**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(119) **CRR-563-2021 (O & M)
Date of Decision : 04.12.2024**

Amit Katyal …Petitioner

Versus

Central Bureau of Investigation ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Himanshu Arora, Advocate
Mr. Arnav Ghai, Advocate and
Mr. Sumit Chahal, Advocate
for the petitioner.

Mr. Ravi Kamal Gupta, Advocate
for the respondent-CBI.

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KULDEEP TIWARI, J.(Oral)

1. The instant statutory revision is directed against the impugned order dated 09.03.2021, passed by the learned Special Judge, Central Bureau of Investigation, Panchkula, wherethrough, the petitioner has been summoned, as an additional accused, to face trial, for committing the offence under Section 120-B read with Sections 420, 468 and 471 of the IPC, 1860, and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'the PC Act of 1988'), in case bearing FIR No.RCAC-I2019A0002 dated 23.01.2019, registered by the Central Bureau of Investigation (CBI).

2. The genesis of the instant FIR, lies in a decision dated 01.11.2017, passed by the Hon'ble Supreme Court, in Civil Appeal No.8977

of 2014, whereby, specific directions were issued to the Central Bureau of Investigation (hereinafter to be referred as 'CBI'), to investigate the matter regarding nexus of officers/officials of the Town and Country Planning, Department of Haryana, and the colonizer company/builder, which in fact, has caused wrongful loss, not only to the original land owner but also to the State Exchequer.

3. The FIR (supra), was registered against 17 known persons, which includes the then Chief Minister of Haryana, the then Chief Administrator, HUDA, Director Urban Estate and the Director, Town and Country Planning, Department of Haryana, and some unknown private persons as well as public servants. The CBI, adopted the procedures of conducting the investigation regarding each licence separately, and consequent upon the investigation, the final report/chargesheet, qua licence No.64 of 2010, issued in favour of M/s. Krrish Buildtech Pvt. Ltd. (now M/s. Brahma City Pvt. Ltd.), through its Managing Director (present petitioner), and three other public servants, for committing the offence under Section 120-B read with Sections 420, 468 and 471 of the IPC, 1860, and Section 13(2) read with Section 13(1) (d) of the PC Act of 1988, for developing plotted colony on 151.569 acres of land, situated in Sectors 60 to 63, Gurugram, by releasing 130.256 acres notified land from the acquisition proceedings.

4. At the time of taking cognizance, the learned trial Court concerned, vide its order dated 10.02.2021, directed the Investigating Officer, of the present case, to file an affidavit, specifically mentioning therein, as to how and why and under what circumstances, the name of the present petitioner i.e. Amit Katyal, was not included in the array of the accused persons. In pursuance to the directions (supra), an affidavit was filed by the

Investigating Officer concerned, and finally, the learned trial Court, vide impugned order dated 09.03.2021, summoned the present petitioner, as an additional accused, in exercising its powers, as envisaged under Section 19 of Cr.P.C.

5. Before proceeding further, it is apt to have a glimpse on the allegations, as alleged in the instant FIR. The study survey of the FIR, reflects the following things :-

> i) During the year 2007-12, some of the accused colonizer company dishonestly and fraudulently entered into a criminal conspiracy with the then Chief Minister of Haryana and Minister in-charge of Directorate of Town and Country Planning, Haryana, and the then Chief Administrator, HUDA, subsequently, posted as Director Urban Estate and Director Town and Country Planning, Haryana, with intent to cheat related land owners, public at large, and the State and in pursuance of the said criminal conspiracy, issued notification under Section 4, and subsequently, under Section 6 of the Land Acquisition Act, 1894 (hereinafter to be referred to as 'the Act of 1894') of the land in question, and compelled the land owners to sell their land to the accused colonizer at lower price, than the price prevalent before the notification issued under Section 4 of the Act of 1894, and fraudulently an dishonestly obtained letter of intents/licence on the notified land and caused loss to the respective land owners, public at large and the State of Haryana, and made corresponding wrongful gain to themselves;
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> ii) It is further reflected in the preliminary enquiry that with a view to compel the land owner, who did not want to sell their land to the colonizer company, to sell their land at lesser price, than the price before notification, the accused colonizer company **managed to get issued notification under Section 4 of the Act of 1894**, for the total area

1417.07 acres situated at village Nangli, Umarpur, Ghata, Tigra, Ulahwas, Kadarpur, Maidawas, Badshahpur and Bahrampur (Sector 58 to 63 and 65 to 67. Gurugram), which was scattered in many of the pockets sandwiched between licensed land/land on which licenses were applied, land falling under revenue rasta, nallah etc. and thus not useful for the use by HUDA (now HSVP) and subsequently fraudulently and dishonestly getting Lol/Licenses issued to them and the land was released from acquisition process;

iii) It is further transpired during the preliminary enquiry that in furtherance of the criminal conspiracy, the the colonizer companies, which had in possession of land in their own names, at the time of issuance of notification under Section 4 of the Act of 1894, applied for Lol/License and managed to get the respective land released from the acquisition process, as they have deep nexus with the officers/officials of the department concerned;

iv) The enquiry has further reflected that, after issuance of notification under Section 4 of the *ibid* Act, the accused colonizer companies purchased lands from the land owners through General Power of Attorneys/Agreements to Sell/Special Power of Attorneys/Collaboration Agreements. Some of the General Power of Attorneys were registered at the office of Sub-Registrar, other than the jurisdictional area of Gurugram/Sohna, by mentioning fake local addresses of the land owners. The accused colonizer companies applied for issuance of LOl/license, in the name of land owners and on the basis of application, they obtained Letter of Intent/License.

v) It is further surfaced that some of the collaboration agreements executed between the colonizers and the land owners, are in fact, ante dated whereas, such agreements empowering the colonizers, to apply for grant of license were actually executed after issuance of the notification under Section 4 of the *ibid* Act.

vi) The Minister in-charge of the officer concerned, knowingly well above all, firstly got the related land notified under Section 4, and subsequently, under Section 6 of the *ibid* Act, and simultaneously recommended approved release of land and approved grant of LOI/License to land owners/colonizers, in order to give undue benefit to the colonizer companies, and thus, caused wrongful loss to the related land owners;

vii) During the preliminary investigation, it is further refected that notification under Section 4 of the Act of 1894, was issued on dated 02.06.2009, for total area of 1417.07 acres and notification under Section 6 the Act of 1894, were issued on dated 31.05.2010, for total area of 850.10 acres. It has further been revealed that during the notification period approximately 616.397575 acres of land were released in favour of collaborators/colonizers, as a result of which, the High Powered Committee, constituted under the order dated 02.08.2011, passed by this High Court in CWP No.12251 of 2010 - Bega and others Vs. State of Haryana and others, recommended for acquisition of only 85.95 acres of land, which was approved on dated 28.05.2012, on the ground that the notified land was not worth acquisition because these areas were scattered in 153 pockets and the pockets having sizes of few marlas to few acres and utilization of those 153 pockets having irregular shape would be difficult. Finally, the award under Section 9 of the *ibid* Act, was passed qua 85.95 acres of land. The total 616.397575 acres of land of the colonizer company were released from the acquisition proceedings from time to time.

6. There are specific allegations in the FIR, against the present accused company, i.e. M/s. Krrish Buildtech Pvt. Ltd., which is represented through the present petitioner-Amit Katyal, to the extent, that he dishonestly

and fraudulently, applied LOI on dated 20.04.2010, on the basis of inadequate documents i.e. **defective ante dated collaboration agreements, General Power of Attorney, Special Power of Attorney etc.** and managed to get LOI, for an area of 151.631 acres, which was recommended and approved by the then, Chief Administrator, and the Minister In-charge. The enquiry, qua the present accused company, also revealed that after getting agreement with M/s Gupta Promoters Pvt. Ltd. and others, the accused company had applied for licence. Earlier, M/s Gupta Promoters Pvt. Ltd. got collaboration agreement with the land owners for around 30-35 acres of land, at Rs.2.20 crores per acre. After collaboration agreement, the company M/s Gupta Promoters Pvt. Ltd., transferred the said land to the present accused company for an amount of rupees three crore per acre. Thereupon, the investigation qua the licence No.64, pertaining to the accused company, was concluded and the chargesheet was filed in the Special Court, CBI, Panchkula.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONER

7. Learned Senior counsel for the petitioner, while making an attempt to throw challenge to the impugned order, vociferously submitted that the directions issued by the Special Judge, CBI, on dated 11.02.2021, to submit a specific affidavit, disclosing therein, as to how and why and under what circumstances, the name of the present petitioner-Amit Katyal, has not been included in the array of accused, clearly reflects the preconceived and predetermined approach of the Court, which also suggests that the Court is putting words in the mouth of the investigating officer, which is contrary to the settled principles of law, and this would tantamount to unwarranted interference related to the investigation, which could not be sustainable in the eyes of law, and for that, he placed reliance upon the judgment passed by the

Hon'ble Supreme Court, in ***'M.C. Abraham and another vs. State of Maharashtra and others' (2003) 2 SCC 649***.

8. In furtherance of his submissions, learned senior counsel has made further additions that the role of the present petitioner has already been looked into and investigated by the CBI, and on the basis of the opinion formed by the CBI, as there was no material to implicate the petitioner, he was rightly not arrayed, as an accused. The present petitioner, being the Director of the company was only acting on behalf of the company, as there was no active role attributed to the present petitioner, therefore, made him vicarious liable. There is no *mensrea* which could attribute to the present petitioner, warranting him to face trial with the accused company.

9. While drawing the attention of this Court towards the impugned order, learned senior counsel for the petitioner has submitted that the learned trial Court, has discussed the contents of the affidavit filed by the investigating officer concerned in peacemeal whereas, if the learned trial Court had considered the entire contents of the affidavit, no occasion would have arisen to summon the present petitioner, by drawing the impugned order. The affidavit of the investigating officer concerned reflects that the petitioner has acted only in the representative capacity, without any active role, as all the documents were signed in the capacity of the Director of the accused company. Finally, he submitted that prior to the final chargesheet, the chargesheet qua other accused company has already been filed, therefore, the instant chargesheet can only be filed in pursuance of Section 173(8) of Cr.P.C., whereas, no such procedure was adopted, therefore, the entire proceedings initiated by the CBI, are illegal in nature.

10. Learned senior counsel for the petitioner, has also placed reliance upon the judgment passed by the Hon'ble Supreme Court, in ***'Sunil Bharti Mittal vs. Central Bureau of Investigation' (2015) 4 SCC 609***, to submit that the Director of the company, cannot be roped in FIR, until and unless there are sufficient incriminating evidence, or the statutory regime attracts the doctrine of vicarious liability, and in the instant case, both these ingredients are absent, therefore, the impugned order requires interference.

11. No further argument advanced by the learned senior counsel for the petitioner.

SUBMISSIONS BY LEARNED COUNSEL FOR THE RESPONDENT- CBI

12. Learned counsel for the respondent-CBI, in its submissions, protected the impugned order and submitted that the same does not suffer any perversity or illegality, requiring any interference of this Court, while exercising its statutory revisional powers. He further submits that the learned trial Court concerned, it its detailed order has considered all the incriminating evidence requiring the petitioner to face trial, along with other co-accused in the final report, before exercising its powers, as envisaged under Section 193 of Cr.P.C. By referring to the final report, he draws the attention of this Court towards all the incriminating evidence, to submit that during the investigation, the corporate wheel was lifted, and the role of the present petitioner clearly surfaced being one of the perpetrator, who, has acted since inception till the end, in conspiracy with the officers/officials of the department concerned, for making undue wrongful gain and caused wrongful loss to the State, and the erstwhile land owners.

13. He further submitted that the license, in question, was challenge before this Court and the Division Bench of this Court, vide order dated 05.02.2015, passed in CWP-27665-2013 titled *'M/s. Fondant Propbuild Pvt. Ltd. & Ors. vs. State of Haryana & Ors.',* quashed the license and remanded the matter back to the Director, for reconsideration of the application, filed by the present accused company. This order has attained finality, as the Special Leave to Appeal No.4115/2015, preferred by the accused company, also stands dismissed. Finally, he submitted that though the license was reissued however, the CBI also examined the legality in reissue. He further informed this Court that the Department of Town and Country Planning, has also lodged another FIR No.0050 dated 25.02.2022, against the accused company i.e. M/s. Krrish Buildtech Pvt. Ltd., under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975. The allegations therein are that the present petitioner has received huge amount, for playing fraud in allotment of registered plot/licensed land. He further submitted that the Enforcement Directorate has also initiated an enquiry against the present accused company.

14. Before embarking upon the rival submissions, as made by the learned counsel for the parties concerned, it is apt at this stage, to deal with the legal propositions.

15. The instant impugned order has been passed by the learned Special Court, CBI, in exercising its original jurisdiction under Section 193 of Cr.P.C. The Supreme Court, in its Constitutional Bench decision passed in ***'Dharam Pal and others vs. State of Haryana and another' 2014 (3) SCC 306***, has categorically held that the Sessions Judge, acting as a Court of original jurisdiction, could summons additional accused, under Section 193 of

Cr.P.C., on the basis of the records transmitted to him, as a result of the committal order passed by the learned Magistrate. Further held that the decision in the case ***'Kishun Singh vs. State of Bihar' 1993 (1) R.C.R. (Criminal) 647***, and not the decision in the case ***'Ranjit Singh vs. State of Punjab' 1998 (4) R.C.R. (Criminal) 552***, laid down the law correctly, in respect of powers of Sessions Court, after committal of case to it by the learned Magistrate, under Section 209 of Cr.P.C. The relevant extract reads as under :-

> *28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.*
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> *29. We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained*

> *in the case papers sent by the learned Magistrate while committing the case to the Court of Session.*
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> *30. The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate.*

16. Further, the Hon'ble Supreme Court in ***'R.N. Aggarwal vs. R.C. Bansal and others' 2014 (4) R.C.R. (Criminal) 644***, has held that the Special Judge may take cognizance of the offence without the accused being committed to him for trial, and the Court of Special Judge shall be deemed to be a Court of Sessions. The Special Judge in trying the accused persons shall follow the procedure as prescribed in Cr.P.C. for trial of warrant cases by the Magistrate. It was further held that the person holding a post of either Sessions Judge, Additional Sessions Judge, appointed as Special Judge and shall follow the procedure prescribed in Cr.P.C. for warrant cases. The relevant extract is extracted hereunder :-

> *6. The Special Judge, CBI vide order dated 23rd July, 2008, after perusing the material submitted by the CBI, took cognizance of the offences punishable under Section 120-B, 420, 468 and 471 of the Indian Penal Code (in short, 'IPC') as well as Section 13(1)(d) of the Prevention of Corruption Act, and ordered summoning of six persons who had been named by the CBI in its charge-sheet as*

accused persons alleged to have committed the offences in conspiracy with each other. After all the accused persons entered appearance, the Special Judge furnished them copies of all the documents as per the requirement of Section 207 of the Code of Criminal Procedure and, thereafter, the matter was adjourned to 9th March, 2009. However, before the next date of hearing, accused R.N. Aggarwal moved an application under Section 190 read with Section 193 Cr.P.C. before the Special Judge for summoning three more persons, namely, Madan Sharma (PW-21), Ms. Sujata Chauhan (PW-23) and R.C. Bansal (PW-30) as accused, who had been cited by the CBI as its witnesses. The learned Special Judge kept that application for consideration on 9th March, 2009. However, on that day the matter was adjourned to 5th May, 2009 for arguments on charge without mentioning anything about the application which had been moved by the accused R.N. Aggarwal. Special Judge heard arguments on that application on 5th June, 2009 and then by order dated 10th July, 2009 allowed that application and summoned the prosecution witnesses Madan Sharma, Sujata Chauhan and R.C. Bansal and also directed the Director of CBI to get a case registered against the Investigating Officer of the case under Section 217, IPC for letting off these three persons.

19. The Constitution Bench has overruled the ratio decided in Ranjit Singh's case (supra) and Raj Kishore Prasad's case and held that the ratio laid down in Kishun Singh's case (supra) has been correctly decided. The Constitution Bench held as under:-

"34. The view expressed in Kishun Singh case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the

Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.[pic]

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

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39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes [pic] cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue *summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.*

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."

20. In another Constitution Bench judgment in Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92, this Court while discussing the powers of the Court concurred with the view taken in Dharam Pal's case and observed as under:-

"53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB). The dispute

therein was resolved visualising a situation wherein, the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C."

21. The Constitution Bench further answered the question as under:-

"117.1. In Dharam Pal case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but

against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 Cr.PC and the Sessions Judge need not wait till "evidence" under Section 319 Cr.P.C. becomes available for summoning an additional accused.

117.2. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C., and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

117.4. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an [pic]event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination."

22. As noticed above, after completion of investigation, CBI filed charge- sheet in the Court of Special Judge to deal with the cases in the Prevention of Corruption Act, as also under the Indian Penal Code. The procedure and the

powers of the Special Judge have been prescribed in Section 5 of the said Act. For better appreciation, Section 5 of the Act is reproduced hereinbelow:-

"5. Procedure and powers of special Judge.— (1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the

purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorized by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944)."

23. A bare reading of the provision would show that the special judge may take cognizance of the offence without the accused being committed to him for trial and the court of special judge shall be deemed to be a court of session. The special judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrate. Indisputably, a person holding the post of either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases.

17. From the above extracted ratio laid down by Hon'ble the Supreme Court, it is clearly reflected that the Special Court, CBI, has power of original jurisdiction, who could issue the summons under Section 193 of Cr.P.C., on the basis of the records transmitted to him as a result of committal order passed by the learned Magistrate. The Special Judge can do so in case he finds sufficient incriminating evidence against any other person, who has not been arrayed in the array of accused, by the investigating officer concerned.

18. Let's examine the legality of the impugned order on the anvil of the above laid down principles of law.

ANALYSES

19. This Court has examined the impugned order and all other relevant documents, with the able assistance of learned counsel for the parties concerned. Learned trial Court, while exercising its power vested under Section 193 of Cr.P.C., has considered all the incriminating evidence before summoning the present petitioner, as an additional accused. The collective reading of the FIR, chargesheet and the impugned order, reflects the following incriminating evidence available with the learned trial Court concerned, to form an opinion of summoning the present petitioner, as an additional accused :-

> i) M/s Krrish Buildtech Pvt. Ltd. (accused company in the instant chargesheet) incorporated on 13.03.2008, registered with the Registrar of Companies (NCT of Delhi and Haryana), Delhi. Amit Katyal (present petitioner) and his wife Deepali Katyal were promoter Directors and shareholders. The name of the company was changed to "M/s. Brahma Krrish Buildtech Pvt. Ltd." on 06.12.2010 and further changed to "M/s. Brahma City Pvt. Ltd." on 17.02.2011. Amit Katyal (present petitioner) remained active Director in the company in the year 2010, when the licence No.64/2010 dated 23.08.2010, for developing 151.569 acres plotted colony was granted to the accused company, though he had got fund/investment from Gulbir Singh Madan of Brahma Group, an NRI settled in New York, since December, 2009 onwards;
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> ii) Deepali Katyal has resigned from this company and Gulbir Singh Madan along with his wife Avantika Madan joined as directors. It was agreed between the present petitioner to have 26% shares of the company and remaining 74% shares with the Brahma Group;
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> iii) M/s. Krrish Buildtech had submitted licence application on 20.04.2010, and LOI for grant of licence

was issued on 31.05.2010;

iv) On 03.06.2010, an investment agreement among M/s. Brahma Opportunities A limited, Amit Katyal, M/s Krrish Infrastructure Pvt. Ltd, all investors and M/s Krrish Buildtech Pvt. Ltd., the developer company was executed. Amit Katyal (present petitioner) was the power of attorney holder of the company to represent and obtain license from the office of Town and Country Planning, Chandigarh;

v) That as per settlement agreement dated 06.08.2012 executed between M/s Krrish Buildtech and M/s Brahma City, 50% plots each were to be developed by both the companies.

vi) The present petitioner on behalf of the M/s Krrish Buildtech Pvt. Ltd. had submitted application in prescribed format LC-1 on 20.04.2010, to the office of Director, Town & Country Planning, seeking license for developing plotted colony on 162 acres of land, without enclosing all the required documents as mentioned in Rule 3 of HDR 1976. The license application (supra) was proceeded at abnormal speed, as the Licence No.64/2010 was issued to the accused company, on 27.05.2010, for 151.569 acres of land, **by excluding about 130 acres notified land from Section 6 notification of the *ibid* Act, issued on 31.05.2010**. There were many discrepancies found during the preliminary enquiry and investigation in the above licence application.

vii) It is apt to note that the above said licence application was subsequently, quashed by this High Court, in February, 2015, and the matter was remanded to the department concerned, for its re-examination. During re-examination, more land measuring 5.6125 acres as mentioned in the licence at Serial No.29 (complete) and Serial No.5 (partly), were de-licensed from the license, and revised license for 141.66875 acres was issued.

viii) The present petitioner-Amit Katyal had got executed collaboration agreements with some landowners, for developing Real Estate Projects in Gurugram, under which the developed areas were to be shared with the landowners. He had also finalized deal for taking over collaborated lands from K.L. Gupta of M/s Gupta Promoters Pvt. Ltd., which had already entered into such collaboration agreements with some landowners. Similarly, he had also struck such deals with other companies namely M/s ABW Infrastructure Ltd., M/s Arnav Buildwell Pvt. Ltd. etc. Though the landowners had signed collaboration agreements with different colonizer companies, most of them had in fact sold their land to the colonizers, and out of 151.569 acres licenced land, 111.182 acres have been purchased in the name of M/s Brahma City Pvt. Ltd. till the year 2018. That with the approval of accused J.S. Redhu, the then Chief Town Planner/Haryana, accused company M/s Krrish Buildtech was given 7 days' time to remove deficiencies noticed in the application submitted on 20.04.2010, violating thereby provisions of Rule 7 of HDR 1976, by not returning the incomplete application of the company. The accused company had enclosed Power of attorney, executed by the landowners, in favour of M/s Gupta Promoters, M/s Arnav Buildwell, M/s ABW Infrastructure, M/s Shree Chitrakoot, M/s. DLF Ltd. etc. However, application was submitted by M/s Krrish Buildtech.

ix) Further investigation revealed that the officers/officials concerned, in violation of all the norms and rules, hurriedly granted the licence to the accused company. The co-accused/officials concerned, did not examine the technical and financial capacity of M/s Krrish Buildtech Pvt. Ltd., who, at the time of making applications for issuance of LOI, had balance of Rs.2.50 crores only, which was meager amount of considering the prospective investment. It is further reflected that the accused company had obtained the instant licence for some of the area, which the company had not collaborated with the land owners. Even, the General Power of Attorney/sale deeds were executed in other jurisdiction, than the original jurisdiction of the land and the land owners.

x) It is reflected during the investigation that Amit Katyal, remained active Director of the accused company, in the year 2010, when the licence No.64/2010 dated 23.08.2010, for developing 151.569 of acres plotted colony was granted to the accused company. The perusal of the chargesheet itself reflects that the present petitioner along with other co-accused, dishonestly and fraudulently proposed to seek approval of the Govt. to grant licence, despite having major discrepancy by releasing notified land about 130 acres from the acquisition proceedings. Further perusal of the final report reflects that in pursuance of the fraudulent act, there are material concealments made by the accused company. The relevant is extracted hereinafter :-

"16.23.1 <u>Fraudulent act of concealment of facts by the accused Company:</u> Investigation disclosed that accused company M/s Krrish Buildtech had entered into collaboration agreements with the landowners. The accused company had also executed agreements with some companies namely M/s Gupta Promoters, Mis Arnav Buildwell, M/s ABW Infrastructure, M/s Shree Chitrakoot, M/s DLF Ltd. etc, having collaborated land, to get rights on the collaborated land.

Investigation disclosed that subsequent to the collaboration agreements purportedly in March 2009 with the landowners by Mis Gupta Promoters Pvt Ltd through Shri KL Gupta, agreements to sell with the landowners were also executed during January- April, 2010, thereby, superseding the terms of collaboration agreements. Therefore, the collaboration agreements stand as null and void. No agreement to sell was submitted by M/s. Krrish Buildtech while submitting license application and instead invalid collaboration *agreements were submitted, which establishes the intention of cheating on the part of the accused company.*

M/s. Krrish Buildtech had entered into an agreement with M/s. Gupta Promoters to transfer the rights of collaborated land at the rate of Rs.3 crore per acre. However, the said agreement was not furnished with license application. Instead, an agreement executed between the accused company and M/s. Gupta Promoters with regard to extension of collaboration agreements executed between M/s. Gupta Promoters and landowners was submitted.

M/s Gupta Promoter Pvt. Ltd. had entered into collaboration agreements with some landowners/farmers for about 48.29 acres land, out which license for 31.49 acres was granted to the accused company. Details of payments made to the landowners by M/s Gupta Promoters have been collected, which establishes that payments of sale consideration amount to the landowners were made during February-April, 2010 at the time of execution of Agreements to Sell. It further establishes that before submitting LC- 1 application on 20.04.2010, "Agreements to Sell for purchasing land from the landowners were executed and initial payments were made.

Similarly, in the case of M/s Shree Chitrakut Buildcon Pvt. Ltd., Agreement to Sale with the landowners for 3.75 acres was not submitted by the accused company. The agreement executed between M/s. Shree Chitrakut Buildcon and the accused company with regard to transfer of rights on the lands at the rate of Rs.3 crore per acre was not submitted with the license application.

Investigation disclosed that M/s Shree Chitrkoot Buildcon Pvt. Ltd had got executed collaboration agreements, agreement to sell with receipt, GPA and agreement entered with M/s Krrish Buildtech in respect of 31 Kanal 1.5 Marla land belonging to landowners Shri Nand Kishor etc. The collaboration agreement and Agreement to Sell are un-dated. The landowner had agreed to sell the above land for Rs 9.50 crores and payment of which was received vide cheque/DD No 132939 dated 26.04.2010 for Rs 4.75 crore and cheque bearing No. 132938 dated 26.04.2010 for Rs 4.75 crores On 27.04.2010, GPA for the above land was executed at the office of Sub-Registrar-III, Noida in favour of M/s Shree Chitrakoot Buildcon Pvt. Ltd Earlier on 02.04.2010, Shri Ranjan Gupta on behalf of his company had executed an agreement with M/s Krrish Buildtech with condition to get developed land measuring 2200 sq *yards per acre of land, which was submitted with license application M/s Gupta Promoters and M/s. Shree Chitrakut had executed agreements to sell with the landowners at the rate of Rs.2.20 crore per acre, whereas the same was sold to the accused company at the rate of Rs 3 crore per acre, thereby, these builder/brokers pocketing the profit of Rs 80 lacs per acre within a span of 2-3 months and thereby. causing loss to the landowners. Investigation revealed that accused company M/s Krrish Buildtech Pvt Ltd had concealed/suppressed the fact of entering into Agreements to Sell with the landowners, from the Deptt. of Town & Country Planning, because the ownership of land was not allowed to be changed for release of notified land, for grant of licence, as per extant policy dated 26.10.2007. Thus, the accused company had obtained the license dishonestly and fraudulently by concealing, misrepresenting and suppressing the above mentioned facts and thereby, cheated the landowners and State of Haryana/HUDA.*

16.23.6 Non-availability of collaboration agreements: The company had obtained licence No.64/2010 for some of the area for which the company had not collaborated with the land owners. On 05.12.2011, such land admeasuring 4.2875 acres out of 151 acres were de-licensed by the Department on the ground of inadvertent inclusion in the licence. During re-examination of the licence file in the year 2015, revised license for 141.66875 acres was issued instead of 147.281 acres. Shri Amti Katyal, Director of Company had signed relevant documents at the time of grant of licence, in which name of the land owner M/s Jai Kishan Promoters Pvt. Ltd. is reflected, whereas the said company had not signed any collaboration agreement. Such Collaboration Agreement is not available on file. Therefore, the company is responsible for such misrepresentation before the office of DTCP."

20. Learned trial Court, before passing the impugned order, has also find out the involvement of the present petitioner in the alleged crime, as he remained active participant throughout in the criminal conspiracy, as he has signed the following documents :-

"i) one letter having Sub: Grant of Licence of Plotted Colony for M/s. Krrish Buildtech Pvt. Ltd. Land measuring 151.931 acres at Sectors 60, 61, 62, 63 & 65 village Nagli Umarpur, Ullahwas, Kardarpur and Maidawas, Gurgaon,

has been written to the Director, Town & Country Planning, Haryana, Chandigarh, under the signatures of Amit Katyal, Director for M/s. Krrish Buildtech Pvt. Ltd. and thereby submitted Banker Cheques, Undertaking etc.;
ii) One document i.e. bilateral agreement dated 21.08.2010 by owner of land intending to set up a plotted colony, is also reflected to have been signed by Amit Katyal, Director, M/s. Krrish Buildtech Pvt. Ltd.;
iii) Further, one more Undertaking dated 12.07.2010 and Indemnity Bond in favour of Governor of Haryana acting through the Director, Town & Country Planning, Haryana, executed by Amit Katyal, Director, M/s. Krrish Buildtech Pvt. Ltd., are also on record;
iv) Further, investigating agency has brought on record Investment Agreement dated 03.06.2010, signed by Amit Katyal, Director, M/s. Krrish Buildtech Pvt. Ltd.;
v) Further, application/form LC-1 and another document dated 27.04.2010 reflect that Amit Katyal, Director, M/s. Krrish Buildtech Pvt. Ltd. has authorized one Anand P. Sachdeva, inter alia to sign, submit, process and receive all licence documents and other work with the Director, Town & Country Planning, Haryana, Chandigarh.
vi) Further, another document Agreement dated 02.04.2010 between M/s. Gupta Promoters Pvt. Ltd. and M/s. Krrish Buildtech Pvt. Ltd. also reflects that that the same has also been signed on behalf of authorized signatory Amit Katyal.
vii) Likewise, another Agreement dated 02.04.2010 between M/s. Shree Chitrakut Buildcon Pvt. Ltd. and M/s. Krrish Buildtech Pvt. Ltd. and Agreement between M/s. Arnav Buildwell Pvt. Ltd. and M/s. Krrish Buildtech Pvt. Ltd and Agreement between M/s. ABW Infrastructure Ltd. and M/s. Krrish Buildtech Pvt. Ltd. (all of dated 02.04.2010) also reflect to be executed through authorized signatory Amit Katyal.
viii) Further, Agreement amongst M/s. Brahma City Pvt. Ltd., M/s. Krrish Infrastructure Pvt. Ltd. and Amit Katyal etc. also reflects that Amit Katyal has been vested with the responsibility of identifying and acquiring land situated in the revenue estates of Maidawas, Kadarpur, Ullahwas and Nangli Umarpur, Tehsil Sohna/Gurgaon, District Gurgaon, and negotiating and finalizing the transactions of collaboration/sale in respect thereof for the purpose of the project."

21. From the perusal of the above, it clearly transpires that there are sufficient incriminating evidence requiring the present petitioner to face the trial, along with other co-accused. The reliance placed by the learned senior counsel for the petitioner upon ***Sunil Bharti Mittal (supra)*** case, in fact, would not serve the purpose for the relief seeking quashing of the impugned order, as in the above said case, the Supreme Court, has categorically, held that the Director of the company, can be roped if there are sufficient incriminating evidence. The relevant extract reads as under:-

> *48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, port, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.*
>
> *49 Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.*
>
> *50. Person who has not joined as accused in the charge-sheet can he summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see*

SWIL Lid. v State of Delhi). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see Union of India v Prakash P Hinduja 38). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (ie. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

22. Rather, the impugned order has passed the test of the legality, in view of the ratio laid down in ***Sunil Bharti Mittal (supra)***.

23. The next submission made by the learned senior counsel is directing the investigating officer to file an affidavit by the learned trial Court

concerned, is not in consonance with the non-principle of law. This Court does not find any illegality committed by the learned trial Court concerned, in asking the Investigating Officer, the reasons for not impleading the present petitioner in the array of accused. The learned trial Court in the process of taking cognizance of offence under Section 193 of Cr.P.C. has passed the directions. However, the trial Court has not passed the impugned order dated 09.03.2021, solely on basis of the affidavit, filed by the investigating officer concerned, in pursuance of the above directions, rather, the learned trial Court concerned, has considered the incriminating evidence available on the chargesheet and then proceeded to pass the impugned order (supra). Therefore, asking the Investigating Officer to file an affidavit disclosing therein, the reasons for not arraying the present petitioner in the array of accused, would in fact, cause no prejudice to the present petitioner. This Court also does not find that there is any attempt by the learned trial Court to make any interference with the investigation. This direction was passed only after the chargesheet was filed, and therefore, this would not tantamount to interference into the investigation. Furthermore, this Court has also examined all the incriminating evidence (some of which reproduced above), and is of the view that there are sufficient incriminating evidence, which requires the petitioner to face trial along with the other co-accused. *Prima facie,* this Court also found incriminating evidence against the present petitioner, who since the inception and till the end, played an active role in conspiracy with the other co-accused, not only to obtain LOI, but also to execute the collaboration agreements, Special Power of Attorney, General Power of Attorney, with the erstwhile landowners and caused financial huge loss to them.

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DECISION

24. From the above detailed discussions, this Court finds no perversity or illegality, requiring this Court, to interfere in the instant matter. Accordingly, the instant revision petition is **dismissed,** and the impugned order is ordered to be **upheld**. It is made clear that anything observed hereinabove would not have any bearing on the trial, as these observations are made only for the purpose of adjudication of the instant revision petition and to evaluate the legality of the impugned order.

(KULDEEP TIWARI)
JUDGE

December 04, 2024
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No