

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:72384-DB

Reserved

Judgment Reserved on 11.10.2023

Judgment Delivered on 03.11.2023

Case :- CRIMINAL MISC. WRIT PETITION No. - 29757 of 2019

Petitioner :- Mohd. Wajid And Ors.

Respondent :- Union Of India Thru. Secy. Personnel Public Grievance & Ors.

Counsel for Petitioner :- Karunanidhi Yadav,Krishna Kant

Counsel for Respondent :- G.A.,A.S.G.,Sanjeev Singh,Shiv P. Shukla

AND

Case :- CRIMINAL MISC. WRIT PETITION No. - 379 of 2020

Petitioner :- Saurabh Mukund

Respondent :- Union Of India Through Secy. Ministry Of Personnel & Others

Counsel for Petitioner :- Krishna Kant,Karunanidhi Yadav

Counsel for Respondent :- Govt. Advocate,A.S.G.,Sanjeev Singh

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per: - Rajan Roy, J.)

1. Heard Sri S. P. Singh, learned Senior Advocate assisted by Sri Karunanidhi Yadav, learned counsel for the petitioners, Sri Shiv P. Shukla, learned counsel for C.B.I. and, Sri Sanjeev Singh, learned counsel for opposite party no. 6 in Criminal Misc. Writ Petition No. 29757 of 2019 and for opposite party no. 5 in Criminal Misc. Writ Petition No. 379 of 2020.

2. These two petitions involve similar facts and issues and as per request of counsel for the parties have been heard together and are being decided by a common judgment.

3. In both the petitions, petitioners claim to be Directors of Companies which had purchased Sugar Mills in furtherance of the disinvestment policy of the Government of U.P. Criminal Misc. Writ Petition No. 29757 of 2019 has been treated as the leading petition and its facts are being discussed as the counsel for the petitioners submitted that the facts in all the petitions are similar. The relief clause of Criminal Misc. Writ Petition No. 29757 of 2019 is quoted below:

"a) issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 12.04.2018 (Annexure 1) issued by OP No. 2 as well as the consequential order dated 22.02.2019 (Annexure 2) issued by OP No. 1 and the order dated 04.04.2019 (Annexure 3) issued by OP No. 2 and all other consequential proceeding arising thereof in respect of the petitioners;

b) issue a writ, order or direction in the nature of CERTIORARI quashing FIR transferred and registered by CBI dated 25.04.2019 registered as RS0062019A0005 of 2019 under Section U/S 420, 468, 471, 477A IPC and 629A of Companies Act, 1956 against the petitioners (Annexure No. 4).

c) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed; and

d) to allow the writ petition with costs."

4. Before considering other issues, it is necessary to mention that earlier a writ petition bearing No. 27765 (MB) of 2019 was filed

by these very petitioners *inter alia* challenging the same FIR quashing of which has been sought in these petitions by way of **relief no. b)** quoted hereinabove. The relief clause of Writ Petition No. 27765 (MB) of 2019 is quoted below:

"A. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the consequent FIR no.: 1409/2017, P.S. Gomti Nagar, u/s. 420/468/477-A/471 IPC Annexure No. 3. & 629(A) Companies Act, 1956 registered based on recommendations as contained in SFIO's illegal report dated 11.08.2017;

B. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the quashing the quashing the Serious Fraud Investigation Office's complaint and all proceedings emanating therefrom including the CC/720/17 titled SFIO VS. Mohd. Iqbal & ors., by Special Judge (Companies Act) Dwarka Courts, (SW) / Delhi;

C. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the RC registered by Central Bureau of Investigation being RC0062019A0005 registered on 25.04.2019 by {CBI-ACB, Lucknow};

D. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the proceedings initiated by Directorate of Enforcement Zonal Office Lucknow being ECIR/LKZO/02/2019;

E. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the inquiry initiated by Uttar Pradesh Vigilance Establishment being 180/17;

F. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the FIR No. 39/2018 dated 10.03.2018, u/s. 420/467/468/471 IPC at P.S. Janakpuri, Saharanpur; Annexure No.7.

G. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the FIR No. 52/2018 dated 147/148/149/352/504/506/447 IPC r/w. 3(2) SCST Act 13.03.2018, u/s. 1989 (Amendment 2015), at P.S. Mirzapur, Saharanpur, Annexure No. 8.

H. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the FIR No. 177/2019 dated 27.07.2019, u/s. 420/504/506 at P.S. Mirzapur, Saharanpur; Annexure No. 9.

I. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the FIR No. 245/2019 dated 18.09.2019, u/s. 406/420 at P.S. Mirzapur, Saharanpur; Annexure No. 11

J. Issue the writ of Certiorari or any other appropriate writ, order or direction quashing the the FIR No. 178/2019 dated 27.07.2019, u/s. 406/342/392/504/506/354 at P.S. Mirzapur, Saharanpur; Annexure No. 10

K. Issue any other suitable writ, order or direction which this Hon'ble court may deem fit, just and proper in the facts and circumstances of the case and in the interest of justice."

The aforesaid petition was dismissed on 17.10.2019 as not pressed. The said order reads as under:

"Heard Sri S. P. Singh along with Sri Karunanidhi Yadav for the petitioners, Sri Shiv P. Shukla for opposite party No.s 2 and 6 as well as learned A.G.A.

After arguing for a little while learned counsel for the petitioners submits that he does not want to press this petition. Accordingly, the petition is dismissed as not pressed.

*However, withdrawal of this petition will not mean that any **other legal remedy** available to the petitioner cannot be under taken by him."*

5. On being confronted with this scenario and a query as to how these petitions were maintainable, learned Senior Counsel appearing for the petitioners submitted that while dismissing the petition the Coordinate Bench had clearly observed that withdrawal of this petition will not mean that any other legal remedy available to the petitioner cannot be undertaken by him.

6. We are afraid this contention is not acceptable as there was no liberty granted by the Coordinate Bench to file another writ petition. The words "*any other legal remedy available to the petitioner*" as referred in the last paragraph of the order dated 17.10.2019 could only mean any remedy other than the remedy under Article 226 of the Constitution of India.

Nevertheless, even if this aspect is ignored for the moment, we find that the relief prayed in **Clause b)** of prayer clause of this petition as quoted hereinabove relates to quashing of the criminal case/FIR dated 25.04.2019 lodged by the Central Bureau of Investigation (CBI) after being handed over investigation of the case which, in fact, was being conducted earlier by the local police concerned based on the FIR dated 07.11.2017 bearing No. 1409 of 2017, under Sections 420, 468, 477A, 471 IPC & Section 629(A) of Company Act, 1956, Police Station Gomti Nagar, District Lucknow. Now, this FIR dated 07.11.2017 bearing No. 1409 of 2017 which is the basis for lodging of the subsequent FIR dated 25.04.2019 by the CBI, apart from being challenged in Writ Petition No. 27765 (MB) of 2019, was also put to challenge by the petitioners along with others by means of an earlier petition being Criminal Misc. Writ Petition No. 36872 of 2018 filed before this Court at Allahabad as is mentioned in paragraph 24 of the writ petition and the said petition was disposed of on 18.12.2018 in the following terms:

"Heard learned counsel for the petitioners and learned AGA for the State.

This writ petition has been filed by the petitioners with a prayer to issue a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 7.11.2017 registered as Case Crime No. 1409 of 2017, under Sections 420, 468, 477A, 471 IPC & Section 629(A) of Company Act, 1956, P.S.- Gomti Nagar, District- Lucknow.

It has been submitted by the learned counsel for the petitioners that the impugned FIR has been lodged by respondent no. 5 after an inordinate and unexplained delay of six years containing absolutely false and concocted allegations against the petitioners, who are the purchaser of Sugar Mill, Deoria. Moreover, apart from the bald allegations made in the impugned F.I.R., no credible evidence whatsoever is coming forth even prima facie indicating at the complicity of the petitioners in the commission of the alleged crime and the impugned FIR, which is a bundle of lies and product of malice, is liable to be quashed.

Per contra learned A.G.A. submitted that from the perusal of the impugned FIR and on the basis of the allegations made therein, it cannot be said that no cognizable offence is disclosed against the petitioners and the impugned F.I.R. is not liable to be quashed on the basis of the submissions advanced by the learned counsel for the petitioners.

After having heard learned counsel for the parties and perused the impugned F.I.R., we are not inclined to quash the same.

However, considering the peculiar facts and circumstances, we direct that investigation of the aforesaid case shall go on but the petitioners shall not be arrested till the submission of police report under section 173(2) Cr.P.C. subject to their extending full co-operation during investigation.

With the aforesaid direction, this petition is finally disposed of."

7. On a reading of the above judgment, it is evident that the Coordinate Bench of this Court was not inclined to quash the said FIR No. 1409 of 2017 dated 07.11.2017 and directed that investigation of the aforesaid case shall go on but the petitioners shall not be arrested till the submission of police report under section 173(2) Cr.P.C. subject to their extending full co-operation during investigation.

8. Now, the question is if the petition of the petitioners challenging the said FIR dated 07.11.2017 was disposed of with the aforesaid observation without quashing the FIR dated 07.11.2017, then, how, subsequent petition bearing Writ Petition No. 27765 (MB) of 2019 was maintainable and how this petition would be maintainable with regard to relief **clause b)** quoted hereinabove challenging the subsequent case registered by the CBI based on the earlier FIR dated 07.11.2017 bearing No. 1409 of 2017 as RC No. RC0062019A0005 under Sections 420, 468, 477A, 471 IPC & Section 629(A) of Company Act, 1956?

9. On being confronted, learned Senior Counsel could not put forth any argument/explanation much less an acceptable one.

10. Having gone through the contents of FIR/criminal case dated 25.04.2019 lodged by the CBI, we find that it categorically mentions that the same is being lodged based on the FIR No. 1409 of 2017,

under Sections 420, 468, 477A, 471 IPC & Section 629(A) of Company Act, 1956 earlier registered at Police Station Gomti Nagar, District Lucknow, further investigation of which has been handed over to it in view of the consent given by the State Government and the Government of India and a copy of the said FIR dated 07.11.2017 bearing No. 1409 of 2017 is part of the FIR dated 25.04.2019.

11. This subsequent case registered by the CBI which is impugned herein is for investigation of FIR No. 1409 of 2017 which was initially registered at Police Station Gomti Nagar, District Lucknow as is mentioned therein. The procedure of the CBI is that it registers its own case as aforesaid even if the FIR had been lodged earlier at some police station.

12. We are all the more surprised that without the said fact being brought to the notice of this Court earlier an interim order was passed on 03.12.2019 in this petition in the following terms:

"Heard Sri S.P. Singh, Senior Advocate along with Sri Karunanidhi Yadav, learned counsel for petitioners as well as learned Additional Government Advocate. Sri S.B.Pandey, Assistant Solicitor General along with Sri Kazim Ibrahim for Union of India, opposite party nos.3 and 4. Sri Shiv P.Shukla for opposite party no.5 while Sri Sanjeev Singh for opposite party no.6.

Counter Affidavit was required to be filed by all the opposite parties. None except Sri S.B.Pandey has filed the counter

affidavit on behalf of opposite party nos. 3 and 4, which is taken on record.

Following prayers have been made by the petitioners :

" (a) issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 12.04.2018 (Annexure 1) issued by OP No.2 as well as the consequential order dated 22.02.2019 (Annexure 2) issued by OP No.1 and the order dated 04.04.2019 (Annexure 3) issued by OP No.2 and all other consequential proceeding arising thereof in respect of the petitioners;

(b) issue a writ, order or direction in the nature of CERTIORARI quashing FIR transferred and registered by CBI dated 25.04.2019 registered as RC0062019A0005 of 2019 under Sections 420,468,471,477A IPC & 629A of Companies Act, 1956 against the petitioners (Annexure No.4).

(c) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed; and

(d) to allow the writ petition with costs."

So far as order dated 4.4.2019 is concerned, the petitioners have forcefully argued that the same has been passed under Section 17-A of the amended provision of Prevention of Corruption Act, 1988. For convenience, Section 17-A of the above Act is quoted here below :

"17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.-- No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval--

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed,

in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed :

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

The petitioners have forcefully argued that they are neither the police officials nor Government servants in any capacity. They are private individuals and permission could not have been granted against them under Section 17-A of the above Act. This contention could not be rebutted by any counsel for opposite parties. They have admitted that petitioners are not government servant.

Sri S.P.Singh, learned Additional Government Advocate has argued that the impugned order dated 4.4.2019 is general in nature and the same has been passed to facilitate the investigation against one and all involved in the corruption.

Learned counsel for petitioners has submitted that he is limiting his prayer to the extent of protection only against the petitioners and not against the police officials and other Government Officers. This argument carries weight.

Prima facie we feel that the application of order dated 4.4.2019, Annexure-3, cannot be extended against the petitioners.

Learned counsel for opposite parties, who have not filed counter affidavit, have made a prayer that further time may be granted to them for this purpose. Accordingly, three weeks' further time is granted to them to file counter affidavit.

List thereafter.

Meanwhile the order dated 4.4.2019, Annexure-3, on page-30 of the writ petition, shall not be given effect to against the petitioners.

It is made clear that the investigation with regard to any other Government Officer or police officials, shall not be effected by this order.

It will be proper that reference may be made of an order passed by this Court in Criminal Misc.Writ Petition No.36872 of 2018 (Suman Sharma and 3 others v. State of U.P. and 4 others) at Allahabad on 18.12.2018, operative portion of which is quoted below :

"However, considering the peculiar facts and circumstances, we direct that investigation of the aforesaid case shall go on but the petitioners shall not be arrested till the submission of police report under section 173(2) Cr.P.C. subject to their extending full cooperation during investigation."

It is needless to say that the petitioners shall cooperate with the investigation as has already been mentioned in the aforesaid judgment and order dated 18.12.2018 passed by this Court at Allahabad."

13. By the aforesaid interim order, arrest of the petitioners was not stayed but the sanction order dated 04.04.2019 which as per their own case did not apply to them was stayed. As per counsel for the petitioners as also the Investigating Officer who was present at the time when the judgment was reserved by us in this petition, the said interim order was operative only against the petitioners and not against other accused, as is mentioned therein. The interim order

was passed on the basis that sanction had been granted under Section 17-A of the Prevention of Corruption Act, 1988 which was not applicable to the petitioners who were not public servants, but, were Directors in Companies which had purchased the Sugar Mills and they were the accused in the impugned FIR. Accordingly, operation of the said sanction dated 04.04.2019 under Section 17-A of the Act 1988 was stayed followed by an observation that the same would operate only to the petitioners and not against Police Officials and Government Officers.

14. On the face of it the said sanction dated 04.04.2019 appears to have been granted because of the possibility of certain public servants also being involved in the commission of the crime as alleged in FIR No. 1409 of 2017 and the subsequent case dated 25.04.2019 registered by the CBI based thereon. The said sanction had nothing to do with the petitioners, therefore, it is inexplicable as to how the petitioners could have any locus to challenge such a sanction order. This interim order could have hindered the investigation by CBI, but we say no more except that this cannot be a ground for the petitioners herein to maintain these petitions after the earlier round of litigation and even if these were maintainable by any stretch of imagination there is no way it was open for them to challenge the sanction granted by the Government of Uttar Pradesh on 04.04.2019 for undertaking enquiry or inquiry or investigation as

is envisaged under Section 17-A of the Act 1988 against public servants referred therein, which according to them they were not.

15. We are also of the opinion that these petitions so far as relief **clause a)** challenging such sanction order dated 04.04.2019 is concerned, are absolutely without locus standi and are not maintainable as the petitioners themselves claim that they are not public servants.

16. Now coming to other reliefs prayed for in relief **clause a)**, we find that Annexure-1 dated 12.04.2018 which is under challenge is a correspondence between the Principal Secretary (Home), Government of U.P. and Secretary of Personnel and Training, Government of India recommending investigation of criminal case/FIR No. 1409 of 2017 referred hereinabove for being investigated by the CBI and enclosing therewith the consent of the State Government on the prescribed proforma. The petitioners who are accused in the said FIR have already failed in getting the said FIR quashed in the earlier round of litigation as discussed hereinabove and, even otherwise, being accused, we fail to understand as to how they could possibly challenge such an order of the State of Uttar Pradesh. The State of Uttar Pradesh has given its consent on 12.04.2018 under Section 6 of the Delhi Special Police Establishment Act, 1946 regarding inquiry/investigation by the CBI into the matter considering the submission of forged

documents with EOI cum RFQ and RFP by purchasers of seven closed Sugar Mills including the Company in which the petitioners claim to be Directors located at Bareilly, etc. We fail to understand as to how such a consent dated 12.04.2018 could be challenged by the petitioners-accused. They have no right to thwart investigation by CBI nor do we find any such ground which could persuade us to interfere in the matter merely because the investigation had been handed over to CBI.

17. Apart from the above, vide relief **clause a)** the petitioners have also challenged the notification dated 22.02.2019 issued by the Government of India for handing over the inquiry/investigation of the the matter to the CBI referring therein to the consent given by the State Government on 12.04.2018. The said notification also refers to further investigation of FIR No. 1409 of 2017 being handed over to CBI.

18. Even at the cost of repetition we would like to say that the challenge to FIR bearing No. 1409 of 2017 has already failed before this Court as referred hereinabove and the Court declined to quash the same, therefore, the subsequent handing over of further investigation of said FIR to the CBI and consequential registration of case by CBI is not open to challenge by the petitioners herein.

19. In view of what has been stated hereinabove, the fact that Central Bureau of Investigation has not filed a counter affidavit in the matter is inconsequential. In fact the counsel for CBI submitted that the question involved was with regard to very maintainability of the petitions and the locus standi of the petitioner to raise a challenge as aforesaid, as already noticed in our dated 11.10.2023 while reserving our judgment.

20. The Investigating Officer of the case, Sandeep Kumar Pandey, Deputy Superintendent of Police, CBI submitted that investigation would be completed by 31.12.2023 and he had also given a hint about involvement of certain Government Officials in the matter. We express no opinion on this aspect as the matter is pending before CBI.

21. Suffice is to say that these petitions for the reasons already given hereinabove are not only not maintainable but even otherwise are misconceived. We see no reason to grant the reliefs prayed for.

22. Learned Senior Counsel appearing for the petitioners referred to some litigation as to the disinvestment policy of the Government and the consequential sale of Sugarcane Mills by the State of Uttar Pradesh being pending before Hon'ble the Supreme Court after a decision by the High Court. In this regard he referred to a judgment by a Division Bench of this Court rendered at Allahabad in Civil

Misc. Writ Petition No. 39850 of 2009 wherein Section 3C and 3D of the U.P. Sugar Undertaking (Acquisition) (Amendment) Act, 2009 were declared ultra vires to some extent and all consequential actions to that extent were also struck down. It is submitted that against the said judgment Special Leave Petition is pending before Hon'ble the Supreme Court and the challenge to the said judgment by the State of Uttar Pradesh by filing Special Leave Petition which was converted into Civil Appeal No. 8198-8199 of 2010 was withdrawn on 27.09.2021. Likewise he submitted that the sale of Sugar Mills and purchases by the various companies and the policy decision taken by the then Government and also the amendment, etc. were the subject matter of another bunch of petitions leading petition being Writ Petition No. 5283 (MB) of 2011 which was decided by a Division Bench of this Court at Lucknow 20.08.2016 and that against the said judgment Special Leave Petition (c) No. 26351 of 2016 filed by one of the aggrieved persons is still pending. He also invited our attention to some orders passed by the Competition Commission of India in this regard against which the writ petition under Article 32 of the Constitution of India bearing No. 779 of 2017 (Sachidanand Gupta Sache vs. Competition Commission of India) is said to be pending. However, we fail to understand as to the impact of any of the proceedings upon the

cases before us wherein question essentially is of criminality in respect of the allegations contained in the FIR is involved.

23. We specifically asked learned counsel for the petitioners as to whether there is any order in any of these proceedings which could persuade us to interfere and grant the relief prayed for, but none could be pointed out to us. CBI can always look into relevant aspects of the matter involving criminality or its absence in the transactions and there is no reason as to why we should interfere in the matter at this stage.

24. Accordingly, we ***dismiss*** both the petitions, but, without prejudice to the rights of the parties in the pending investigation and thereafter.

25. The petitioners have not been arrested as yet and if at any stage they apprehend their arrest in the matter they can take recourse to the remedy prescribed under Section 438 Cr.PC. which is now available in the State of Uttar Pradesh.

[Ajai Kumar Srivastava-I, J.] [Rajan Roy, J.]

Order Date :- 03.11.2023

Santosh/-