

IN THE COURT OF VISHAL GOGNE, SPECIAL JUDGE
(PC ACT) (CBI)-24 (MP/MLA CASES),
ROUSE AVENUE DISTRICT COURT, NEW DELHI

Criminal Revision No. 26/2023

In the matter of

1. Shri Sandeep Kumar Rawat & Ors.
S/o Sh. Gopal Singh Rawat
R/O H. No. 276, Niti Khand-3,
Ghaziabad, U.P.

2. Shri Naveen Kumar Yadav
S/o Sh. Ambika Yadav
R/o Flat No. 1A, Takshila Apartment,
Abhay Khand-3, Indra Puram,
Ghaziabad, U.P-201014

3. Shri Vikas Aggarwal
S/o Sh. Vinod Kumar
R/o D-69, 1st Floor, Gulmohar Park,
Hauzkhas New Delhi

.....Revisionist

versus

1. State & Ors.
Through: Prosecution Branch
New Delhi

2. Shri Rakesh Kumar Kuldeep Singh Wadhawan
S/o Shri Dewan Kuldeep Singh Wadhawan
R/o Wadhawan House,
Plot No. 32/A, Union Park Road No. 05
Bander (West),
Mumbai-400050

3. Shri Ashok Kumar Makkar
S/o Sh. Paras Ram Makkar

4. **Shri Gautam Gambhir**
S/o Sh. Deepak Gambhir
R/o 22, Pusha Road, New Delhi

5. **Ms. Romy Pawan Mehra**
D/o Sh. Kuldeep Singh Diwan Chand Wadhawan
R/o A-20, Anshal Villa Satbari, Chhatar Pur,
New Delhi-110048

....Respondents

Criminal Revision No. 34/2023

In the matter of

1. **Babita Khurana**
R/o B-7/100, Safdarjung Enclave,
Sarojni Nagar,
New Delhi-110029

.....Revisionist

versus

1. **State of NCT of Delhi**

....Respondents

Criminal Revision No. 27/2023

In the matter of

1. **Shri Gautam Mehra**
S/o Sh. Pawan Mehra,
R/O A-29, Ansal Villas, Satbari, Chattarpur
New Delhi-110074

.....Revisionist

versus

1. State & Ors.
Through: Addll. Public Prosecutor

2. Shri Sandeep Kumar Rawat & Ors.
S/o Sh. Gopal Singh Rawat
R/O H. No. 276, Niti Khand-3,
Ghaziabad, U.P.

3. Shri Naveen Kumar Yadav
S/o Sh. Ambika Yadav
Flat No. 1 A, Takshila Apartment,
Abhay Khand-3, Indira Puram, Ghaziabad, U.P. 201014

4. Shri Vikas Aggarwal
S/o Sh. Vinod Kumar
R/o D-69, 1st Floor, Gulmohar Park,
Haus Khas, New Delhi

5. Shri Vinay Prakash Rai
S/o Sh. Hriday Navin Rai
R/o H. No. 110/1, Gali No. 4,
Durga Park, Nasirpur Road, Delhi

6. Shri Varun Agarwal
S/o Sh. Yogender Kumar
R/o Kati Karkhana, Joraphatak Road,
Dhanbad-826001, Jharkhand

7. Shri Jai Prakash
Flat No. 806, 2nd Floor, Shakti Khand- 4
Indirapuram, Ghaziabad, U.P.

8. Shri Kumar Satish Chandra
X- 588, Street No. 5, Raghuwar Pura- I,
Gandhi Nagar, Delhi-31

9. Smt Geeta Sharma
B-813, Jalvayu Tower, Sector-47, Noida, U.P.

10. Smt. Raj Kumari
61, Navyug Market, Ghaziabad, U.P.
11. Smt. Leena Thanai
D-3/9, Sector-14, Gautam Budh Nagar District
Noida-201010, U.P.
12. Shri Vinay Prakash Rai
H. No. 110/1, Gali No. 4, Durga Park,
Nasirpur Road, New Delhi-110045
13. Shri Sultan Singh Sikriwal
H. No. 829, Shree Awas LIG/MIG
DDA Flats, Sector-18 B, Phase-II,
Dwarka, New Delhi-78
14. Shri Kumar Asheesh Saxena
Flat No. C-82, FF-2 Surya Nagar,
Ghaziabad 201011, U.P.
15. Shri Vikash Jain
H. No. D-57, G.F. Ramprastha
Ghaziabad 201011, U.P.
16. Shri Om Prakash Agarwal
47/L-4, Jawahar Quarters, Begum
Bridge Road, Meerut
17. Shri Ankit Tayal
A-16, Vivek Vihar, Delhi 92
18. Smt. Vimla Devi
H. No 617, Street No. 2, Shyam Park
(Main) Sahibabad, Ghaziabad-201005
U.P.
19. Smt. Anju Gupta
H. No. E-3, Arya Nagar CGHS Ltd.
I.P. Extension Patparganj, Delhi-110092

20. Shri Upendra Kumar Singh
H. No. 50, Babudih Post Polytechnic
Near Bank of India, Dhanbad-826001,
Jharkhand
21. Shri Atul Kumar Singh
B-53/A, Shashi Garden, Gill No. 08,
Mayur Vihar, Phase-I, Delhi-110091
22. Smt. Anu Ranjan
B-34/3276, New Tagore Nagar
Haibowal Kalan Ludiana- 141001,
Punjab
23. Shri Santosh Kumar Gambali
Flat No. 8C, 2nd Floor, Takshila Apartment,
Abhay Khand-11, Indirapuram, Ghaziabad
24. Shri Vikash Khosla
Flat No. 184, Samrat Apartment,
Vasundhra Enclave, Delhi-110096
25. Shri Naresh Kumar Agarwal
2B- 209, Sector-2, Vaishali
Ghaziabad- 201010, U.P.
26. Shri Shashwat Dubey
C/o K.B. Dubey (Advocate), Matri
Sri Baldev Plaza Lane, Purdilpur,
Golghar, Gorakhpur- 273001, U.P.
27. Shri Maneesh Gaur
Flat No. A-14, Aishwarayam Apartments,
Plot No. 17, Sector- 4, Dwarka,
New Delhi- 78
28. Shri R. Yedukondalu
H. No. 280-B, Ground Floor, Pocket-2,
Mayur Vihar Phase- I, Delhi- 91

29. Shri Ashwani Kumar Singh
H. No. 495, 1st Floor, Niti Khand, Indirapuram
Ghaziabad- 201010, U.P.
30. Smt. Bhawna Gulati
H. No. 6/246, Geeta Colony,
New Delhi- 110031
31. Bushra Yasmeen
C-286, 2nd Floor, Shaheen Bagh,
Jamia Nagar Okhla,
New Delhi- 110025
32. Smt. Tripati Narang
H. No. 7/176, Geeta Colony,
New Delhi- 110031
33. Shri Manoj Narang
H. No. 7/176, Geeta Colony,
New Delhi- 110031
34. Shri Vaibhav Agarwal
S/o Sh. Yogender Kumar
R/o Kati Karkhana, Koraphatak Road,
Dhanbad-826001, Jharkhand
35. Shri Rakesh Ladhani
A-3, 7th Floor, Madhushudan Apartment,
P-18, Dobson Lane, Howrah,
West Bengal
36. Shri Anoop Tandon
Plot No. 04, Das Nagar Maldahiya Colony,
Varanasi, U.P.
37. Shri Manoj Tandon
C-27/273, K-1, Indian Press Colony,
Lahurabir, Varanashi, U.P.
38. Smt. Pramila Giri
SE-146, E- Block, Shastri Nagar, Ghaziabad, U.P.

39. Shri Sahil Gupta
D-304, Vivek Vihar,
New Delhi- 95

....Respondents

ORDER

1. The present common order decides the three revision petitions instituted against the order dated 10.12.2020 (*hereafter referred to as the impugned order*) passed by the Court of Ld. ACMM-04, RADC, New Delhi on the aspect of charge to be framed against the persons accused in the chargesheet.
2. The impugned order found that a prima facie case under section 420 read with section 34 IPC was made out against accused no. 1 (Mukesh Khurana), accused no. 2 (Babita Khurana) and accused 3 (Gautam Mehra) while a prima facie case was also made out under Section 420 IPC against two companies viz accused no. 4 (M/S Rudra Buildwell Realty Pvt. Ltd) and accused no. 5 (M/S H R Infracity Pvt Ltd).
3. The impugned order discharged other accused persons viz Gautam Gambhir, Ashok Kumar Makkar, Rahul Chamola, Rakesh Kumar Kuldeep Singh Wadhawan and Romy Pawan Mehra. The accused so discharged had infact been previously placed by the IO in column no.12 of the chargesheet but had been summoned by the Ld.Trial Court.
4. The revision petitions have been addressed by this special court for matters pertaining to MPs/MLAs as one of the accused persons namely Gautam Gambhir has been a Member of Parliament.

5. The allegations and summary of investigation reflected in the chargesheet are noted below.

Allegations

6. Complainant S K Shukla (named as complainant in the FIR) and 16 other complainants filed a complaint dated 20.05.2015 with the DCP Economic Offence Wing, Crime Branch, Mandir Marg, New Delhi seeking a registration of a complaint against three companies of the description M/S Rudra Buildwell Realty Pvt. Ltd, M/S H R Infracity Pvt Ltd and M/S U M Architectures and Contractors Ltd. (hereafter referred to as *Rudra*, *HR Infracity* and *UM Architectures* respectively). The complaint also named a fourth accused namely Gautam Gambhir, Director and Brand Ambassador. The complaints alleged that these three companies were engaged in the business of Real Estate and had jointly promoted as well as advertised an upcoming housing project by the name 'Serra Bella' in July/August 2011. This project was later renamed as 'Pavo Real' in 2013. The project was located at Indirapurma, Ghaziabad, UP and was promoted through the print and other media. Gautam Gambhir was stated to have been attracting and inviting buyers as the Brand Ambassador for this project.
7. The complainants were purportedly lured to invest in this project through such advertisements and the project brochure. They thus booked flats in the projects and paid various amounts, mostly in the range of 6 lakhs to about 16 lakhs for various flats in the project. The details of investments by the 17 complainants were provided in the complaint.
8. The grievance of the complaints arose when, even after purported fulfillment (by them) of preliminary obligations in the form of these payments, no infrastructural or other development of significance was made on the plot in question. This plot was described as plot no. 9D,

khasra no. 526/4 and 527/1. The land remained bereft of any development till the time of making of the complaint and the developers allegedly made no utilisation of the funds received from the investors. Possession therefore did not come to the hands of the complainants even after 36 months of the date of booking of the respective flats by them. They rather learnt in due course that the proposed project was neither developed as per the site plan nor had been approved by the competent state government authorities. The companies in question purportedly even stopped entertaining queries and telephone calls from the complaints.

9. The allegations of criminality arose when the complaints learnt that the site of the housing project in question was embroiled in litigation and a stay order had in fact been passed by the Allahabad High Court regarding the possession of the land in the year 2003 in Writ Petition no. 20618 of 2003. The complaint alleged that any sort of business transaction or other activity at the land in question was explicitly prohibited by order dated 22.09.2014 in the said writ.
10. Since the Builder–Buyer agreements (BBA) executed with the complainants had represented that the accused companies were in legal possession of the plot in question, it was alleged in the complaint that the offence of cheating under section 420 IPC had been committed.
11. After a preliminary enquiry, the FIR came to be registered under sections 406/420/34 IPC on 11.12.2015.

Investigation

12. The investigating officer filed the chargesheet upon investigation. Later, a supplementary chargesheet also came to be filed.
13. The chargesheet reported that documents had been collected from the complainant, accused persons, Registrar of Companies, Banks and Ghaziabad Development Authority (GDA).

14. The investigation revealed that the Directors of accused no. 4 (*Rudra*) were as under:

S. No.	Name	Designation	Date of appointment	Whether resigned or not
1.	Mukesh Khurana	Director	10.06.2011	-
2.	Babita Khurana	Director	10.06.2011	24.03.2014
3.	Gautam Gambir	Addl. Director	29.06.2011	01.10.2013
4.	Ashok Kumar Makkar	Addl. Director	24.03.2014	-

15. Further, the Authorised Share Capital of the Company was Rs. 1,00,000/- (Rs. One Lac) divided into 10,000 (Ten Thousand Equity Shares of Rs. 10/- each. The shares were equally divided between the two initial Directors namely Mukesh Khurana and Babita Khurana with 5000 equity shares each.

16. The directors of *HR Infracity* were found to be as under:

S. No.	Name	Designation	Date of appointment	Whether resigned or not
1.	Mukesh Khurana	Director	14.06.2011	
2.	Ashok Kumar Makkar	Director	14.06.2011	
3.	Rahul Chamola	Director	14.06.2011	12/09/2012
4.	Rakesh Kumar Kuldeep Singh Wadhawan	Director	14.06.2011	
5.	Romy Pawan Mehra	Director	14.06.2011	
6.	Gautam Mehra	Director	14.06.2011	

17. The Authorised Share Capital of the Company was Rs. 1,00,000/- (Rs. One Lac) divided into 10,000 (Ten Thousand) Equity Shares of Rs. 10/- each. The shares were equally divided into 5000 equity shares each between *Rudra* through its Director Mukesh Khurana and *U M Architectures* through its Director Gautam Mehra.

18. The details of the bank accounts of the accused companies were also collected and cited in the chargesheet in the following manner:
- a. Account No.911020031263466 of Axis Bank was found to be in the name of ***Rudra*** wherein Mukesh Khurana and Babita Khurana were the joint account holders and authorised signatories of the account.
 - b. Account No.911020031741377 of Axis Bank was in the name of ***HR Infracity***. Mukesh Khurana & Gautam Mehra were found to be the joint account holders and authorized signatories of the account.
 - c. Account No. 914020011018164 of Axis bank was in the name of ***U M Architectures*** with Gautam Mehra and Mukesh Khurana being the joint account holders and authorised signatories of the account.
19. These accounts were stated to have reflected a receipt of money from various victims/investors.
20. The chargesheet enumerated the various amounts paid by as many as 50 investors, through cheques, towards the project in question and who received builder buyer agreements. However, the chargesheet did not specify the respective bank accounts into which these amounts were paid.
21. The investigating officer quantified the cheated amount at Rs. 3.5 crores stating that the booking amounts were collected by the accused developers namely Mukesh Khurana (accused no.1), Babita Khurana (accused No. 2) and Gautam Mehra (accused no. 3) since the year 2011.
22. The specific evidence collected during investigation was also highlighted in the chargesheet.
23. The Sanctioned Building Plan (SBP) for the project expired on 23.06.2013. Yet, the developers purportedly executed the BBA with the

victims even after June/July 2014 and continued to collect money from the victims even after 23.06.2013. The investors were kept in the dark about the litigation about the site in question and the clause in the BBA relating to the authority available for developing the project was found to be a misrepresentation. Further, the developers failed to deliver the possession within 36 months from the date of signing of the agreement.

24. The GDA finally cancelled the sanction for the project on 15.04.2015 upon default in payment of requisite license fee and non compliance with other formalities. A reply from the Chief Architect and Town Planner (CATP), GDA revealed that the SBP was approved on 26.03.2007 in favour of *U M Architectures* for developing plot no. 9D, *Khasra* No. 526/4 and 527/1, Ahinshakhand-II, Indirapuram, Ghaziabad, UP for the project named Serra Bella/Pavo Real and its validity lapsed on 23.06.2013.

25. The investigating officer next collected the list of investors to whom repayments of the principal amounts had been made by accused Mukesh Khurana and Gautam Mehra and qua which MOUs had also been signed by the investors. According to the chargesheet, four victims remained unpaid and included one company apart from three individuals.

26. During the course of submissions before this court, the investigating officer and the respective counsels stated that many investors had been refunded their payments while others remained to be refunded the advance amount paid towards booking the flats in question.

27. The conclusions drawn by the IO regarding accused placed in column no. 1 of the chargesheet were as under:

Accused No. 1 (Mukesh Khurana)

28. This accused was represented to be a director and share holder, to the extent of 50% in two of the companies viz *Rudra* and *HR Infracity*,

apart from being the account holder and authorised signatory for the bank accounts of *Rudra*, *HR Infracity* and *UM Architectures*. Accused No. 1 provided proof of settlement amounts paid to 36 out of 40 investors.

Accused No.2 (Babita Khurana)

29. The IO reported that accused no.2 was a director and share holder to the extent of 50% shares in *Rudra* and *HR Infracity* apart from being the account holder and authorised signatory of the bank account in the name of *Rudra*. She too provided documents pertaining to settlement with 36 out of 40 investors.

Accused No.3 (Gautam Mehra)

30. Accused No. 3 was found to be a director and share holder, to the extent of 50% in *HR Infracity*, apart from being the account holder and authorised signatory for the bank accounts of *HR Infracity* and *UM Architectures*. Accused No. 3 also reportedly informed the IO regarding settlement with 36 out of 40 investors.

Accused No. 4 (Rudra) and Accused No. 5 (HR Infracity)

31. These companies were also forwarded as accused in column no.11 of the chargesheet but the specific details of the acquisition of the site land or other agreements between these two companies and *UM Architectures* were not detailed or articulated in the chargesheet.
32. The investigation pertaining to persons in column no.12 summarised the findings of the IO in the following manner:

Gautam Gambhir

33. It was stated in the chargesheet that no evidence with respect to allurements and inducements was found on part of Gautam Gambhir and that he had remained an additional director with *Rudra* from 29.06.2011 to 01.10.2013 without any equity shares in his name. Further, while he had paid a total sum of Rs. 6,00,00,00 to *Rudra* between 01.07.2011 and

25.07.2012, he had been paid back a total sum of Rs. 4,85,00,000/-by **Rudra** (in installments) from 06.02.2012 to 30.09.2015. The IO concluded that no monetary gain appeared to have accrued to Gautam Gambhir and he was therefore kept in column no.12 of the chargesheet.

Ashok Kumar Makkar

34. The chargesheet stated that this accused was one of the additional directors in **Rudra** from 24.03.2014 and did not hold any shares in the company. He did not engage in any inducement to the investors and no transactions took place between him and **Rudra**. No financial gain was found to have been made by him either.

Rahul Chamola

35. This accused was a director in **HR Infracity** from 14.06.2011 to 12.09.2012 and he was not found to have induced any investor to part with money. He, however, received Rs. 35 lakhs from **Rudra** on 02.07.2011 but paid back the same amount in installments from 20.12.2013 to 27.12.2013. The IO again concluded that for want of monetary gain, accused Rahul Chamola was kept in column no.12.

Rakesh Kumar Kuldeep Singh Wadhawan

36. The chargesheet stated that this accused was a director in **HR Infracity** from 14.06.2011 but did not hold any equity shares. He too purportedly did not induce any investor and was kept in column no.12 for reason of not receiving any monetary gain.

Romy Pawan Mehra

37. This accused remained a director in **HR Infracity** from 14.06.2011 and also did not acquire any shares in this company. Similar to other accused placed in column no. 12, he also was found to have neither induced the investors nor received any financial gain.

Supplementary Chargesheet

38. The supplementary chargesheet dated 05.07.2019, stated that further investigation reflected a total of 153 investors in the project and that 84 investors had been refunded their amount with 69 investors remaining to be repaid. Also, that in the course of investigation of the status of the land in question, it was revealed that one Khimchand had filed an application before the District Magistrate, Ghaizabad, U.P. on 24.02.2014 upon which the DM had ordered *status quo* on construction. Further, that the accused had subsequently moved the Hon'ble Allahabad High Court and thereafter the Hon'ble Supreme Court, which had, vide order dated 07.04.2017, directed *status quo* at the site in question. The IO concluded that on account of pending litigation, the land was not free from encumbrances.
39. A further status report dated 28.10.2020 intimated the Ld. Trial Court that the details regarding the present status of the land had been sought from the Sub Registrar and would be furnished before the court.
40. No such details have apparently been filed before the Ld. Trial Court till date.

Submissions in the revision petition titled Sandeep Kumar Rawat & Ors vs State Crl. Rev. 07/2023.

41. The Id. Counsel for the complainants (petitioners) submitted that while the revision petition was not pressed for with respect to the impugned order discharging accused Ashok Kumar Makkar (respondent no. 3) and Romy Pawan Mehra (respondent no. 5), the complainants were aggrieved by the Id. Trial court having discharged accused Rakesh Kumar Kuldeep Singh Wadhawan and Gautam Gambhir (respondents no. 2 and 4 respectively). It was submitted that while respondent no. 2 and 4 had remained directors in *HR Infracity*, respondent no. 4 had also actively

promoted the project. Further, that respondent no. 4 had received a sum of Rs. 4.85 crores from **Rudra** which had nexus with the investments made by the various complainants. It was prayed on behalf of the petitioners that respondents no. 2 and 4 were liable to be charged for commission of the offence under section 420 IPC.

42. The Id. Counsel for respondent no. 2 sought support from the reasoning of the Id. Trial court in the impugned order wherein it had been observed that the said respondent had neither come in direct contact with the investors nor received any amount from them.

43. The Ld. Counsel for respondent no.4 submitted that he had been justifiably discharged from the proceedings by the impugned order as he never remained a Director in **HR Infracity** and was instead only a Director in **Rudra**. Further, that the status of the respondent as a brand ambassador for the project could not be equated with inducement to the investors with any dishonest intention. The Ld. Counsel submitted that although the respondent had remained a Director and Additional Director in accused no. 4 company (**Rudra**), he had resigned from the said company in 2013 and never held shares in the said company. It was submitted that the impugned order was fair in recording that for want of direct contact with the investors and for reason of non receiving of any money from the investors, respondent no.4 was liable to be discharged.

44. The Id counsel cited the following decisions in support of his submissions:

- a. Amit Kapoor Vs. Ramesh Chander & Anr. (2012) 9 SCC 460.
- b. Taron Mohan Vs. State and Another, 2021 SCC Online Del 312.
- c. K Kuppuraj Vs J. Thrilokamuthy Crl. Rev. No. 606 of 2020.
- d. K. Kuppuraj Vs. J. Thrilokamurthy Criminal Revision Petition

No. 606/2020.

- e. Sunil Bharti Mittal vs. Central Bureau of investigation (2015) 4 SCC 609.
- f. Shiv Kumar Jatia vs. State of NCT of Delhi (2019) 17 SCC 193.
- g. Dipakbhai Jagdishchandra Patel vs. State of Gujarat (2019) 16 SCC 547.

**Submissions in the revision petition titled Babita Khurana vs State & Ors
Crl. Rev. 10/2023.**

45. The ld counsel for the petitioner sought the setting aside of the impugned order on the submission that the status of petitioner Babita Khurana had been completely misappreciated by the Ld. Trial Court. The counsel agitated that the record of the chargesheet itself reflected that the petitioner had never remained either a Director, share holder or an authorised signatory in accused company *H R Infracity* or *UM Architectures* and that she had only been a Director in *Rudra*.
46. It was the argument of the Ld. Counsel that for want of an inducement from the petitioner to the investors for parting with any sum of money towards the project in question, she does not emerge as having nexus with allegations of cheating. Essentially, the counsel maintained that for want of any inducement in relation to the money of investors and for want of any status of decision making in the accused companies, the petitioner should have been discharged from the proceedings wherein several other accused were discharged.
47. It was added by the Ld. Counsel for the petitioner that the chargesheet reflected a false statement asserting that petitioner Babita Khurana had remained a share holder in *H R Infracity*. Reference was made to the following excerpt from the chargesheet:

The accused Babita Khurana, as per ROC is/was one of the Directors of the accused company Rudra Buildwell Realty Pvt. Ltd. since 10.06.2011 with 50% (5000) of the equity shares. Further, he is/was Director of HR Infracity Pvt. Ltd. since 14.06.2011, with 50 % (5000) of the equity shares.

48. In response the Id. Prosecutor for the state (respondent) agitated that the Id. Trial court had duly noted the status of accused Babita Khurana as a director and authorised signatory for the bank account of **Rudra** to find her liable for being charged under section 420 read with section 34 IPC.

Submissions in the revision petition titled Gautam Mehra vs. State & Ors Crl. Rev. 08/2023.

49. At the outset, the Id. counsel for the petitioner submitted that since petitioner Gautam Mehra had not been named in the FIR, there was no prospect of him having induced any investor to deposit money in the project in question. The counsel denied criminality on part of the petitioner for this sole reason.
50. It was offered as an allied submission that the chargesheet had recorded a false factual allegation *inter alia* Gautam Mehra being a shareholder in **HR Infracity**. Further, that despite being named in the complaint, **UM Architectures** was neither chargesheeted nor summoned.
51. The Id. counsel next maintained that since the order on charge was not considered with the perspective or application of criminal conspiracy under section 120B IPC and rather arrayed the petitioner with the aid of section 34 to invoke common intention on his part alongwith other accused persons, the Id. Trial Court should have recorded detailed reasons for imputing common intention to the petitioner. It was the prayer of the Id. counsel that the impugned order was liable to be set aside for being

silent in this regard.

52. The next aspect of the submissions was associated with the plea that the order was non speaking. The counsel pointed to the impugned order clubbing accused no. 1, 2 and 3 as recipients of money from investors on behalf of accused no. 4 and 5 (*Rudra* and *HR Infracity* respectively) and therefore being liable under Section 430 read with Section 34 IPC. It was agitated that such reasoning was generalised and did not explain or discuss the respective material/evidence cited by the chargesheet or the prosecution while leading arguments on charge.

53. The following extract from the impugned order was cited by the ld. Counsel for petitioner Gautam Mehra:-

As per the prosecution, the amount from investors were received in three bank accounts i.e. account bearing no.911020031263466 of Axis Bank in the name of accused no.4 company and accused no.1 and 2 are the joint account holder and authorised signatory of said bank account, account bearing no.911020031741377 of Axis Bank in the name of accused o.5 company and accused no.1 and 3 are the joint account holder and authorized signatory of said account, account bearing no.914020011018164 of Axis Bank in the name of company M/s UM Architectures and Contractors Ltd. and accused no.1 and accused no.3 are the joint account holder and authorized signatory of said account.

54. The counsel argued that this excerpt from the order was inadequate expression of mind in as much as no reference was made to any document or witness while recording the receipt of amounts from investors into various bank accounts. The reasoning of the Ld. Trial Court was portrayed as a sweeping generalisation without reference to specific documents or statements.

55. The counsel agitated that it was in fact not forthcoming from the prosecution either before the Ld. Trial Court as to which documents and witnesses were cited against accused persons.
56. Reference was made to the decision in *Sharif Ahmed & Anr. Vs. State of UP & Anr.* to agitate that the reasoning recorded by the Ld. Trial Court was incapable of being deciphered by this court or the counsels arguing the present petition.
57. The Id. Counsel next cited the decision in *M/s. Karnataka EMTA Coal Mines Ltd & Anr. Vs CBI* to highlight the nature of appraisal of material when charge is to be considered against accused persons.
58. Additionally, parity was claimed for the petitioner with the accused persons who had been discharged by the impugned order namely Gautam Gambhir, Ashok Kumar Makkar, Rahul Chamola, Rakesh Kumar Kuldeep Singh Wadhawan and Romy Pawan Mehra. The counsel submitted that much like these discharged persons, the present petitioner too had no alleged interaction with the investors and did not receive any money from them.
59. The respondents viz the state and the complainants reiterated the reasoning of the Id. Trial court in the impugned order in opposing the grounds urged by revisionist Gautam Mehra.

Discussion and reasons

60. Upon consideration of the impugned order and the submissions made by the respective counsels, the court would notice at the outset that while the allegations indicate purported inducement of investors to part with substantial sums of money for a project which may have suffered from litigation regarding the site and involved multiple developers as well as a multitude of directors, the investigation did not bring forth a clear chain of transactions *inter se* the three companies. Neither the chain of

title *qua* the project land nor the inflow or outflow of funds (invested by the complainants) among these companies was specified in any measure of detail in the chargesheet. The documents pertaining to acquisition of the project land and *inter se* agreements between these companies were not reference or described in the chargesheet.

61. While the impugned order found five accused (accused no.1 to 5) to be liable for charge to be framed against them, it did not elucidate the respective evidence/material cited against each of these accused or the findings of the Ld. Trial Court for adequacy of material *qua* each accused for framing the charge under section 420 read with section 120B IPC (against accused Nos. 1 to 3) and under section 420 IPC against accused Nos. 4 & 5.

62. The relevant extract from the impugned order dated 10.12.2020 is reproduced below:

“This court is of the considered view that as per the case of prosecution, money from investors were received by accused no. 1, 2 & 3 on behalf of accused No. 4 & 5 and said amount was received in the bank accounts which were under the control of accused No. 1,2 & 3 as accused No. 1,2 & 3 were the authorized signatories of the said bank account. This court is of the further view that investors were not informed about the status of the land on which project was to be built and despite that money was received from number of investors and that was done in furtherance of common intention of accused No. 1, 2 & 3. In these circumstances, ingredient of offence under Section 420 r/w Section 34 IPC is made out and prima facie case under Section 420 r/w Section 34 IPC is made out against accused No. 1, 2 & 3 and as offence was committed in respect of project of companies arrayed as accused No. 4 & 5, prima facie case under Section 420 IPC is made out against accused No. 4 & 5.”

63. The impugned order firstly noted the prosecution allegations of receipt of amounts from investors in three bank accounts of the three

companies in question and the status of accused no. 1, 2 and 3 as authorised signatories for these bank accounts. The order then noted the collection of the booking amounts while keeping the investors in the dark. The impugned order lastly found that since money had been received by accused nos. 1, 2 and 3 on behalf of the two accused companies (accused nos. 4 and 5) and accused no.1 to 3 were authorised signatories, the ingredients of section 420 read with section 34 IPC were made out.

64. This court finds the said order to not be an informed or effective speaking order. Mere reproduction of the allegations made by the prosecution and stringing together assertions from the chargesheet does not evoke the mind of the judge. The order is expected to assign reasons for the finding it seeks to render. However, the impugned order failed to clarify the specific amounts received by each of the three companies or to specify the exact allegation of the prosecution against each of the first three accused. The general assertion that accused no. 1, 2 and 3 received money on behalf of accused no. 4 and 5 does not satisfy the standard of minimum prima facie finding contemplated on hearing of charge.

65. The court in revision is not expected to render the first instance findings on fact, howsoever prima facie they may be. The said exercise is for the trial court to discharge in order that all relevant facts and material cited or discussed in the chargesheet are highlighted in aid of the order on charge. The court in revision would rather conduct an appraisal of the impugned order with a view to detecting any infirmity in law or lack of correctness, propriety or legality. The impugned order does not record an adequate discussion on facts or material cited in the chargesheet or during the course of arguments on behalf of the state. The impugned order thus suffers from inherent infirmity in law, being, in effect, a non speaking order.

66. Here, the Ld. Trial Court was certainly hampered by the failure of the prosecution to lay out the detailed allegations and supporting material qua each accused. This court would point out several glaring lapses in investigation as well as the submissions on behalf of the State which may have constrained the Ld. Trial Court from reaching more complete findings for purpose of framing of the charge.

67. **Firstly**, the entire chargesheet was framed with the *fait accompli* of settlement between parties. The chargesheet documented greater detail of the settlement in form of refunds made to the investors rather than the flow of the investments between the purportedly culpable companies and their directors. When specifying the role of each accused, the chargesheet rather specified the number of investors who had been refunded their amounts. The acts of each accused, constituting the ingredients of section 420 or section 34 IPC, were not laid out. The investigating officer did also fairly concede upon query from this court during submissions on the present three revision petitions that the chargesheet had been prepared in the context of the accused companies continuously refunding some amounts to the investors.

68. **Secondly**, the details of the cheated amount of Rs. 3.5 crores were summarily described in the chargesheet as under:

“The scrutiny of the documents the cheated amount was approx. Rs. 3.5 crores. The booking amount was collected by the accused Developer namely Mukesh Khurana, Gautam Mehra & Babita Khurana, since 2011.”

69. No further details of the collection of these amounts, in terms of date, exact amount and the entity for which the same were collected, came to be provided to the chargesheet. The complex transactions involving multiple companies, directors, authorised signatories and agreements *inter se* were reduced, in the chargesheet, to a bundle of non

severable allegations against accused no.1 to 3.

70. **Thirdly**, the entire chargesheet was focused on the amounts collected from the investors. While these amounts were certainly material, the core of the allegations, relating to misrepresentation about the clear title or non encumbered nature of the site land, remained inadequately described. The allegations relating to cheating were incomplete without specific description of the persons or entities who were aware of the disputed status or *sub judice* nature of the project land. The chargesheet needed to specify such persons who induced investors to part with booking amounts for the flats in question despite knowledge of the encumbrance or dispute from the land. Yet, this exercise was reduced to a euphemism by the following description in the chargesheet (at page xxiii):

3. Victims/investors have been deliberately kept in dark about the litigation (s) involving the propose site of land and the same is evident as per clause in BBA wherein it has been misrepresented that developer is authorised to develop the project.

71. The above assertion of the IO was a conclusion *sans* material details and reasoning. It was only a repetition of the allegations of the complainants for the IO to have stated that the investors were kept in the dark about the site of the project. The IO is expected to investigate and not profess the same allegations as asserted by complainants. It is also not appropriate for the court seized with trial to simply accept superficial investigation. Since the allegations had named three companies, the IO, as a prudent investigator, should have collected the record of the meetings of the Board of Directors of these companies for the dates when the project in question was on the agenda. Only the minutes of such meetings would have thrown light on the presence of directors when the disputed

status of the site or any judicial order were noted. Such details would have enabled the court to conclude prima facie as to which directors knowingly promoted the project despite awareness of any dispute qua the land and kept the investors in the dark. Yet, the investigation did not collect the record of the minutes of the meetings of directors in these companies. No effort was made to collect such records from the Registrar of Companies either. As noticed earlier, the chargesheet is premised on settlement between the parties rather than investigation qua the offences in question.

72. On account of non availability of the minutes of the meetings of the Board of Directors of *Rudra*, the specific knowledge available to Gautam Gambhir, as additional director of *Rudra*, regarding the disputed status of the project land was as undecipherable as any knowledge on part of the other directors viz accused No. 1 (Mukesh Khurana), accused No. 2 (Babita Khurana) and Ashok Kumar Makkar.
73. Consequently, the further assertion in the chargesheet that the developers continued to demand and collect money from the investors even after the sanctioned building plan expired on 23.06.2016 is devoid of supplemental details in form of the particular directors who so continued despite awareness of the disputed status of the land in question.
74. **Fourthly**, while the complainants had named a company viz *UM Architectures* and the chargesheet stated that the SBP had been issued in favour of this company, the company was not made an accused. Instead, two of the authorised signatories of this company, namely Mukesh Khurana (accused No. 1) and Gautam Mehra (accused no.3) were forwarded as accused in column no. 11 of the chargesheet. Again, the chain of title between this company and the other two companies named as accused (accused no. 4 and 5) was not investigated or specified in the

chargesheet.

75. In the decision reported as *Sharif Ahmed vs Ors State of UP 2024 INSC 363*, the Hon'ble Supreme Court highlighted the criticality of specific material being cited against respective accused persons. The relevant extract from the said decision is reproduced below:

20. There is an inherent connect between the chargesheet submitted under Section 173(2) of the Code, cognisance which is taken under Section 190 of the Code, issue of process and summoning of the accused under Section 204 of the Code, and thereupon issue of notice under Section 251 of the Code, or the charge in terms of Chapter XVII of the Code. The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages. The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative document and evidence available to the court till that stage. Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc.

.....
31. Therefore, the investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons.

76. It is the patent import of the above decision that the material evidence against each accused must find independent mention in the chargesheet. Such material must at least be argued by the prosecution/IO with specificity at the stage of arguments on charge. The court considering the framing of charge ought not to accept general allegations for framing charge as it defeats the right to fair trial which operates individually for each accused. Also, the court is not a mouth piece for the prosecution but rather a neutral surveyor and adjudicator of material cited

against any accused.

77. In *M/S Karnataka Emta Coal Mines Ltd and Anr. Vs CBI 2024 INSC 623*, the Apex Court elaborated as under:

20.2. As observed in Prafulla Kumar Samal (supra) the expression “not sufficient ground for proceeding against the accused” clearly shows that the Judge is not a mere post office to frame the charge at the behest of the prosecution. The Judge must exercise the judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The principles governing the scope of Section 227, Cr.P.C. have been succinctly summarized in the caption case as below:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

[emphasis added]

20.3. To the same effect is the view expressed in Niranjana Singh KS Punjabi (supra) where this court has observed as follows:

“5. Section 227, introduced for the first time in the new Code, confers a special power on the Judge to discharge an accused at the threshold if ‘upon consideration’ of the record and documents he considers ‘that there is not sufficient ground’ for proceeding against the accused. In other words his consideration of the record and document at that stage

is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not he will discharge the accused. It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure. |

6. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution."

78. Seen in the above light, the impugned order suffers from several material infirmities detailed below:

- i. The impugned order failed to discuss the specific evidence available in the chargesheet against each of the five accused persons who were directed to be charged or against the other five accused who were discharged. The reasons provided qua accused no. 1 to 3 conflated receipt of money from investors with culpability of the said accused for purpose of charge by generally associating them with accused no. 4 and 5 (*Rudra* and *HR Infracity* - both companies).
- ii. Since section 34 IPC was applied for finding section 420 to be applicable to accused no. 1 to 3, the meeting of minds contemplated by the said provision was required to be discussed with reference to the material in the chargesheet. This exercise too was not discharged in the impugned order.

- iii. Similarly, even without reference to the transactions concerning the project land between the two accused companies namely **Rudra** and **HR Infracity** (accused no.4 and 5) and the third non accused company namely **UM Architectures** as well as the flow of funds among or beyond them, the Ld Trial Court proceeded to record a facile finding that a case was prima facie made out against accused no. 4 and 5 under section 420 IPC.
- iv. The reasons recorded in the impugned order with respect to accused nos.1 to 5 are not only bare but also a general reproduction of the allegations of the prosecution. The order does not reflect application of mind resulting in an effective speaking order.
- v. Also, the role of the remaining accused, who were discharged, was dismissed with the brief finding that since none of them came in direct contact with the investors and did not receive money from such investors, they were liable to be discharged. This purported lack of culpability of the discharged accused persons was not contrasted with the accused who were charged. Infact, the chargesheet does not disclose that accused no. 1 to 3 came into contact with the investors either.
- vi. The only accused who infact did have any direct interface with the investors, in his capacity as Brand Ambassador, was Gautam Gambhir. He had also been named in the complaint. Though the said accused came to be discharged, the impugned order made no reference to the huge amount of Rs. 6 crores paid by him to **Rudra** and the sum of Rs. 4,85,00,000/- received back by him from the company. The charge sheet did not clarify whether the amounts paid back to him by **Rudra** had any nexus or were sourced from funds received from the investors in the project in

question. Since the core of the allegations pertains to the offence of cheating, it was required to be clarified by the charge sheet and also by the impugned order whether any component of the cheated amount(s) came to the hand of Gautam Gambhir. He apparently had financial transactions with the company beyond his role as a Brand Ambassador and was infact an Additional Director from 29.06.2011 till 01.10.2013. Thus, he was an office bearer when the project was advertised. The bulk of the repayment to him occurred after he resigned from the position of additional director on 01.10.2013. Yet, the impugned order generalised the findings against the named accused (Gautam Gambhir) by combining the findings against him with observations of the court regarding other accused (not named in the complaint). The impugned order recorded that :

.....no prima facie case is made out against remaining accused persons as neither they came in direct contact of any of the investors and no money/amount was handed over to any of them by any of the investors. Even the bank accounts in which the money amount was received, were under the control of accused No.1,2 & 3. In view of the same, no prima facie case is made out against accused Gautam Gambhir, Ashok Kumar Makkar, Rahul Chamola, Rakesh Kumar Kuldeep Singh Wadhawan and accused Romy Pawan Mehra and accordingly, they are discharged.

- vii. The impugned order reflects inadequate expression of mind in deciding the allegations against Gautam Gambhir. The allegations also merit further investigation into the role of Gautam Gambhir.
- viii. The impugned order similarly failed to distinguish the available material against the other persons who were discharged.

Notably, Ashok Kumar Makkar remained an Additional Director in *Rudra* while Rahul Chamola, Romy Pawan Mehra and Rakesh Kumar Kuldeep Singh Wadhawan remained directors in *HR Infracity*. Much like accused no. 1 to 3 (who were charged), these persons too did not come into contact with investors. In fact, one of them namely Rahul Chamola did receive a large payment of Rs.30 lakhs from *Rudra*. It was incumbent upon the Ld. Trial Court to record a finding on the nature of the said payment *inter alia* it being sourced from the amounts allegedly received from the investors by dishonest inducement or fraudulent inducement so as to constitute the offence of cheating punishable under Section 420 IPC.

ix. The combined findings of the Ld. Trial Court regarding all accused who were discharged, therefore suffer from material infirmity in law on account of the lack of nuanced discussion qua each of them. Much like accused Gautam Gambhir, the money trail between the companies in question and the other discharged accused (Ashok Kumar Makkar, Rahul Chamola, Romy Pawan Mehra and Rakesh Kumar Kuldeep Singh Wadhawan) was not discussed in the impugned order with any reference to the documents appended to the charge sheet. This money trail also requires further investigation.

x. The impugned order suffers from lack of accused specific reasons in relation to the invoking of section 420 read with section 34 against accused no. 1 to 3, section 420 against accused no. 4 and 5 and the non invoking of any of these penal provisions against the five discharged accused. The impugned order is in essence a non speaking order.

- xi. The impugned order is thus liable to be set aside.
- xii. Undoubtedly, the said non speaking order may have been occasioned by the glaring inadequacies in investigation highlighted in this order. The Ld. Trial Court ought to have taken recourse to its powers to direct further investigation prior to framing of charge on account of sparse investigation. The settlement centric approach of the IO ought to have been corrected by eliciting complete evidence regarding the transactions and material indicating cheating. The powers of the Magistrate in directing further investigation have been constantly asserted by the Hon'ble Supreme Court, especially in the decisions reported as *Vinubhai Haribhai Malaviya and Ors vs. The State of Gujrat and Anr.* and *State through CBI vs. Hemendhra Reddy & Anr. 2023 SCC Online SC 515.*
79. Interestingly, cheating (Section 420 IPC) is a scheduled offence under the Prevention of Money Laundering Act, 2002 (PMLA). Any property arrived from criminal activity relating to a scheduled offence would be of the description "proceeds of crime" as defined under Section 2 (u) of PMLA. A person involved in activity connected to the "proceeds of crime", including its concealment, possession or acquisition would be liable for prosecution relating to the offence of "money laundering", as defined under Section 3 and punishable under Section 4 of PMLA. The allegedly cheated amount of Rs. 3.5 crores, mentioned as the booking amount received from the investors, if it was indeed derived as a result of criminal activity of any of the accused persons (whether charged or discharged) may be required to be probed as "proceeds of crime" and any of the accused who were involved in activity connected to such possible "proceeds of crime" including by way of concealment, possession or

acquisition may have to be investigated with reference to “money laundering”.

80. Upon query from the Court, the IO stated that the allegations had neither been investigated with reference to money laundering nor was information regarding the funds involved in the present investigation shared with any other investigation agency tasked with probing money laundering. In the assessment of this Court, the investigation of the present FIR was grossly inadequate and also failed to discharge the duty of information sharing with other agencies. Upon such patent lacunae coming to the notice of the Court, appropriate directions cannot be abdicated.

ORDER

81. The impugned order dated 10.12.2020 is set aside with the following directions:-
- i. The matter is remanded back to the Ld. Trial Court with directions to pass a detailed fresh order on charge specifying the allegations against each accused with respect to the particular offence or provision and the corresponding material cited by the prosecution with reference to the chargesheet.
 - ii. The Ld. Trial court shall render specific findings qua each accused within the level of scrutiny required at the stage of charge.
 - iii. The prosecution shall duly make submissions in the above template to aid the Ld. Trial Court.
 - iv. However, prior to a fresh hearing on the aspect of charge, and in order to avoid uninformed or unsubstantiated findings, the Ld. Trial Court shall consider directions for further investigation in light of the observations made in this order and in light of the wide powers discussed in *Vinubhai* and *Hemendhra Reddy*.

- v. Let a copy of this order be also sent to the Directorate of Enforcement (ED) which shall also be provided the copy of the present chargesheet, supplementary chargesheet and any other further status report filed before the Id. Trial court by the IO within one week. The Directorate of Enforcement shall examine the allegations from the perspective of money laundering and file a status report on or before 11.11.2024. Since this court shall be *functus officio* upon disposal of the present revision petitions and the Id. Trial court is not the special court for matters related to the PMLA either, the said status report shall be filed by the ED through the prescribed filing mechanism, for matters under the PMLA pertaining to MPs/MLAs, before the Id. Principal District and Sessions Judge, RADC, New Delhi.
- vi. It is clarified that the directions for filing of a status report by the ED is not a direction from this court for registration of a FIR/ECIR and the ED shall take an independent view of the allegations with reference to the offence of money laundering.

(Vishal Gogne)
Special Judge [PC Act][CBI]-24
(MP/MLA cases), RADC),
New Delhi/29.10.2024