

**HIGH COURT OF DELHI AT NEW DELHI**

**BENCH : HON'BLE MR. JUSTICE AMIT SHARMA**

**Date of Decision: April 02, 2024**

CRL.REV.P. 1227/2019 & CRL.M.A. 41031/2019

**SHIV RAJ SINGH ...PETITIONER**

**versus**

**STATE OF NCT OF DELHI & ORS ...RESPONDENTS**

**Legislation:**

Sections 420, 406, 468, 471, 384, 120B of the Indian Penal Code, 1860

Sections 397, 401 of the Criminal Procedure Code, 1973

**Subject:** Criminal revision petition challenging the order of discharge by the Chief Metropolitan Magistrate in a case involving allegations of fraudulent transfer of shares and falsification of company records.

**Headnotes:**

Criminal Revision Petition – Discharge of Respondents by Trial Court Challenged – FIR for offenses under Sections 420/406/468/471/384/120B IPC – Allegations of illegal transfer of shares and fraudulent removal as director – High Court sets aside Trial Court order discharging respondents and remands matter for fresh consideration – Held that Trial Court failed to properly consider chargesheet and other materials provided by the Investigating Officer. [Paras 1, 18-21]

Role of Petitioner as Director and Shareholder – Contention – Alleged illegal transfer of shares and fraudulent removal as director by respondents – Petitioner claims shares were transferred and directorship removed without his consent using forged documents – Issues were also raised before National Company Law Tribunal (NCLT) with contrasting findings – High Court finds that Trial Court did not adequately consider the chargesheet and investigation materials. [Paras 2-7, 18-21]

Decision – Discharge of Respondents Set Aside – Delhi High Court sets aside Trial Court's order discharging respondents – Matter remanded for fresh

consideration on the point of charge – High Court emphasizes need for careful examination of chargesheet and other investigation materials – Directs Trial Court to provide opportunity to parties for representation. [Paras 21-22]

Findings of National Company Law Tribunal (NCLT) – Role in Criminal Proceedings – High Court notes that NCLT’s findings were considered by Trial Court – Observes that material before NCLT was not same as before the criminal court – Emphasizes distinction between civil and criminal proceedings and different standards of proof required. [Paras 3, 19-20]

Referred Cases:

- Radheshyam Kejriwal vs. State of West Bengal, (2011) 3 SCC 581.
- Surinder Kumar Yadav And Ors. vs Suvidya Yadav And Anr., 31 (1987) DLT 13.
- P.S. Rajya v. State of Bihar (1996) 9 SCC 1.
- N.C.T. of Delhi v. Ajay Kumar Tyagi, SLP(Crl.) No. 1383 of 2010.
- State v. M. Krishna Mohan, (2007) 14 SCC 667.
- Kishen Singh v. Gurpal Singh 2010 (8) SCC 775.
- Satish Mehra v. Delhi Administration AND Another, (1996) 9 SCC 766.
- State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568.
- SAS Hospitality Pvt Ltd v. Surya Constructions Pvt Ltd., 2018 SCC Online Del 11909.
- Shashi Prakash Khemka v. NEC Micon, (2019) SCC OnLine SC 223.

Representing Advocates:

Petitioner: Mr. Mukul Gupta, Sr. Adv. with Mr. Virendra Rawat, Mr. N.S. Bisht & Mr. Sumit Kr. Mishra

Respondents: Mr. Mukesh Kumar, APP for the State; Respondent no.2 in person and as a AR of respondent no.3 & 4

## **JUDGMENT**

### **AMIT SHARMA, J.**

1. The present petition under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 („CrPC“) assails order dated 17.08.2019 passed by the learned Chief Metropolitan Magistrate, Rohini, Delhi in C.C. No. 529169/2016, whereby the learned Magistrate was pleased to discharge respondents no. 2 to 4 in case FIR No. 177/2013 under Sections 420/406/468/471/384 read with section 120B of the Indian Penal Code, 1860 („IPC“) registered at PS Economic Offences Wing (District South), New Delhi („EOW“).

## **Background**

2. The case of the petitioner, Sh. Shiv Raj Singh as set out in the FIR registered at his instance is as under:

- i. The complaint was filed by the petitioner in his capacity as one of the Directors of M/s Kempty Konstructions Private Limited, stating that 988 shares of the aforesaid company were in his name, and it was alleged that the same got transferred to respondent no.2 because the company secretary Sh. A.K. Popli filed fake/forged documents with the Registrar of Companies („RoC“) misusing the digital signatures of the petitioner in the period November-December 2009.
- ii. The petitioner alleged that he neither signed any transfer deed nor did he receive any consideration from respondent no.2 for the alleged transfer of his 998 shares.
- iii. It is further alleged that the Petitioner was removed from the post of Director of M/s Kempty Konstruction Pvt. Ltd surreptitiously by respondent no. 2 by the way of filing fake/forged documents with Form 32 and the petitioner did not resign from his position at the company voluntarily.
- iv. The petitioner also alleged that respondents no.3 and 4 were appointed Directors of M/s Kempty Konstruction Pvt. Ltd in the year 2005, however they have failed to disclose as to how they were appointed the Directors.
- v. Further respondent no.3 and respondent no.4 have also been allotted ten shares of the aforesaid company, however they have failed to disclose as to how were the shares allotted to them.
- vi. After investigation chargesheet against respondents no.2 to 4 under Sections 420/406/468/471/384/120B, of the IPC was filed before the learned Trial Court.

3. Based on the aforesaid chargesheet, the learned Trial Court, on the point of charge, observed that the facts mentioned in the chargesheet *qua* the accused persons were also the subject matter of C.P. No. 104/ND/2011 titled „Shiv Raj Singh Vs. M/s Kemptv Konstruction Pvt. Ltd. and Ors.“ before the learned National Company Law Tribunal („NCLT“), and observed as under:

"It is relevant to mention here that the facts mentioned in the charge sheet qua the accused persons were also the subject matter before the National Company Law Tribunal, in the matter of Shiv Raj Singh Vs. M/s Kempty Konstruction Pvt. Ltd. and Ors., wherein the Ld. Tribunal held that:-

From the pleadings on record, documents relied, and upon hearing arguments addressed by the Ld. Senior counsels, this Bench is of the opinion that the resignation of the petitioner cannot be opined as

being fraudulent. His allegations of removal as a Director of the respondent company are also without any legs to stand upon. Form32 along with his resignation letter was duly uploaded with the ROC. It is the easiest of the allegations to deny a document as being forged or the digital signatures being misused by any other person. This has to be seen in conjunction with the other ancillary facts. There is no denial to the execution of the MOU which clearly acknowledges money being received by the petitioner with the understanding that upon failure to return the loan, the respondent no. 2 would be entitled to transfer the same to himself. The petitioner has nowhere denied taking financial assistance nor having executed the MOU. Further, he has not been able to show that he has failed to liquidate the loan. Under such circumstances, it cannot be said that the transfer of 998 shares was not for valuable consideration received. As per the annual report filed for the year 2007-08, it has clearly been reflected that while respondent no. 2 holds 998 shares, the petitioners share holding is "zero". This return bears the digital signatures of the petitioner as well as the company secretary Sh. A. K. Popli.

The National Company Law Tribunal held that "Not only is the certificate of the auditor on record confirming the same, the respondents have been able to co-relate the remittance to the auditor from the personal account of the petitioner. Therefore, in the light of documentary evidence, the allegations of the petitioner remain unsubstantiated. Further, it would fall only within the domain of civil litigation to declare the said transfer of share void or illegal on his proving that he is entitled to their return. Since the petitioner at the moment is not a shareholder and has not been able to satisfy this Bench that the same were transferred illegally, the present petitioner suffers from the disability under Section 399 of the Companies Act, 1956. Even otherwise, in equity, the petitioner has failed to satisfy this Bench that he is entitled to the prayers made in the present case. We do not find any merit in the allegations made by the petitioner in respect "of oppression and mis-management. The allegations are self-serving with the view of cause harassment to the respondent and pressurize them to return properties legally conveyed. The petitioner is dismissed with the cost of Rs. 20,000/-.

The order of National Company Law Tribunal was challenged before the National Company Law Appellate Tribunal, New Delhi without success. The same was then challenged before the Hon'ble Supreme Court, however, the complainant failed to get any relief from the Hon'ble Supreme Court. It is observed here that the National Company Law Tribunal exercises the power of Civil Court and has an exclusive domain over the company matters. Hence, this Court has the benefit of findings on facts given by National Company Law Tribunal, which in fact dealt the said allegations in detail and gave the findings thereon. The findings on facts by National company Law Tribunal shall prevail upon the criminal Court and therefore, this Court cannot re-examine the same facts and take a different view. Here, reliance is placed upon the judgment of the Hon'ble Supreme Court in the matter of **Radheshyam Kejriwal vs. State of West Bengal, (2011) 3 SCC 581**, wherein the Hon'ble Supreme Court held in case of exoneration on merits in adjudication of civil nature, where the allegations are found not to be sustainable at all and person concerned is held innocent, the criminal prosecution on the same set of facts and circumstances cannot be

allowed to continue, underlying principle being the higher Standard of proof in criminal cases.

Accordingly, no prima facie case is made out to frame charge against the accused persons.

All three accused persons namely Kamal Jain, Manoj Jain and Sunil Aggarwal are discharged for the offence u/s 420/406/468/471/384/120B IPC with direction to furnish bail bond u/s 437 A Cr.PC for the amount of Rs. 20,000/- each.”

#### **Submissions on behalf of the Petitioner**

4. Learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner is one of the directors of Kempty Konstructions Private Limited. The authorised share capital of the aforesaid company is Rs 25,00,000/- (Rupees Twenty-Five Lakhs only) divided into 25,000 equity shares of Rs. 100/- each and paid-up share capital as per the MCA Master Data is Rs. 1,02,000/- (Rupee One Lakh Two Thousand only) divided into 1,020 equity shares of Rs.100/- each wherein 20 shares are in dispute. The petitioner herein was appointed as director on 06.12.1991 and allotted 3 equity shares. Pursuant to amendments in the Companies Act, 1956, requiring the minimum paid-up capital of a private company to be Rs. 1,00,000/-, the aforesaid company duly allotted 995 equity shares of Rs 100/- each of the aforesaid company to the Petitioner.

5. Learned Senior Counsel appearing on behalf of the petitioner also submitted that respondent no.2 was a family friend of the petitioner and a Chartered Accountant by profession and owing to mutual trust and good faith he was entrusted with the responsibility of statutory compliance and functioning of the aforesaid company. Respondent no. 2 also used to handle other works of the petitioner like filing Income Tax Returns with Income Tax Authority.

6. Learned Senior Counsel for the petitioner pointed out that due to a dispute between the petitioner and respondent no.2 in 2011 regarding handing over of the title documents with respect to two shops located at 2/28, Roop Nagar, New Delhi, the petitioner got suspicious and worried of respondent no.2's behaviour and dishonest intention and therefore, on 14.08.2011 he inspected the website of Ministry of Corporate Affairs and was shocked to know about the actual position of the aforesaid company as his shareholding had been reduced to Nil (as per the unsigned annual returns of the year 200708). The records also revealed that on 10.03.2005, respondent no.2 had illegally allotted 10 equity shares each of the aforesaid company to

respondents no. 3 and 4, who as per the chargesheet filed in the present case, are relatives of respondent no. 2.

7. It was further pointed out by learned Senior Counsel for the petitioner that respondent no.2 had unlawfully transferred the petitioner's 998 equity shares of the aforesaid company to himself on 28.09.2008 after illegally appointing himself as a director on 25.09.2008 by misusing the digital signatures of the petitioner. Pursuant to the above the petitioner filed a complaint dated 26.09.2011 with the Deputy Commissioner of Police (Crime), New Delhi with respect to the illegal acts committed by respondent no. 2, and the same was converted into an F.I.R. bearing no. 177/2013 on 19.07.2023. Pursuant to the completion of the investigation a chargesheet dated 22.02.2014 had been submitted before the learned Chief Metropolitan Magistrate, Rohini Court, New Delhi on the ground that there is sufficient evidence against respondents no. 2 to 4 for their prosecution. It was also urged that the learned Trial Court did not appreciate the fact that the alleged resignation letter of the petitioner from the directorship of the aforesaid company was dated 21.10.2008 and the Annual Returns of the abovementioned Company, for the year 2005-08 was filed on 21.11.2009, 25.11.2009 and 05.12.2009 respectively, with the digital signature of the petitioner with the ROC by one witness namely Mr A.K. Popli and his statement during the investigation supported the case of the petitioner.

8. Learned Senior Counsel for the petitioner submitted that the learned Trial Court, *vide* its impugned judgement dated 17.08.2019, has misinterpreted the order dated 10.07.2017 passed by the learned NCLT and has erred in discharging respondents no. 2 to 4 by considering the learned NCLT to be the exclusive domain over company matters. It was further submitted that the learned Trial Court did not appreciate the documentary evidence and the statement of the petitioner and other witnesses provided by the Investigating Officer with the chargesheet. Learned Senior Counsel for the petitioner asserted that it is a settled legal position that at the stage of framing of charges, the learned Trial Court can only consider the chargesheet and documents sent with it under Section 207 of CrPC and no other document can be taken into consideration including the documents provided by the accused. However, the learned Trial Court solely relied upon the order of the learned NCLT which did not even form a part of the chargesheet. The petitioner contended that the impugned order has been passed in violation of the judgement of this Hon'ble Court in **Surinder Kumar Yadav And Ors.**



**vs Suvidya Yadav And Anr., 31 (1987) DLT 13**, wherein it has been held as under:

"The plain reading of Section 239 Criminal Procedure Code would go to show that whereas this provision talks of the consideration of documents sent by the prosecution along with the police report u/s 173 Criminal Procedure Code. and the police report, it is silent about any documents to be produced by the accused. It simply talks of the examination if any, of the accused as the Magistrate thinks necessary and also an opportunity to the prosecution as well as the accused of being heard. It is not open to the Magistrate to consider any other document which is not covered by the provisions of Section 207 Criminal Procedure Code, as that would widen the scope of the inquiry and necessitate an inquiry about the nature and origin of such documents, which can be done only during the trial, which- means after charges have been framed."

9. Learned Senior Counsel for the petitioner also highlighted that the impugned judgement passed by the learned Trial court suffers from misinterpretation of law and the observations made therein are not conclusive in nature as per Para 17 of the learned NCLT's judgement. However, the petitioner has filed a petition under Section 59 of the Companies Act 2013 and the said petition is pending adjudication before the learned NCLT. It was further contended that the learned Trial Court has erred in placing reliance on **Radheshyam Kejriwal (supra)**, as the facts and circumstances of the said case were different from the present case. The issue in **Radheshyam Kejriwal (supra)** was regarding erstwhile Foreign Exchange Regulations Act, 1973 („FERA“) and the subsequent breach of its regulations. FERA had its own Investigating Agency under which the concerned Enforcement Officer, after conducting the departmental enquiry filed its report as per the investigation done by him. The adjudication done by a quasi-judicial body such as the learned NCLT cannot be said to be the same as the adjudication done in a departmental enquiry by an Enforcement Officer. Therefore, it was submitted that the learned Trial court has wrongly discharged respondents no. 2 to 4 in the present case. Learned Senior Counsel for the petitioner also highlighted that the Hon“ble Supreme Court, in **Radheshyam Kejriwal (supra)** has reiterated the principles laid down in **P.S. Rajya v. State of Bihar (1996) 9 SCC 1**, which also came up for consideration before a threejudge bench of the Hon“ble Supreme Court in **N.C.T. of Delhi v. Ajay Kumar Tyagi, SLP(Crl.) No. 1383 of 2010** wherein *vide* order dated 31.08.2012, it has been held as under:

“...The decision in the case of P.S. Rajya (Supra), therefore does not lay down any proposition that on exoneration of Page 13 an employee in

the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed. It is well settled that the decision is an authority for what it actually decides and not what flows from it. Mere fact that in P.S. Rajya (Supra), this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground....

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It is worth mentioning that decision in P.S. Rajya (supra) came up for consideration before a two-Judge Bench of this Court earlier, in the case of State v. M. Krishna Mohan, (2007) 14 SCC 667. While answering an identical question i.e. whether a person exonerated in the departmental enquiry would be entitled to acquittal in the criminal proceeding on that ground alone, this Court came to the conclusion that exoneration in departmental proceeding ipso fact would not lead to the acquittal of the accused in the criminal trial. This Court observed emphatically that decision in P.S. Rajya (supra) was rendered on peculiar facts obtaining therein.”

10. In support of his contentions, Learned Senior Counsel for the petitioner further placed reliance on **Kishen Singh v. Gurpal Singh 2010 (8) SCC 775**, wherein in Para 18, it has been observed and held as under:

“18. Thus, in view of the above the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

11. Learned Senior Counsel for the petitioner also submits that the reply filed on behalf of the respondents is primarily based on an alleged Memorandum of Understanding („MoU“) dated 24.09.2008 executed between the petitioner and respondent no. 2 in their personal capacity. The said MoU is a private arrangement between the parties, if at all, and has no bearing on the affairs of the petitioner’s company. It was further pointed out that the alleged amount of Rs.80,00,000/- purportedly due from the petitioner to respondent no. 2 has not even been mentioned in the MoU so as to quantify the consideration with respect to the transfer of 998 equity shares held by the petitioner in his company in favour of respondent no. 2. It was mentioned that the petitioner’s company is not even a party to the said MoU allegedly executed between the petitioner and respondent no. 2 and that the



said MoU is a forged and fabricated document which does not bear the true signatures of the petitioner.

**Submissions on behalf of Respondents No.2 to 4.**

12. *Per contra*, respondent no.2, who appeared in-person as well as on behalf of respondents no.3 and 4, submitted that the petitioner himself is an accused in an FIR no. 538/2021 under Sections 420/406/468/471/120B of the IPC registered at PS Ashok Vihar against him pursuant to order dated 01.11.2021 passed by the learned Additional Chief Metropolitan Magistrate, on an application under Section 156(3) of the CrPC. The said FIR was registered in relation to allegations of him cheating respondent no.2 of Rs 25 Crore, under an MoU dated 24.09.2008. It was further submitted that the petitioner has hatched a criminal conspiracy against respondents no. 2 to 4.

13. It is also submitted that the petitioner has not denied the execution of the said MoU before the learned NCLT. It was further submitted that forgery has not been established as the alleged signatures of the petitioner were not sent to FSL by the Investigating Officer. Further reliance was placed on the Hon'ble Supreme Court's judgement in **Satish Mehra v. Delhi Administration AND Another, (1996) 9 SCC 766**, to establish that documents can be placed before the learned Trial Court, whereby the said documents in possession of the accused can be considered by the learned Trial Court at the stage of consideration on the point of charge.

14. Respondent no. 2 vehemently denied that the filing of the annual return for Financial Years 2005-06, 2006-07 and 2007-08 was without the consent or knowledge of the petitioner. It was pointed out that all payments for filing the forms was paid by the petitioner himself from his firms" bank account and he failed to counter this fact before the learned NCLT. It was further pointed out that the Investigating Officer was duty bound to put on record before the learned Trial Court, all the relevant orders including those passed by the learned NCLT, learned NCLAT and the Hon'ble Supreme Court by way of a supplementary chargesheet but the Investigating Officer deliberately did not file the aforesaid orders.

15. Respondent no. 2 submitted that the present dispute is civil in nature and Section 430 of the Companies Act, 2013 has explicitly excluded the jurisdiction of any other Court '*in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine*' and hence findings of the learned NCLT shall stand on highest footing as the Tribunal exclusively deals with cases on company matters. It was further pointed out that issue of jurisdiction as to whether a Civil Court or the learned NCLT are competent to

handle company matters came up for consideration before a Coordinate Bench of this Court in **SAS Hospitality Pvt Ltd v. Surya Constructions Pvt Ltd., 2018 SCC Online Del 11909** and it was held as under:

**15.** The bar contained in Section 430 of the 2013 Act is in respect of entertaining “any suit”, or “any proceedings” which the NCLT is “empowered to determine”. The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos. 5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos. 5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No. 1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.

**16.** The allegations in the present case relate to non-compliance of the stipulations in Section 62 of the 2013 Act. The non-compliance of any conditions contained in Section 62 of the 2013 Act also constitutes mismanagement of the company, inasmuch as under Section 241 of the 2013 Act, the conduct of affairs of the company “in a manner prejudicial” to any member or “in a manner prejudicial to the interest of the company”, would be governed by the same. The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass “such order as it thinks fit”, including providing for “regulation of conduct of affairs of the company in future”. These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.”

**16.** Reliance has been placed on the judgment of Hon<sup>ble</sup> Supreme Court in **Shashi Prakash Khemka v. NEC Micon, (2019) SCC OnLine SC 223**, wherein it was observed as under:

**5.** The learned counsel has also drawn our attention to Section 430 of the Act, which reads as under:

**“430. Civil court not to have jurisdiction.**—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.” The effect of the aforesaid provision is that in matters in respect of which power has been conferred on NCLT, the jurisdiction of the civil court is completely barred.”

### **Rejoinder on behalf of the Petitioner**

17. Learned Senior Counsel appearing on behalf of the petitioner submitted that the alleged resignation letter dated 20.10.2008 filed with the RoC in Form No.32 has not been signed by the petitioner. It was argued that the letter of resignation was dated 20.10.2008, however, the aforesaid form was uploaded in the year 2009. It was further submitted that the company secretary Sh. A.K. Popli in his statement to the Investigating Officer has stated that resignation letter dated 20.10.2008, was not brought to his knowledge at the time of filing the documents in the period November-December 2009

**Analysis and Findings**

18. Heard learned counsel for the parties and perused the record. The relevant portion of chargesheet records as under:

“Documents collected during investigation revealed that in the annual returns etc. filed on the behalf of the company with the ROC for the financial year ending on 31-03-2006 and 31-03-2007 the complainant is shown to be one of the Directors of the company M/s Kempty Konstructions Pvt Ltd. having 998 shares in his name out of its total 1020 allotted shares to its share holders. Hence, in this manner he was having about 97.84% shares of the said company in his name. The annual return of the financial year ending on 31-03-2008 filed with the ROC revealed that the above mentioned all the shares of the complainant have been transferred in the name of accused Sh. Kamal Jain. Later on, the complainant is removed from the post of the Director of the said company w.e.f. 21-10-2008 by way of filing the form no. 32 regarding his resignation letter dated 20-10-2008 purported to be submitted by complainant Shiv Raj Singh. All the above mentioned documents were filed in the year 2009 & 2010 with effect from back dates. Accused Kamal Jain has stated that Sh. A.K. Popli, the company Secretary, filed most of the documents on the instruction of complainant himself except resignation letter of the complainant Shiv Raj Singh. Accused Kamal Jain has supplied the copy of the certificate issued by Sh. A.K. Popli in support of his version regarding filing of the documents in question with the ROC.

The detail of the alleged fake/forged documents filed with the ROC in the year 2009 & 2010 are as follows:-

Sl No.	Detail of the document filed with the ROC	Date of filing	Name of the person filing the documents
1.	Appointment of Sh. Kamal Jain as Director w.e.f. 25.09.2008	21.11.2009	Sh. A.K. Popli
2.	Annual Return, Balance Sheet etc. for the financial year ended on	21.11.2009	Sh. A.K. Popli

	31.03.2006		
3.	Annual Return, Balance Sheet etc. for the financial year ended on 31.03.2006	21.11.2009 & 25.11.2009	Sh. A.K. Popli
4.	Annual Return, Balance Sheet etc. for the financial year ended on 31.03.2008	05.12.2009	Sh. A.K. Popli
5.	Form 32 regarding removal of Shiv Raj Singh from the Directorship of the company w.e.f. 21.10.2008	07.01.2010	Sh. Kamal Jain

Scrutiny of the above mentioned documents revealed that the documents vide which accused Kamal Jain was appointed as Director of the company and the share holding of the complainant was transferred in the name of Kamal Jain, were filed with the ROC by company Secretary Sh. A.K. Popli in the period November-December 2009 w.e.f. back dates i.e. 2006 onwards. Form 32 related to the removal of the complainant from Board of Directors is found to be filed by the accused Kamal Jain on dated 07-01-2010. During investigation, accused Kamal Jain has admitted filing of above said form no. 32 vide which complainant Shiv Raj Singh was removed from the Directorship of the company. Accused was directed to produce the original of the documents i.e AGM etc. as well as resignation letter of the complainant, if any, with him but he denied having the original resignation letter in his possession claiming all records of the company are with the complainant himself. On the other hand complainant denied having ever resigned from the Board of the Directors of the company as well as transferring his shares in favour of accused Kamal Jain. Investigation revealed that the resignation letter of the complainant filed by Kamal Jain with the ROC is unsigned and 'sd' is written at the place of the signature of Shiv Raj Singh. Complainant has alleged that accused Kamal Jain being C.A. of their company was handling the matters related to the filing of the documents with the ROC as well as other agencies and he got managed to file the fake/forged documents with the ROC through A.K. Popli in the period November-December 2009 with dishonest intention for the purpose of benefiting himself (Kamal Jain).

**During investigation above named Sh. Anil Kumar Popli (AK. Popli) was examined who has admitted that the certificate dated 14-05-2013 was issued by him on the demand of the accused Kamal Jain. It is mentioned in the certificate that the above said documents were filed by him on the instruction of Shiv Raj Singh, the complainant. However, during examination on seeing the photograph of the complainant Shiv Raj Singh, Sh. A.K. Popli has confirmed that he never met him**

**regarding filing of the documents in question. He is of the version that someone contacted him telephonically introducing himself being Shiv Raj Singh but the person who had come to him introduced himself from the accounts department of the company and supplied the documents which were to be filed with the ROC.** He further stated that all the above mentioned documents were tiled by him in his professional capacity. He has stated that he is not in the position to recognize the person who had supplied him the documents in question as well as digital signatures of Shiv Raj Singh as the matter is about 04-05 years old. He further clarified that the DIN number of Shiv Raj Singh was supplied to him bearing his photograph and on the basis of the same he is in a position to confirm that the said person Shiv Raj Singh did not meet him at that time and someone else had approached him for filing the related documents. **He has also clarified that the alleged fake/forged resignation letter dated 20-10-08 of Sh. Shivraj Singh, if any, was not brought to his knowledge at the time of filing the documents in the period November-December 2009 and the said letter, if any, was concealed from him. He has stated that above said documents were filed in the digital signatures of Shiv Raj Singh and the concerned person of the company, who had come to him, has brought the digital signatures of Shiv Raj Singh in a pen drive for uploading the documents with the ROC. He has stated that had the resignation letter of Shiv Raj Singh been in his knowledge, he would have not filed the documents in question with the ROC using the digital signatures of Shiv Raj Singh. He is of the opinion that resignation letter dated 20-10-08 of the complainant, if any, should have been filed with the ROC soon after the resignation of Shiv Raj Singh or prior to the filing of any other documents after the date of his resignation.**

It clearly indicates that the documents related to the appointment of accused Kamal Jain as Director in the above said company as well as transfer of 998 shares of the said company owned by the complainant in favour of accused Kamal Jain were managed to get filed with the ROC from the side of the complainant himself. **Resignation letter of the complainant from the post of Director of the company M/s Kempty Konstructions Pvt. Ltd., if any, was concealed from Sh. A.K. Popli at the time of filing. the documents by him and the said letter same was filed later on by the accused Kamal Jain in January, 2010 in his digital signatures being Director of the said company. investigation revealed that the resignation letter filed with the ROC by accused Kamal Jain does not, bear the signature of the complainant and merely 'sd' is written at the place of the signature of Shiv Raj Singh.** On examination, complainant denied having ever signed such resignation letter and alleged that the accused Kamal Jain has prepared and filed the fake/forged resignation letter removing him (complainant) from the board of Directors of the company. Efforts were made to trace/recover the said letter, if any, but the same could not be recovered. As, the beneficiary is accused Kamal Jain himself, he should have kept the original resignation letter of the complainant with him or in the records of the company. His plea that the original resignation letter is with the complainant himself cannot be believed as being Director of the company the records etc. should be in their possession only.

So, the investigation revealed that the accused person has filed the resignation letter of the complainant in the absence of his original signed resignation letter with the dishonest intention to remove him from the board of Directors of the company and to take over the full control of the company in his own hands along with its assets i.e. the 05 Bighas Land at Mussorie. **Being beneficiary of the filing of the fake documents with the ROC by way of misusing the digital signatures of the complainant without his knowledge and consent as well as concealment of the resignation**



**letter of the complainant if any from Sh. A.K. Popli, the company Secretary, it is sufficient to prove that accused Kamal Jain has committed the offence u/s 468/471 IPC in this matter**

Accused Kamal Jain is the beneficiary of the transfer of 998 shares owned by the complainant in the company Mis Kempty Konstructions Pvt. Ltd. which were transferred in the name of accused Kamal Jain from the name of the complainant. Being beneficiary of the transfer of the shares he was directed to produce the transfer deed etc. signed by the complainant for the transfer of said shares in his favour as well as the proof of- the payment made to the complainant, if any, with him, for the purchase/transfer of those shares but he could not produce such transfer deed or the proof of the payment. Complainant has stated that the accused Kamal-Jain has got filed several fake and forged documents with the ROC at his own mentioning therein that the above said 998 shares owned by the complainant is transferred in his name. **Investigation revealed that the documents i.e. notices of the AGM, Lists of share holders, balance sheets which were filed for the financial years 2006 to 2008 are not signed by any of the directors and merely 'sd' is written at the places of the signatures of the Directors of the company. Accused Kamal Jain as well as other Directors of the company were directed to produce the original of the said papers signed by the concerned directors but none of them could produce the same. Hence, said documents are proved to be fake/forged.**

(emphasis supplied)

19. Without going into the details of the present case, this Court is of the considered opinion that the learned Trial Court while passing the impugned order did not take into consideration the aforesaid facts as mentioned in the chargesheet as well as other material placed on record by the Investigating Officer. So far as the reliance placed by respondent no. 2 to 4 on the judgment of Hon<sup>ble</sup> Supreme Court in **Satish Mehra (supra)** is concerned, it is relevant to note that the said judgment has been overruled by the Hon<sup>ble</sup> Supreme Court in **State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568**, wherein it has been recorded as under:

"18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and



documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

**23.** As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

- 20.** So far as the ground that the petitioner did not specifically deny the execution of the MoU in the proceedings before the learned NCLT is concerned, it is pertinent to note that the rejoinder filed on behalf of the petitioner before the Company Law Board was placed on record wherein in paragraph 2 thereof, it was categorically stated that the MoU is a forged and fabricated document and does not bear the true signatures of the petitioner. It is also pertinent to note that the material placed by the Investigating Officer along with the chargesheet filed before the learned Trial Court was not placed on record before the learned NCLT.
- 21.** In view of the above, the present petition is allowed. The impugned order dated 17.08.2019 passed by the Learned Trial Court is set aside. The matter is remanded back to the learned Trial Court for fresh consideration on the point of charge. The learned Trial Court shall give opportunity to the parties and thereafter pass appropriate orders in accordance with law. It is clarified that this Court has not expressed any opinion on the merits of the case.
- 22.** The parties are directed to appear before the learned Trial Court on 22.04.2024 at 2:30 PM. With the aforesaid directions, the petition is allowed and disposed of.
- 23.** Pending application(s), if any, also stand disposed of.
- 24.** Copy of this judgment to be sent to the learned Trial Court for necessary information and compliance.
- 25.** Judgment be uploaded on the website of this Court, *forthwith*.

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