHIL ANSAL Petitioner
Through Mr. Uday U. Lalit, Senior Advocate with
Mr. R.K. Naseem, Advocate

versus

STATE OF DELHI Respondent
Through Mr. P.P. Malhotra, ASG with
Mr. Jaideep Malik, Advocate
Mr. K.T.S. Tulsi, Senior Advocate with
Mr. K. Sultan Singh, Advocate for complainant.

CRL M C No. 1332/ 2008 & Crl M A No. 5036/08 (Stay)

DHARAM VIR MALHOTRA Petitioner
Through Mr. Vijay Aggarwal and
Mr. Rakesh Mukhija, Advocates

versus

STATE Respondent
Through Mr. P.P. Malhotra, ASG with
Mr. Jaideep Malik, Advocate
Mr. K.T.S. Tulsi, Senior Advocate with
Mr. K. Sultan Singh, Advocate for complainant.

CRL M C No. 1334 of 2008 & Crl M A No. 5038/08 (Stay)

GOPAL ANSAL Petitioner
Through Mr. D.C. Mathur, Senior Advocate with
Mr. Vijay Aggarwal and
Mr. Rakesh Mukhija, Advocates

versus

STATE OF DELHI Respondent
Through Mr. P.P. Malhotra, ASG with
Mr. Jaideep Malik, Advocate
Mr. K.T.S. Tulsi, Senior Advocate with

Mr. K. Sultan Singh, Advocate for complainant.

AND

CRL M C No. 1378/ 2008 & Crl M A No. 5177/08 (Stay)

PREM PRAKASH BATRA Petitioner
Through Mr. R.N. Mittal, Senior Advocate with
Mr. Manu Sharma and
Mr. Manish Sharma, Advocates

versus

STATE Respondent
Through Mr. P.P. Malhotra, ASG with
Mr. Jaideep Malik, Advocate
Mr. K.T.S. Tulsi, Senior Advocate with
Mr. K. Sultan Singh, Advocate for complainant.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

S. Muralidhar, J.

1. Criminal Revision Petition No. 224 of 2008 by Sushil Ansal challenges an order dated 15th February 2008 passed by the learned Additional Chief Metropolitan Magistrate, New Delhi ('ACMM') taking the cognizance and summoning the Petitioner in FIR No. 207 of 2006 registered at Police Station Tilak Marg, New Delhi.

2. Criminal M C No. 1332 of 2008 by Dharam Vir Malhotra, Crl M C No. 1334 of 2008 by Gopal Ansal and Crl M C No. 1378 of 2008 by Prem Prakash Batra each seek an identical relief by challenging the summoning

order dated 15th February 2008 passed by the learned ACMM in FIR No. 207 of 2006 and for quashing the supplementary charge sheet filed in the case on the basis of which the summoning order was passed.

3. The background to the present petitions is that on 13th June 1997 while the matinee show of film 'Border' was being screened at Uphaar Cinema in Green Park, New Delhi, a fire in a transformer at the basement resulted in emission of thick smoke and toxic gases. The result was the death by asphyxiation of 59 persons and injuries to over 100 persons. Sushil Ansal is the former Managing Director of Green Park Theatres Associated Private Limited ('GPTAPL') which had built and established Uphaar Cinema. Gopal Ansal is the brother of Sushil Ansal and a shareholder in GPTAPL. It may be mentioned that Sushil Ansal is also the Chairman of Ansal Properties & Industries Limited ('APIL') which has controlling share holding in GPTAPL.

4. Initially an FIR No. 432 of 1997 was registered at Police Station Hauz Khas, New Delhi on the basis of the information/complaint of the aforementioned incident. Subsequently the investigations in the aforesaid FIR were transferred to the Central Bureau of Investigation ('CBI') on 23rd July 1997, pursuant to which CBI registered case No. RC-3(S) 97/SIC-IV/New Delhi. On 15th November 1997 a charge sheet was filed in the aforementioned case against 16 persons named as accused. On 9th April 2001 the trial court framed charges against all 16 persons, of whom 9 were charged under Section 304 IPC and 7 persons under Section 304-A IPC. The revision petitions challenging the order framing of charge were dismissed by

this Court by a judgment dated 11th September 2001. The trial proceeded and resulted in the conviction and sentencing of the accused by the learned ACMM. The appeal against the said judgment was disposed of by this Court on 19/12/2008. It is stated that the further appeal against the said judgment is pending in the Supreme Court.

5. As far as the present petitions are concerned, their origin can be traced to an order dated 5th May 2006 passed by the learned Single Judge of this Court in CrI M (Main) No. 2380 of 2003 filed by the Association of Victims of the Uphaar Tragedy ('AVUT') seeking cancellation of bail granted to the accused persons Sushil Ansal, Gopal Ansal and H.S. Panwar who were at that time facing trial for the offences under Sections 304/304A.3378/338/36 IPC read with Section 14 of the Cinematograph Act. Prior to this AVUT had approached the trial court with an application for cancellation of bail of the accused on the ground that they were instrumental in the removal/tampering with the judicial record. It was alleged that this was done with the clear motive of destroying evidence which would have proved their criminal liability. The trial court passed an order dated 29th April 2003 declining the prayer of AVUT for cancellation of the bail granted to the accused on the ground that trial was nearing conclusion. It was then that AVUT filed CrI M (M) No. 2380 of 2003 in this Court.

6. An application CrI M No. 2229 of 2006 was also filed by AVUT under Section 482 of the Code of Criminal Procedure ('CrPC') in CrI M (M) No.2380 of 2003 seeking a direction to the State to register a criminal case (FIR) against the accused for tampering with the documents forming part of

the record of the trial court. It was stated that during the progress of the trial it was noticed by the learned Public Prosecutor (PP) that several important documents seized by the investigating agency during the course of investigation and filed along with the charge sheet were missing from the record of the case. Some other documents had been tampered with and/or mutilated or defaced by tearing off a portion or by staining with ink.

7. By an application dated 13th January 2003 the learned PP drew the attention of the trial court to the above fact. In turn the trial court apprised the learned District & Sessions Judge ('D&SJ'), Delhi. On 20th January 2003 the learned PP sought permission from the trial court to lead secondary evidence in respect of the missing documents and the documents which had been tampered with in the above manner. This application was allowed by the trial court and the prosecution was permitted to lead secondary evidence with regard to the missing and tampered documents.

8. It appears that pursuant to the orders of the D&SJ, an enquiry was conducted by the learned Additional Sessions Judge ('ASJ'), New Delhi. The report dated 30th April 2004 of the enquiry officer concluded that the Ahlmad of the Court, Dinesh Chander Sharma, was *prima facie* guilty of causing the documents forming part of the judicial record of the case to disappear or to be mutilated or torn. On the basis of the said report, an order dated 25th June 2004 was passed by the learned D&SJ, Delhi removing Dinesh Chander Sharma from service.

9. In CrI M 2229 of 2006 AVUT pointed out that although the disciplinary

action taken against Dinesh Chander Sharma proved his negligence and misconduct arising out of the removal/tampering of the documents forming part of the judicial record which was in his custody, no order had been passed for registration of a criminal case against him.

10. The prayer made by AVUT was vehemently opposed by the accused. They raised preliminary objections as to the locus to the AVUT to file such a petition since they could appear in the trial court only upon permission being granted by the learned PP. It was pointed out that none of the accused had any ulterior motive of tampering with the records and that it was a mere apprehension of the AVUT which was without any basis. It was further pointed out that no offence under Section 201 IPC could be said to have been made out.

11. By a judgment dated 5th May 2006 the learned Single Judge of this Court dismissed the said petition seeking cancellation of bail i.e. Crl M (M) No. 2380 of 2003. By the same order however the application Crl M No. 2229 of 2006 was allowed and the Special Branch of Delhi Police was called upon to register a case under the appropriate provisions of law in regard to the incident of removal/tampering with/mutilation of the documents. After registration of the FIR, the investigation was directed to be handled by an officer not below the rank of Assistant Commissioner of Police ('ACP'). The investigation was directed to be conducted expeditiously and concluded within a period of three months from the date of the order.

12. Consequent upon the judgment dated 5th May 2006, a letter was written

by the AVUT to the Police Station (P.S) Tilak Marg on 13th May 2006. Thereafter an FIR No.207 of 2006 under Sections 109/193/201/218/409/120B IPC was registered on 17th May 2006.

13. A charge sheet was initially filed on 12th February 2007 in which Dinesh Chand Sharma was named as the sole accused and the offence was under Section 409 IPC. Cognizance was taken by the learned ACMM and the accused Dinesh Chand Sharma was summoned.

14. Thereafter a supplementary charge sheet was filed on 23rd May 2007. It was based on the information given by the Government Examiner for Questioned Documents ('GEQD') on 30th April 2007. Further investigation led to the filing of a third supplementary charge sheet on 17th January 2008. In this Sushil Ansal, Gopal Ansal, Prek Prakash Batra and Dharam Vir Malhotra were named as accused along with Anoop Singh and Har Swarup Panwar. The offences mentioned in the third supplementary charge sheet were under Sections 109/409/201/120B IPC. A list of eleven documents and a list of five witnesses were appended to the charge sheet. On the basis of the supplementary charge sheets, by the impugned order dated 15th February 2008 the learned ACMM summoned the Petitioners.

15. The submissions of Mr. Mr. U.V. Lalit, learned Senior counsel on behalf of Mr. Sushil Ansal, Mr. Vijay Aggarwal, learned counsel for Mr. Dharam Vir Malhotra, Mr. D.C. Mathur, learned Senior counsel for Mr. Gopal Ansal and Mr. R.N. Mittal, learned Senior counsel for Mr. Prem Prakash Batra have been heard. On behalf of the State the submissions of Mr. P.P.

Malhotra, learned Additional Solicitor General and on behalf of AVUT Mr. K.T.S. Tulsi, learned Senior counsel have been heard.

16. It is submitted on behalf of the Petitioners that the mandamus issued by this Court in its judgment dated 5th May 2006 has not been complied with by the State. It is further submitted that by registering the FIR showing the AVUT as complainant, the investigation proceeded on the basis that it was only the Petitioners who were the accused and no one else. This led to an imbalance and an unfair investigation in a manner not warranted by the order passed by this Court. It is submitted that inasmuch as AVUT was projected as the aggrieved party/ complainant and the accused as the Petitioners, the possibility of the complainants themselves having caused the evidence to disappear or having deliberately mutilated the records was not even considered.

17. It is submitted on behalf of the State as well as AVUT that at the present stage when the charge sheet has been filed and cognizance taken, the learned ASJ was not required to give detailed reasons. At this stage the learned ACMM was only required to examine whether there was “sufficient ground for proceeding” and not “sufficient ground for conviction.” It is submitted that the possible defence of a person arrayed as accused could be examined at the appropriate stage. As long as a *prima facie* case was made out the criminal case could not be quashed in a petition under Section 482 CrPC.

18. It is seen from the order dated 5th May 2006 passed by the learned Single Judge of this Court that the Court had rejected some of the contentions now

urged on behalf of the accused. It was held that it was for the trial court alone to exercise powers under Section 340 CrPC for holding an inquiry and directing the filing of a complaint. It is submitted that since the inquiry by the learned ASJ had only found Dinesh Chand Sharma liable, this Court could not exercise its power under Section 482 CrPC to direct any further inquiry.

19. It was observed by the learned Single Judge in the order the order dated 5th May 2006 as under:

“17. A great deal of arguments was advanced on behalf of the respondents/accused persons that there exist no material, what to talk of any cogent material or circumstances, which would show that the respondents were in any way responsible for removal or tampering with the said documents. It was even suggested that it could be the handiwork of anybody or even of the petitioners themselves who might have resorted to such course with a view to create ground for cancellation of bail of the accused persons. True, it could be anybody and that is precisely the reason why this Court should order a probe to find out who are the persons responsible for committing the said offences.”

20. It was further observed as under:

“19. It needs to be considered if the action taken so far in punishing the court official can be said to be adequate or something more needs to be done in this behalf. The acts of removal or tampering with the judicial record are very serious and have large ramifications on the administration of justice. Such like episodes cannot be brushed aside lightly.

Therefore, this Court feels that there is a crying need for instituting an inquiry/investigation into the whole episode so that the truth is unearthed and all those who are directly or indirectly responsible for committing the said offence(s) are brought to book and punished in accordance with law. Moreover, this Court is not able to comprehend what objection anyone can possibly have on that score? This Court is unable to accept the contention of Mr. Altaf Ahmed, learned Senior counsel that in case an inquiry/investigation is instituted, respondents no. 1 to 3 and/or many other persons may be put to undue harassment. If we accept such a contention, it would mean that no crime of whatsoever nature should be investigated because investigation of a crime is likely to result in harassment of one kind or the other to the persons as suspected of the commission of offences or witnesses who may be subjected to certain inquiries. The stand of respondents no. 1 to 3 is that they were not in any manner or even remotely responsible for the removal or tampering with the said documents and, therefore, they need not to be apprehensive if such a probe is ordered. Rather they should welcome it in order to remove any lurking suspicion which is being entertained in certain quarters. Having regard to the totality of the facts and circumstances, it is strongly felt that this Court would be failing in its duty if it does not exercise its inherent jurisdiction and order for registration of FIR and investigation into this serious episode which has seriously affected the administration of justice and undermine the majesty of Rule of law.”

21. The following consequential directions were issued:

“20.In the result Crl M (M) 2380 of 2003 seeking

cancellation of bail of respondents 1 to 3 is dismissed and Crl M 2229/2006 is hereby allowed and the Special Branch of Delhi Police is called upon to register a case under appropriate provisions of law in regard to the incident of removal/tampering with/mutilation of the documents, referred to above, from the judicial record of the trial court. After registration of the FIR, investigation shall be entrusted to an officer not below the rank of Assistant Commissioner of Police who will conduct the investigation expeditiously and endeavour to conclude the same within a period of three months from the date of this order. A status report shall be filed by the investigating agency before the next date of hearing. Observations made in this order are based on a prima facie view of the facts and circumstances brought before the Court and may not be construed as the expression of opinion in regard to the complicity of one or the other person.”

22. What appears to have happened after the passing of the said judgment is that AVUT forwarded a copy thereof to the police for taking action. On the basis of the said judgment, an FIR was registered and investigation entrusted to the Assistant Commissioner of Police, EOW Crime Branch, Delhi.

23. This Court does not find merit in the contention that the investigation was unfair only because the State itself did not by itself register the case on the basis of the said judgment but did so at the instance of AVUT which was shown as the complainant. As far as this Court is concerned, a direction was issued by this Court that an FIR should be registered and investigation taken up. Merely because the FIR was registered at the instance of AVUT and

investigation was taken up thereafter, it cannot be said that the direction issued by this Court in the judgment dated 5th May 2006 was disobeyed.

24. It was insisted by learned counsel for the Petitioners that in order to determine whether the investigation that followed was fair and reflected the view expressed by this Court that the tampering of documents causing a portion of records to disappear could have been done by any person including AVUT itself, the case diary should be summoned even at this stage. This Court is unable to accept the submission. The case is still at the stage of arguments on charge. It will be open to the trial court to undertake an elaborate exercise of examining these contentions at the stage of framing the charges. This Court is not persuaded, in exercise its powers under Section 482 CrPC, to undertake such an exercise at this stage.

25. The further submissions of the learned counsel for the petitioners were as follows. It was repeatedly urged that the impugned summoning order does not show any application of mind by the learned ACMM to the contents of the charge sheet. While the first charge sheet only names Dinesh Chand Sharma and seeks to make him alone liable for the offence under Section 409 IPC, the supplementary charge sheet does not mention him as an accused and seeks to make the Petitioners liable for a whole range of offences including under Sections 109/193/201/218/409/120 B IPC. The impugned summoning order passed by the ACMM did not mention the offences for which the Petitioners were being summoned. Therefore, they were not in a position to even know the offences for which they were being summoned. The summoning order was therefore passed in a mechanical

manner. It is submitted that the power to issue process to the accused/summon the accused is, in terms of the wording of Sections 109, 203 and 204(b) CrPC, a discretionary one and therefore, it was incumbent upon the learned ACMM to have passed a proper speaking order examining the role of each of the accused and indicating why they were being summoned. Reliance is placed upon the judgments in *Omar Usman Chamadia v. Abdul* (2004) 13 SCC 234: AIR 2004 SC 1508, *State of Punjab v. Bhag Singh* AIR 2004 SC 1203, *State of Rajasthan v. Sohan Lal* 2004 (5) SCC 573 and *Paul George v. State* 2002 (2) SCC 406. Reliance was additionally placed on the judgment in *Notified Area Committee v. Additional Director, Consolidation* (2002) 10 SCC 87, *Punjab National Bank v. Surendra Prasad Sinha* AIR 1992 SC 1815, *Ram Lal v. Parvinder Singh* 1986 (10) DRJ 188, *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668 and *Ashok Sikka v. State* 2008 II AD (Cr) DHC 143.

26. The above submissions have been considered. Learned counsel for the Petitioners are not correct in their submissions that at the present stage the learned ACMM is required to give detailed reasons for summoning the accused. For the record the order dated 15th February 2008 passed by the learned MM reads as under:

“15.2.08

Present: APP for the State with Inspector Harish Chander.

Supplementary charge sheet has been filed in case FIR No. 207/06, PS Tilak Marg.

The main file has already been put up before me and I have gone through the report under Section

173 CrPC and the documents on record. In the present supplementary charge sheet six accused have been named. However, they have not been arrested during the investigation. After perusal of the report under Section 173 CrPC and the documents on record, I find sufficient ground to proceed against the accused named in the supplementary charge sheet as well. Hence, they be summoned for 2.5.08, on which date the main case is fixed for consideration on charge.

Sd/-
ACMM/15.2.08”

27. A perusal of the above order it shows that reference has been made by the learned ACMM to the supplementary charge sheet which not only named the accused but also indicated the offences. The learned ACMM stated that he has gone through the report as well as the documents on record. He also noticed that in the supplementary charge sheet six accused have been named. Thereafter, the learned ACMM stated that he found sufficient ground to proceed against the accused named in the supplementary charge sheet as well. It is really an exercise in hair splitting to criticize the above order for not specifically mentioning each of the accused and for also not mentioning the offences for which they have been summoned. It is plain that when the accused appear they will be supplied copies of the charge sheet along with the documents and they would definitely know the offences for which they have been summoned. Thereafter that they will be heard on charge. It is not as if they will be sent for trial without being heard on charge.

28. In *Deputy Chief Controller of Imports & Exports v. Roshanlal Aggarwal* (2003) 4 SCC 139 it has been held by the Supreme Court as

under: (SCC p. 145, para 9)

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. **At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.** This question was considered recently in *U.P. Pollution Control Board v. Mohan Meakins Limited* (2000) 3 SCC 745 and after noticing the law laid down in *Kanti Bhadra Shah v. State of West Bengal* (2000) 1 SCC 722 it was held as follows : (SCC p. 749, para 6)

‘The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. **The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.**’
(emphasis supplied)

29. In *State of Madhya Pradesh v. Awadh Kishore Gupta* 2004 (1) SCC 691 it was held as under:

“11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude, of the power requires great, caution in its

exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard, and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.” (*See: The Janata Dal etc. v. H.S. Chowdhary and Ors., etc., (1992) 4 SCC 305, Dr. Raghubir Saran v. State of Bihar and Anr. AIR 1964 SC 1*) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude, that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint, do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. **In exercise of the inherent powers under Section 482 of the Code it is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether, the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the**

statement made on oath of the complainant that the, Ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court. When information is lodged at the police station and an offence is registered, then the mala fides of the Informant "would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. (See: *Dhanalakshmi v. R. Prasanna Kumar and Ors.* 1991 SCC (Crl) 142, *State of Bihar and Anr. v. P.P. Sharma.* I.A.S. and Anr. (1992 Suppl. (1) SCC 222), *Rupan Deol Bajaj (Mrs.) and Anr. v. Kanwar Pal Singh (Bill and Anr.* (1995) 6 SCC 194, *State of Kerala and Ors. v. O.C. Kuttan and Ors.* (1999) 2 SCC 651, *State of U.P. v. O.P. Sharma* (1996) 7 SCC 705, *Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada* (1997) 2 SCC 397, *Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr.* (1999) 8 SCC 728, *Rajesh Bajaj. v. State NCT of Delhi and Ors.* (1999) 3 SCC 89.” (emphasis supplied)

30. In *S.W. Palanitkar v. State of Bihar* 2002 (1) SCC 241 it was again reiterated as under: (SCC p. 247 para 15)

“15. In case of a complaint under Section 200 CrPC or IPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and his witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or

vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words “sufficient ground” used under Section 203 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.”

31. In light of the clear enunciation of the law in the aforementioned decisions, this Court is unable to be persuaded to hold at this stage in the present petitions under Section 482 Cr PC or in the revision petition that the learned ACMM erred in summoning the Petitioners for the aforementioned offences.

32. Elaborate arguments were addressed on whether the learned ACMM could have, without their being any fresh material on record, summoned the Petitioners on the basis of the supplementary charge sheets. In other words it is sought to be contended that the impugned summoning order tantamounts to taking cognizance of the offence twice and since in any event a review by the learned ACMM of the earlier order taking cognizance only vis-à-vis Dinesh Chand Sharma was impermissible, no further cognisance could have been taken of the same offence. Reliance is sought to be placed in judgments in *Anirudh Sen v. State 2006 (3) JCC 2081 (Del)*, *Jamuna Singh v. Bhadai Shah AIR 1964 SC 1541* and *D.A.M. Prabhu v. State 131 (2006) DLT 397*. It is further submitted that name of the witnesses Shiv Raj Singh and Anokhe Lal Pal, who as per prosecution version revealed that Dinesh Chand Sharma was given employment at the recommendation of Dharam Vir

Malhotra, and who figured in the charge sheet, were missing in the third charge sheet. It is accordingly submitted that there was no material available before the learned ACMM to summon the Petitioners after a gap of about one year.

33. This Court finds the above submissions to be misconceived. When the learned ACMM observed in the order dated 15th February 2008 that the report under Section 173 CrPC and the documents on record have been examined and further that “the main file has already been put up” clearly the learned ACMM had seen the entire material on record and not just the supplementary charge sheets. The supplementary charge sheet is part of the entire record before the learned MM. That being the position, it matters little whether the names of the witnesses figure in the first charge sheet or in the supplementary charge sheet. These documents only mention the names of the persons, who according to the prosecution, should be sent up for trial. The material against each of them is, according to the prosecution, available in the documents placed along with the charge sheet. It was for the learned ACMM to examine all these materials in order to be satisfied in the first place whether they should be summoned. Thereafter if prosecution is able to satisfy the Court about the existence of material vis-à-vis particular offence for which each of them is sought to be tried, the learned ACMM will take a decision at the stage of the charge. This Court is not able to find any illegality committed by the learned ACMM on this score.

34. It is misconceived to contend that since the learned ACMM summoned only Dinesh Chand Sharma on the basis of the first charge sheet, he was

precluded from summoning any of the Petitioners on the basis of the supplementary charge sheets. The material against the Petitioners emerged as a result of the analysis and in particular the GEQD opinion which has been mentioned in the supplementary charge sheet. It cannot therefore be said that without there being any change whatsoever in the circumstances, the learned ACMM proceeded to summon the Petitioners.

35. The entire material concerning the employment of Dinesh Chand Sharma was not available at the time of filing the initial charge sheet on 20th February 2007. It was observed therein that “during investigation two wages and remuneration register of employees of in which fluid were applied over the name of accused Mr. Dinesh Chand Sharma was seized through seizure memo and have been sent to Government Examiner Questioned Documents, Hyderabad for examination and furnishing of expert opinion. Result from GEQD is still awaited.” The report of GEQD received on 30th April 2007 revealed that on the register of Employment and Remuneration of employees of A-Plus Security and Training Institute for the month of November 2004 to June 2005 white fluid had been applied to the original writings and the name of Ram Karan Singh written thereon. The writing below the fluid read as Dinesh Chand Sharma. It was accordingly concluded by the investigating agency that Dinesh Chand Sharma had remained on the pay roll of the A-Plus Security Agency for eight months. The supplementary charge sheet was accordingly filed against Dinesh Chand Sharma. In fact this confirmed the suspicion expressed in the first charge sheet to the effect that “possibility of Dinesh Chand Sharma tampering with the records at the instance of Prem Prakash Batra acting in the interest of his employers Sushil Ansal and Gopal

Ansal cannot be ruled out.” This Court is unable to therefore accept the submission that the investigation was either unfair or that there was no material on which the learned ACMM could have taken cognizance and summoned the Petitioners.

36. Elaborate submissions have been made on behalf of Sushil Ansal, Gopal Ansal and Dharm Vir Malhotra that there was no material on the basis of which they could be summoned for the aforementioned offences. Each counsel has analysed threadbare the concerned provisions of IPC to submit that the said offences were not even *prima facie* is attracted as regards each of the accused on the basis of the material gathered by the prosecution. It is submitted that the judicial records remain in the custody of the court and are not separately entrusted to any Ahlmad attached to the Court. In other words it is submitted that Ahlmad is a mere record keeper and there is no entrustment to him of the records for safe keeping. It is sought to be submitted that it is doubtful if even the offence under Section 409 IPC is attracted vis-à-vis Dinesh Chand Sharma. The further submission is that if the above position is accepted that there is no question of any of the accused being in the criminal conspiracy with Dinesh Chand Sharma for committing the offence under Section 409 IPC. It is submitted that there must be some physical manifestation of the conspiracy in order to show how the accused were involved in the mutilation/ disappearance of the documents. It is submitted that lack of *mens rea* on the part of the accused vitiated the chargesheets. It is pointed out that inasmuch as none of the accused opposed the application of prosecution for leading the supplementary evidence from the photocopies of those documents, there was no intention of committing

any crime.

37. This Court finds that at the present stage the evidence does not have to be analysed in a great detail to find out if each of the Petitioners can be held to be guilty for the aforementioned offences. They were nine tampered/missing documents. Some of them show that Sushil Ansal was one of the persons actually managing the cinema as he was attending the meeting of the Board of Directors, operating bank accounts, and visiting the cinema regularly and issuing instructions to the staff. This Court had in its order dated 11th September 2001 while dismissing the revision petitions challenging the framing of charges noticed that Sushil Ansal had on 26th June 1995 signed the cheque on behalf of GTPAPL and therefore, appeared to be involved in the affairs of the said company. It is this cheque which went missing and was later found on 10th June 2003 during the course of the trial. Two other cheques signed by Gopal Ansal went missing while one was found during the trial and the other remains untraced.

38. It cannot be said that there is not even a *prima facie* made out against any of the accused and that because none of the accused had anything to gain by documents going missing or being tampered, they should be discharged. This Court would hasten to add that irrespective of the result of the appeals petitioners' against the conviction pending before the Supreme Court, the offence of tampering with the judicial record by either causing documents to disappear or be mutilated or torn could be attracted and that event each of the accused would be liable to face trial for the said offence.

39. Extensive arguments were advanced by learned counsel for the accused to the effect that Section 173 (8) CrPC permits only further investigation and not re-investigation and that the investigation cannot be done piece meal. Reliance was placed on the judgment in *Tunde Gbaja v. Central Bureau of Investigation 2007 (2) JCC 1306 (Del)*.

40. This submission is attractive at first blush but on a careful consideration is without merit. It cannot be predicted with any certainty even at the commencement of investigation whether any material will emerge before the filing of the charge sheet which may point to the guilt of the same accused or any other accused. The gathering of evidence by the investigating agency is an on-going exercise and it may well be possible that by the time the first charge sheet is filed, the entire material is not available and further evidence remains to be discovered. Therefore, the device of filing a supplementary charge sheet is not unknown. It is misconceived to suggest that every supplementary charge sheet can be related only to Section 173 (8) CrPC. In the considered view of this Court it would be a mistake to consider the supplementary charge sheet as being traceable to Section 173 (8) CrPC. It is really a continuation of the investigation in respect of which the first charge sheet has been filed. Usually, as has happened in this case, the charge sheet will itself indicate that investigations are still in progress. The supplementary charge sheets are in that sense a continuation of the initial charge sheet and has to be read along with it. The learned ACMM has at this stage only formed a *prima facie* view and after taking cognizance has summoned the accused. The arguments on charge are yet to be heard. The learned ACMM is entitled to form an opinion on the basis of the existing materials one way

or the other. It is also not possible to countenance the submission of the Petitioners that not even *prima facie* material exists for summoning them for an offence under Section 120 B IPC.

41. It is also sought to be contended that events that took place after the records either disappeared or were mutilated cannot form the subject matter of any offence and is hit by Section 10 of the Evidence Act. It is not possible for this Court to accept the above submission. There appear to be several circumstances relied upon by the prosecution to prove the conspiracy involving the accused. These include the call data conversations between Dinesh Chand Sharma and Prem Prakash Batra, providing employment to Dinesh Chand Sharma after his dismissal from A-Plus Security and Training Institute, applying fluid over his name in the attendance register, giving him double salary by paying cash and so on. The documents would include the opinion of GEQD to prove the white fluid, records of registration of companies pertaining to SEML, balance sheet and IT returns of A-Plus Security, bank details of payment to the accused H.S. Panwar by M/s. Sushant Estate Pvt. Limited, sister concern of M/s. APIL. As observed by the Supreme Court in *Hardeo Singh v. State of Bihar 2000 (5) SCC 623* although there may not be any direct evidence against each of the accused, it would not permit the Court to conclude that not even a *prima facie* case is made out against them for the offence of criminal conspiracy.

42. There is merit in the submission of learned ASG that Section 10 of the Evidence Act would get attracted only where the prosecution seeks to rely upon the statement of a co-accused. There is no such statement of a co-

accused in the present case. The offence of conspiracy is sought to be established on the basis of both oral and documentary evidence and not upon the statement of a co-accused.

43. The allegation that the entire responsibility for the custody of the records cannot be shifted to the Ahlmad is again misconceived. In the functioning of the Court, it is the Ahlmad who is in charge of the records of the case. He keeps the keys of the almirah in which the records are preserved.

44. Each of the counsel insisted that the Court should hear them extensively on the merits of the case. However, towards the end of the arguments, each of them pleaded that the Court should not make any observation which may prejudice their case at a subsequent stage of the case. Having invited the Court to deal with their submissions on merits of the case, this Court finds the plea that it should refrain from dealing those submissions a bit strange. Nevertheless given the scheme of the present CrPC, which seemingly permits several rounds of challenge, this Court is constrained to clarify that the observations made by it in this judgment will not influence the opinion to be formed by the trial court at any of the subsequent stages.

45. For the aforementioned reasons this Court does not find merit in any of the petitions. Each of the petitions is accordingly dismissed with cost of Rs.25,000/-. These costs will be paid to the State within a period of four

weeks from today. The interim orders stand vacated. The pending applications are dismissed. The trial court records be returned to the concerned court forthwith together with a certified copy of this order.

S. MURALIDHAR, J.

SEPTEMBER 3, 2009

rk