

Net Link Information Systems Limited vs State Of Nct Of Delhi on 25 April, 2016

IN THE COURT OF SHRI AMIT BANSAL
ADDITIONAL SESSIONS JUDGE-04, NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI

Unique I.D No. : 02403R0
Criminal Revision Number : 1/2/14

1. Net Link Information Systems Limited
A company incorporated under the
provisions of the Indian Companies Act, 1956
and having its registered office at D-6/226,
Kaveri, Vasant Kunj,
New Delhi-110070.

2. TMT Investments Pte. Ltd.
A Company incorporated under
the Laws of Singapore and having
its registered office at 17, Phillip Street,
#05-01, Grand Building,
Singapore-048695.

Versus

1. State of NCT of Delhi
Through the Ld. Public Prosecutor,
Patiala House Courts, Delhi.

2. Zenga Entertainment Private Limited
A Company incorporated under the provisions
of the Companies Act 1956 and having its registered
office at B-158 Basement, Shivalik, Malviya Nagar,
New Delhi-110017.

3. Mr Shabbir Momin
Director, Zenga Entertainment Private Limited,
D-14/39 Ground Floor,
DLF Exclusive Floors,
DLF Phase V, Gurgaon.
CR no. 1/2/14

Net Link Information Systems Limited & Anr. Vs

4. Mr Sanju Kapoor
B2-804, PW0, Sector-43,
Gurgaon.

5. Mr Vikramjit Roy
B-158, 2nd Floor, Shivalik,
Malviya Nagar, New Delhi-110017.

Date of receipt of file in this Court
Date of Order

ORDER

1 The present Revision Petition is directed against the impugned order dated 17.10.2013 passed by the Ld. Trial court in proceedings arising out of CC No. 161/1A/13 in matter titled as M/s Net Link Information Systems Ltd. & Ors Vs M/s Zenga Entertainment Pvt Ltd & Ors. whereby the learned Trial Court dismissed the application of the complainant/revisionists u/s 156 (3) CrPC and posted the matter for pre summoning evidence. 2 I have heard the rival submissions on behalf of learned counsel for the Revisionists, Ld. Addl. PP for the State/respondent no. 1 and Ld. Counsel for respondents no. 2, 3 and 5. None for respondent no. 4 appeared to address arguments on the revision petition. I have also carefully perused the record including the Trial Court record.

3 Perusal of record shows that earlier in Criminal Revision no. 1/2/14 dated 15.01.2014 titled as Net Link Information Systems Ltd. & Anr. Vs. State of NCT of Delhi & Ors. the learned predecessor of this court vide order dated 04.02.2014 directed for registration of FIR under appropriate sections of law CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 2 of 19 upon which FIR no. 184/2014, u/s 420/120-B IPC, PS Vasant Kunj (South) was registered. The said order dated 04.02.2014 was assailed in Criminal M.C. No. 1185/2014 before Hon'ble Delhi High Court and the Hon'ble Delhi High Court vide order dated 21.05.2014 quashed the order dated 04.02.2014 with direction to the revisional court (ld. predecessor of this court) to decide the revision petition of respondent no. 1 and 2 expeditiously after notice to respondent no. 4 Sanju Kapoor and any proceeding taken in consequence of order dated 04.02.2014 was also quashed. Perusal of record shows that subsequently respondent no. 4 put in the appearance, however, none for respondent no. 4 has appeared to address arguments on the revision petition before this court.

4 The ld counsel for the Revisionists/complainant argued that the respondents had assured the revisionist no. 2 company that it had obtained all permits, approvals and licences for execution of the bank guarantee in terms of the licence agreement dated 30.03.2009 but the respondents never complied with the same and therefore the investigation was required to collect the material and establish that there was no such approval, permissions etc and the respondent no. 1 company had no wherewithal to furnish the bank guarantees at the time of execution of the licence agreement dated 30.03.2009. He argued that the respondents were duty bound in terms of licence agreement dated 30.03.2009 to disburse 80% of the net revenue to the revisionist no. 2 company, the respondents did not pay any amount to the revisionist company on that account, the cheque issued for Rs 14.25 crores had also been returned dishonoured and the factum of the amount of net revenue earned by the respondent no. 1 company had to be investigated by the police authorities which cannot be procured or proved by the revisionists/complainant on its own. He also submitted that some third party vendor has also admitted the fact that they had made some payment to the CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 3 of 19 respondents.

He contended that the aspect that the respondents had conspired with each other to induce the revisionist company to enter into the licence agreement by making false promises of furnishing bank guarantee and promising payment of the minimum guarantee fees has to be investigated by the police authorities. He further argued that the investigation by the police was also required as the respondents had conspired with each other to induce the complainant company to enter into, execute and adhere to the terms of the amendment of the licence agreement by way of letter dated 02.05.2009 and the aspect whether the respondents in furtherance of their criminal conspiracy had handed over the cheque of Rs 14.25 crores with full knowledge that it could not be honoured on presentation. He contended that the said aspect has to be investigated by the police as it cannot be established by the complainant. He also contended that the respondents entered into third party contracts with various persons including Electronic Arts, Asia Pacific Pte. Ltd. and received amounts from them which has also been confirmed through letter from the said companies. He argued that the total amount received from the third party vendors could not be ascertained without investigation by the police authorities. He argued that the Ld. Trial court did not take into consideration the judgment of Hon'ble Supreme Court of India in matter titled as Lalita Kumari Vs Govt. of Uttar Pradesh & Ors., (2014) 2 SCC 1 and contended that the facts of the case disclosed commission of cognizable offences requiring thorough investigation by the police.

5 He argued that the licence agreement dated 30.03.2009 was entered into between the revisionist no. 2 TMT Investment Pvt Ltd and respondent no. 2 Zenga Entertainment Pvt Ltd wherein the respondent no. 2 represented and warranted that it had obtained all permits, approvals and licences for the execution of bank guarantee, remittance of TMT Profit share CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 4 of 19 and the minimum guaranteed fee, the revenue sharing model was also fixed in the ratio of 80% to TMT and 20% to Zenga with clause no. 8 of the said agreement providing for Bank Guarantee to the effect that for each year of the licence period, respondent no. 2 Zenga would obtain and furnish to revisionist no. 2 TMT and unconditional bank guarantee in favour of TMT, the first year bank guarantee to be provided by 12.04.2009 and 30 days before the start of IPL for each subsequent year (of the value of 25% of that year's Minimum Guaranteed Fee) with the stipulation that the bank guarantee shall be encashable from 07 days of start of IPL of that year. He further contended that Clause 6 of the said Licence Agreement dated 30.03.2009 provided for Minimum Guaranteed Fee. He contended that the market revenue was to be generated by respondent no. 2 as they were to market the Live feed of IPL matches from 18.04.2009 to 25.05.2009, only respondent no. 2 knew how much subscription they received, how much they earned and out of the said earning as per the agreement 80% was to be of revisionist no. 2 whereas 20% was to be of respondent no. 2. He contended that on 30.03.2009 respondent no. 2 did not even had the wherewithal to give bank guarantee and once agreement was entered into, it was with an assurance from respondent no. 2 that it could give bank guarantee. He argued that once live feed was given to the respondent, it was gone from the control of the revisionists, there was misrepresentation from respondent no. 2 from even the first day of entering into the said licence agreement as they did not had the wherewithal from even the first day to furnish bank guarantee and hence, they had the intention to cheat from the first day itself. He argued that as per the licence agreement the minimum guarantee assured was never provided nor the bank guarantee was furnished by the respondent. He also referred to letter dated 02.05.2009 (on page no. 91 of the revision petition) wherein the revisionist no. 2 and respondent no. 2 agreed

that the licence agreement CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 5 of 19 dated 30.03.2009 entered into between them would stand amended and all defaults / deviations till the date of issuance of letter dated 02.05.2009 stood waived by revisionist no. 2. He argued that vide said letter dated 02.05.2009 Zenga and TMT agreed that the minimum guarantee to be paid by Zenga to TMT on May, June and August of year (1) shall be modified and payable as Rs. 4,25,00,000/- as due on 14.05.2009, Rs 5,00,00,000/- as due on 30.05.2009 and Rs. 5,00,00,000/- as due on 15.08.2009. He contended that further in terms of said letter dated 02.05.2009 qua the bank guarantee in terms of licence agreement, TMT acknowledge the receipt of Rs 75 lacs and that the bank guarantees in terms of licence agreement against the first three minimum guarantee stood waived. He argued that the revisionist no. 2 was unlawfully induced by the respondent to enter into the said modification agreement dated 02.05.2009 even though the respondent had the intention to cheat from the very inception. He contended that it is an admitted case on behalf of respondents that the revenue was generated but argued that how much revenue was generated is endemic to respondent no. 2 as the revisionist only gave live feeds and not even a single penny was paid b Zenga after taking live feeds. He argued that there was marketability of IPL tournament, the first was in India which was a huge success but the second one for which the agreement dated 30.03.2009 was entered into was shifted from India to South Africa on 27.03.2009 due to general elections in India and the respondent while entering into the agreement dated 30.03.2009 were conscious of the fact that the IPL had been shifted from India to South Africa on 27.03.2009.

6 Ld. Sr Counsel for the revisionists referred to Licence Agreement dated 30.03.2009 and submitted that respondent no. 2/Zenga falsely represented that he had obtained all permits, approvals and licences for the execution of bank guarantee and the revisionist proceeded on that assurance.

CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 6 of 19 In that regard he referred to Section 35A of The Banking Regulation Act, 1949 which gives powers to the Reserve Bank to give directions. He also referred to the Master Circular dated 01.07.2008 qua Guarantees, Co-acceptances and Letters of Credit issued by Reserve Bank of India (RBI) wherein some safe guards in issuance of guarantees have been mentioned in Clause 1.3 of said Master Circular and contended that the revisionist proceeded on assumption that these directions would have been complied with by the respondent no. 2 and only under that impression entered into the licenced agreement dated 30.03.2009 with the respondent no. 2. He contended that as per the said circular, the guarantees should not normally be allowed to the customers who did not enjoy credit facilities with the banks but only maintained Current Accounts and the requests of Customers only maintaining Current Accounts should be subjected to thorough scrutiny and after thorough inquiry to the financial position of the customers, the source of the funds from which they would be in a position to meet the liability, prescribe a suitable margin and obtain other security etc. He argued that in the present matter the respondent no.2 represented that he had obtained all permits, approvals, licences for execution of bank guarantee although it only had a current account and as such the respondent no. 2 cheated the revisionist as on 30.03.2009 (the date of entering into Licence Agreement) the respondent no. 2 did not have even wherewithal to furnish the bank guarantee. He contended that investigation by the police was required to look into the cognizable offences of cheating committed by the respondents and also into the aspect as to with what other

companies the respondent entered into further agreement and the revenue they earned etc. He argued that this information was only in the domain of the respondents, which could not be obtained by the revisionists/complainants on which they could lead any evidence and that investigation by the police was required in that regard. He CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 7 of 19 also referred to the impugned order dated 17.10.2013 and argued that it is illegal and should be set aside. He argued that as the complaint disclosed commission of cognizable offences by the respondents, therefore the police be directed to register a FIR in the matter and to investigate the matter as per law.

7 The Ld. Counsel for respondents no. 2, 3 and 5 argued that the impugned order dated 17.10.2013 passed by the Ld. Trial court was neither illegal nor perverse and there is no ground to interfere in the said order by the revisional court. He argued that the impugned order is a well reasoned order and has been passed by Ld. MM upon proper application of the law covering the field. He argued that the directions u/s 156 (3) CrPC cannot be passed by the Ld. MM as a matter of routine or in a mechanical manner. He in that regard referred to the judgment of Hon'ble Delhi High Court in case Subhakaran Loharuka & Anr. Vs State & Anr, ILR (2010) VI DELHI 495. He contended that vide impugned order, the Ld. Trial court gave liberty to the complainant to step into the witness box for recording the pre summoning evidence and that on the facts of the case the assistance of law enforcement agency was not required for collection of evidence. He further argued that in the year 2009 the revisionist no. 1/complainant filed a complaint u/s 138 NI Act r/w Section 420 IPC, however, Ld. MM took cognizance only u/s 138 NI Act and now therefore no reliance can be placed u/s 420 IPC. He contended that there is no privity of contract with the complainant no. 1/revisionist no. 1 and both the agreements dated 30.03.2009 and 02.05.2009 were entered into between complainant no. 2/revisionist no. 2 and respondent no. 2. He contended that in view of subsequent agreement dated 02.05.2009 the clause 8 of Licence Agreement dated 30.03.2009 was amended regarding furnishing of bank guarantee and Rs 75 lacs on that score was paid in the account of revisionist no. 2 as against the furnishing of proposed bank guarantee in the CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 8 of 19 licence agreement. He argued that respondent no. 3 and 5 are Directors of respondent no. 2 company and the respondent no. 2 company through its Directors signed an agreement with revisionist no. 2 on 30.03.2009 relating to assignment of mobile rights of Indian Premiere League Tournament (IPL) to be held in the year 2009 by Board of Control of Cricket in India (BCCI), the rights were assigned for five years starting 2009, it was represented on behalf of revisionist no. 2 that they had obtained rights from the organizers of IPL Cricket Tournament for dissemination of the details, programs, cricket matches, cricket commentary, live scores and other related information about the tournament and matches to be held through cellular mobile technology, however, at no point of time the revisionists supplied any such document of such delegated and assigned powers which was crucial for the respondent company to market rights and generate the revenue. He argued that due to shifting of IPL from India to South Africa, the financial statistics came down drastically which resulted in frustration of the contract. He contended that the revisionist no. 2 never provided any logistical support to the respondent no. 2. He contended that in terms of subsequent communication dated 02.05.2009 the revisionist no. 2 itself agreed to waive off the previous deviations and the respondent no. 2 issued a cheque of Rs 14.25 crore in the name of revisionist no. 1. He argued that the said cheque was issued in the name of revisionist no. 1 on the request of

revisionist no. 2, however, there was no privity of contract between respondent no.2 and revisionist no.1. He contended that in view of subsequent communications, the respondent no. 2 further paid Rs 75 lacs to the revisionist no. 2 in lieu of and against the furnishing of bank guarantee.

8 The Ld. Counsel for revisionist no. 2, 3 and 5 further argued that an appeal should be distinguished from a revision petition and in the absence of any perversity in the impugned order, it should not be entertained. He referred CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 9 of 19 to the impugned order and argued that there was no perversity in it. He further argued that the Ld. Trial court vide impugned order has passed an affirmative order that in fact no investigation was required and no police investigation was required regarding any bank guarantee. He contended that the respondents joined the enquiry with the police when the status report was to be filed by the police and supplied documents including bank documents. He contended that upon reading the licence agreement dated 30.03.2009 in conjunction with letter dated 02.05.2009, it would become clear that the bank guarantee had been waived. He contended that no cognizable offence requiring any investigation by the police was made out and the investigation by the police was not required. He contended that a party cannot be allowed to approbate and reprobate i.e. blow hot and cold in the same breath in the same time. He argued that it is a matter of documentary evidence for which police investigation was not required. He also relied upon the following judgments:-

- (i) Rajneesh Kumar Singhal Vs The State (NCT of Delhi), 2001 (57) DRJ 411 (FB);
- (ii) Simran Ahluwalia Vs State, 2012 SCC OnLine Del 1439;
- (iii) Venkatesan Vs Rani, AIR 2013 SC 320;
- (iv) Johar Vs Mangal Prasad, (2008) 3 SCC423;
- (v) State Vs N.M.T. Joy Immaculate, (2004) 5 SCC 729;
- (vi) Bindeshwari Prasad Singh @ B P Singh Vs State of Bihar (now Jharkhand), (2002) 6 SCC 650 and
- (vii) D. Stephens Vs Nosibolla, AIR 1951 SC 196.

9 Learned Addl. PP for State / respondent no. 1 argued that three action taken reports were filed before the learned Trial Court wherein no where it was stated that no case was made out. He categorically submitted that from the facts of the case cognizable offences are made out upon which CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 10 of 19 FIR should be registered. He further referred to the notice by Insp. Neeraj Chaudhary to respondent no. 3 and 5 requesting for information / documents and contended that the said information or documents were not given and were withheld by the said respondents and as such also a proper investigation is required for which FIR should have been registered in this case.

10 The ld counsel for the revisionists referred to the impugned order and argued that it is perverse on the face of it because the ld. Trial court in paragraph no. 5 of the impugned order held that the complainant has not alleged as to what evidence was needed through investigation, which could show the dishonest intention of the accused persons. He contended that it is a case of non application of mind and hence is perverse. He also referred to the judgment of Hon'ble Karnataka High Court in case M.S Narayanagouda Vs. Girijamma, AIR 1997 Karnataka 58 and argued that a perverse order is made in the contravention of the basic principles of rules of natural justice and can not be allowed to stand uncorrected. He further argued that even though the impugned order mentioned the status report but does not mention that there are three status reports and no status report has also been discussed. He argued that the respondent withheld information from the police and there was non co-operation on its part. He argued that the respondent is in possession of information which he was not disclosing. He contended that in the impugned order the learned trial court even did not form an opinion if the complaint disclosed commission of cognizable offences or not. He also referred to reply dated 12.08.2009 (on page no. 109 and 110 of the revision petition) given on behalf of respondent no. 2 to the revisionists wherein the respondent no. 2 has specifically mentioned that the proposal contained in the letter dated 02.05.2009 has been lapsed. He thus argued that it is not the revisionist but the respondents who are blowing hot and cold in the same CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 11 of 19 breath. He thus prayed that the facts disclose commission of cognizable offences, therefore, the police should be directed to register a FIR and to investigate the matter as per law.

11 The revisionists/complainants filed a complaint case before the Ld. Trial court including an application u/s 156 (3) CrPC for commission of offences by the respondents u/s 406/409/420/422/424 r/w Section 120 B IPC. It was averred in the complaint that complainant no. 1/revisionist no. 1 was a company incorporated under the provisions of Company Act, 1956 whereas the complainant no.2 /revisionist no. 2 is a company incorporated under the laws of Republic of Singapore. It was averred that the respondents in pursuance of a criminal conspiracy have dishonestly and fraudulently defrauded and cheated the complainants and have criminally misappropriated the amounts entrusted to them in violation of agreements between the parties. The complainants filed a complaint dated 28.02.2013 to the DCP, EOW, Delhi as received on 01.03.2013 which was transferred to PS Vasant Kunj for appropriate action. It was averred that the complaint disclosed commission of cognizable offences by the respondents in pursuance of criminal conspiracy, however, the police authorities did not register a FIR in the matter. 12 It was averred that both the complainant companies form part of Netlink Blue Group of Companies and the interest of complainant no. 2 in India was being looked after by its sister concerns and officials i.e. complainant no. 1 company in the present case. It was averred that in the year 2008 the complainant no. 2 /TMT acquired from BCCI the rights for the internet, mobile transmission and exploitation rights globally for the IPL tournament for a period of 10 years. After the grant of said contract, the respondent no. 2 company / Zenga through its Directors i.e. respondent no. 3, 4 and 5 approached complainant no. 2's sister concern Netlinkblue LLC for obtaining the licence of the mobile rights for IPL. After initial negotiations, the CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 12 of 19 respondent no. 2 sought to enter into a non disclosure agreement on 24.03.2009. It was averred that all the respondents represented to complainant no. 2 and its officials that they were a leading player in the business of digital

marketing in India and therefore induced complainant no. 2 to grant licence to them to use its mobile rights for the purpose of rights exploitation. They represented that they would collect all revenue from such exploitation of rights for and on behalf of complainant no. 2 and would deposit 80% of such collection with complainant no. 2. They also represented that they would secure the deposit of such amount by furnishing a bank guarantee every year before the start of the tournament and that for the first year the bank guarantee was to be furnished by 12.04.2009. It was averred that believing the representations to be correct, the complainant no. 2 entered into a licence agreement dated 30.03.2009 with respondent no. 2. The licence agreement dated 30.03.2009 stipulated that the complainant no. 2 would provide the raw live match stream to respondent no. 2 and in turn the respondent no. 2 would exploit the rights therein and would collect all revenue from the users. The respondents were also required to then deposit 80% of the total revenue collected with complainant no. 2. It was also provided in the agreement that the respondent no. 2 would pay a minimum guarantee fee of US \$ 5 million for the first year i.e. IPL session 2009 and also promised to furnish bank guarantee amounting to 25% of the minimum guarantee fee by 12.04.2009. It was averred in the complaint that the respondents knew very well from the very beginning that they would not furnish any bank guarantee nor deposit any money collected in terms of the agreement and they had dishonest and fraudulent intention from the very beginning. It was further averred that on the basis of such fraudulent and dishonest representation, the respondents had been successful in inducing complainant no. 2 to execute the licence agreement dated 30.03.2009 and that the complainant no. 2 CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 13 of 19 believing the representations to be correct had also provided live feeds and all other required assistance as per the licence agreement. It was averred that in terms of licence agreement, the respondents had to furnish the bank guarantee by 12.04.2009 but they had no intention to furnish the same at any point of time and they made one excuse after the another. It was averred that the respondents kept on deferring the furnishing of the said bank guarantee and the respondent no. 3 and 5 issued several emails to that effect. When complainant no. 2 insisted that some amount had to be deposited, then the respondents deposited a sum of Rs 75 lacs and also assured the payment of minimum guarantee fee of Rs 14.25 crores for the first three installments of the first year i.e. IPL season 2009 on the basis that Rs 4,25,00,000/- would be due as on 14.05.2009, Rs 5 crores would be due as on 30.05.2009 and thereafter Rs 5 crores would be due on 15.08.2009. It was averred that respondents had no intention to make such payment and therefore all such excuses were made and that they also handed over a cheque bearing no. 222020 dated 30.06.2009 drawn on ABN Amro bank for a sum of Rs 14.25 crores with the agreement that complainant no. 1 would deposit the said cheque on or after 30.06.2009 if until that time the amount was not received and this understanding and agreement was confirmed by way of letter dated 02.05.2009 which was signed by the respondent also. After getting the assurances from the respondent, the complainant no. 2 continued to supply them the requisite mobile feed till the finals of IPL season 2009 but the respondents had no intention to make the payment. It was averred that despite assurances, the respondents did not make any payment and had no intention of honouring the above said cheque of Rs 14.25 crore which was dishonoured upon presentation and consequently a separate complaint case was also filed. It was averred that the respondents in pursuance of a criminal conspiracy with each other had cheated the revisionists / complainants by CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 14 of 19 making dishonest and fraudulent statements thereby inducing complainant no. 2 to enter into the licence agreement and

also to provide the mobile feeds and that their wrongful and illegal act had caused wrongful loss to the complainant companies and caused wrongful gain to the respondents. It was further averred that the respondents have committed the offence of cheating and they have dishonestly induced delivery of property and further that the respondents have received various payments from various persons / entities and they had received those payments on behalf of complainant no. 1 and 2, they were entrusted with the said payment with the obligation to deposit 80% of the amount received, the respondents acted as an agent of the complainant companies for the said purpose, the respondents in violation of the said entrustment misappropriated the amounts for their illegal and wrongful benefit in violation of contractual terms, the respondents conspired together causing wrongful loss to the complainant company and the respondents are guilty of criminal breach of trust and criminal breach of trust by an agent. It was averred that the respondents committed offence u/s 420/422/424/406/409 r/w Section 120B IPC.

13 The impugned order dated 17.10.2013 would show that the Ld. Trial court mentioned that it had called for the status report, which was duly filed by the concerned SHO and the same is on record. The Ld. Trial court further mentioned that the said report was being considered. It seems that the Ld. Trial court has only referred to have considered one status report of the police, whereas, the record shows that there are three status reports filed by the police in this matter. It thus seems that the Ld. Trial court did not even consider the entire record and passed the impugned order even without considering and referring the entire trial court record. Further, the Ld. Trial court in the impugned order although mentioned about one status report from the police but did not at all discuss it in the impugned order. The impugned CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 15 of 19 order does suffers from illegality and perversity on account of non application of mind and non consideration of the entire available record. In one status report SI Amit PS Vasant Kunj (S) has mentioned that the officials of the alleged company were contacted telephonically and they were asked to join the enquiry but after repeated directions to them neither they came nor their representatives came at PS Vasant Kunj (S) to join the enquiry of said complaint and further one month time was requested to compete the enquiry. In the second status report, the IO Inspector Neeraj Chaudhary PS Vasant Kunj (S) inter alia mentioned that a detailed point wise notice was given to the alleged persons to provide relevant documents regarding the said agreement and their resources to pay the bank guarantee, the alleged Mr Shabbir Momin produced a reply dated 10.07.2013 stating there in that the bank guarantee was waived off by the complainant by letter dated 02.05.2009 but he did not produce the details of their would be resources of the said bank guarantee and other relevant information. It was further mentioned in the said status report that a fresh notice on specific points was again being sent to the alleged persons to provide the required relevant documents with also mentioning that FIR was not registered in the matter so far. In the third status report, it was further inter alia mentioned that the alleged persons produced their reply dated 22.07.2013 stating therein that the letter dated 02.05.2009 was filed by the complainant in Section 138 NI proceedings in the court and the alleged persons also produced copy of their account statements. It was mentioned in the status report that the complainant also produced his reply dated 23.07.2013 regarding the above grounds taken by the complainant wherein it was stated that the said cheque was given by the alleged persons on 02.05.2009 itself, the alleged persons never intended to clear the cheque and the alleged persons never had the sufficient amount in their account to clear the said cheque. It was also mentioned in

the status report that the CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 16 of 19 replies and documents submitted by the complainant and alleged persons on 22.07.2013 and 23.07.2013 were being examined and verified, however, the FIR was yet not registered on the complaint as the same was still pending enquiry.

14 The above said three status reports filed by the police have not at all been discussed by the Ld. Trial court in the impugned order. The Ld. Addl. PP for the State/respondent no. 1 rightly argued that no where it has been mentioned in three status reports filed by the police that no cognizable offence was made out from the facts of the complaint. In facts, the Ld. Addl. PP for the State went on to argue that a cognizable offence is made out from the facts of the complaint and that FIR should be directed to be registered in this case mentioning that the respondents did not provide the documents and requisite information was also withheld by them.

15 The Ld. Trial court in the impugned order mentioned that the complainant had made direct allegations on the accused persons but the complainant had not alleged as to what evidence was needed through investigation which could show the dishonest intention of accused persons. It was not necessary for the complainants to specifically allege as to what evidence was needed through investigation as the learned trial court could have framed its own opinion after going through the facts of the complaint case and the documents filed with it if the investigation was required on some aspects or not or if the allegations could be proved by the complainant itself by adducing evidence. The ld trial court did not at all consider if the facts of the case disclosed commission of cognizable offences requiring investigation by the police. The ld trial court thus committed an illegality and material irregularity in the impugned order. It has been averred in the complaint that the respondents knew very well from the beginning that they would not furnish any bank guarantee nor deposit any money collected in terms of the CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 17 of 19 agreement and they had dishonest and fraudulent intention from the very beginning. It was also argued that investigation was required for gathering information as to with whom the respondents entered into agreement, the revenue which they generated and for ascertaining the actual amount which was cheated from the complainants. Further as argued by the ld Addl. PP for State that the respondents did not properly co-operate during the inquiry, with held the information from the police and did not hand over the entire requisite documents. In these circumstances, it seems that the FIR should have been directed to be registered in this case with an opportunity to the police to conduct a thorough investigation and to seize the requisite documents, if so required, during the the investigation.

16 Further, the facts of the case disclose the commission of cognizance offences which require thorough investigation by the police. The police investigation is also required for digging out of evidence which is neither in the possession of the complainant nor can be procured without the assistance of the police. The Hon'ble Supreme Court of India in case of Lalita Kumari (Supra) has held that the registration of FIR is mandatory u/s 154 CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and the police officer can not avoid his duty of registering offence if cognizable offence is disclosed. The ld trial court thus without mentioning that the complaint disclosed commission of cognizable offence or not committed an illegality and the impugned order thus is not sustainable in the eyes of the law. 17 The

Id counsel for the respondents no. 2, 3 and 5 laid much emphasis on the letter dated 02.05.2009 mentioning that the licence agreement was amended by this letter and all the defaults / deviations stood waived by TMT. In this regard, it seems that the respondents no. 2,3 and 5 CR no. 1/2/14 Net Link Information Systems Limited & Anr. Vs. State of NCT of Delhi & Ors. page 18 of 19 are blowing hot and cold in the same breath as in the reply dated 12.08.2009 (on page no. 109 and 110 of the revision petition) given on behalf of respondent no. 2 to the revisionists, the respondent no. 2 has specifically mentioned that the proposal contained in the letter dated 02.05.2009 has been lapsed. The respondents therefore can not take any advantage of any said letter dated 02.05.2009 at this stage. There can not be any doubt over the judgments as relied upon by the respondents, however, they are distinguishable on the facts of the case and would not help them. 18 In view of the above said discussion, it is thus held that the impugned order suffers from material irregularity, illegality and non application of mind and is thus not sustainable in the eyes of law and is therefore set aside. As the complaint discloses commission of cognizable offences requiring investigation by the police, therefore, in terms of directions as contained in the judgment of Hon'ble Supreme Court of India in case of Lalita Kumari (Supra), the SHO PS Vasant Kunj (South) is directed to register a FIR under relevant provisions of law and to investigate the matter thoroughly as per law. It is made clear that vide present order, only directions for registration of the FIR have been passed which should not be construed as directions to arrest any person during the investigation of the case, which would be the prerogative of the investigating officer to be decided as per law. 19 In view of the above said discussion, the present revision petition is allowed and the impugned order dated 17.10.2013 is set aside. 20 TCR be sent back along with the copy of the present order and Revision file be consigned to record room.

Announced in the open
Court on 25.04.2016

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Net Link Information Systems Limited & Anr. Vs