

Neutral Citation No. - 2024:AHC-LKO:39740

Court No. - 14

Case :- APPLICATION U/S 482 No. - 4271 of 2024

Applicant :- Paresh Rastogi

Opposite Party :- Central Bureau Investigation And Another

Counsel for Applicant :- Sunil Kumar Singh, Aarohi Bhalla

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Jaspreet Singh, J.

1. The petitioner has approached this Court seeking quashing of the chargesheet and the summoning order dated 01.01.2022 as well as the order dated 16.04.2024 issuing bailable warrant as per order passed by the Court of Special Judicial Magistrate, CBI, Lucknow in Case No.114343 of 2022 vide RC no.2-A/22 under Sections 120-B read with Sections 420, 406, 468 IPC.
2. The brief facts giving rise to the instant petition are being noticed hereinafter first.
3. The present petitioner is an erstwhile Director of M/s Hydric Farm Input ltd (the company is now in liquidation) and it was engaged in retail business relating to all kinds of agricultural inputs as well as providing technical assistance relating to agriculture. The Company i.e. Hydric Farm Inputs Ltd (hereinafter referred to as the Company) had approached the Small Industries Development Bank of India (hereinafter referred to as SIDBI) seeking financial assistance of Rs.10 crores.
4. A letter of intent was issued by SIDBI addressed to Director Hydric Farm Inputs ltd wherein the loan was sanctioned. The purpose for which the said loan was available was mentioned in the offer document which reads as under:-

“For any tangible or intangible business need such as Capex, servicing new orders, renovation of property/assets, reimbursement against self financed assets acquired in last one year, funding of intangibles, brand building /marketing, R & D, inorganic business growth, or any other bonafide business need etc.

The assistance shall not be used for speculative purposes like investing in stock markets, non business related commodity trading, commercial real estate activity etc.”

5. In order to secure the said loan, the company Hydric Farm input ltd had also provided corporate guarantee. A security was also provided and an agreement was signed by SIDBI and Hydric Farm Input ltd.

It is in respect of the said financial assistance received by the Company Hydric Farms that FIR was lodged by SIDBI on 05.08.2021.

6. As per allegations in the FIR, it was stated that the Company was sanctioned and disbursed Rs.10 crores on 15.04.2015. However, the Company on the very same day diverted the entire amount to M/s Fortek Biosciences Pvt ltd. It was also alleged that the utilization certificate dated 11.04.2015 did not conform to the transactions done by the Company and the charge was that the Company had diverted the amount contrary to the terms of the loan agreement. It was also alleged that the Company did not furnish true and correct facts and disclosures, inasmuch as, in the balance sheet for the financial year 2014, it was not indicated that there were income tax dues, however, in the balance sheet for the financial year 2015, it reported that an amount of Rs.1.15 Crores of undisputed tax dues were outstanding for more than six months in the books of account of the Company pertaining to financial year 2010-11. The further charge levelled against the Company was that the borrowing company could not have diverted or further lend out the money nor it was authorized to invest the amount in any third party Company and, thus, the diversion of funds from the Company to another entity M/s Fortek Biosciences Pvt ltd was contrary to the terms of the loan contract. It was also alleged that amongst the properties mortgaged with SIDBI, one property bearing Khasra no.836 Bakshi ka Talab, Lucknow

measuring 6080 squaremeters was not distinctively identifiable and it was found to be land locked.

7. It is in the aforesaid backdrop that the chargesheet dated 05.01.2022 was filed before the trial court and the Court upon taking cognizance issued the summoning order dated 01.12.2022 and then bailable warrants were issued on 16.04.2024 which has prompted the petitioner to approach this Court seeking quashing of the chargesheet and the summoning order including the order issuing bailable warrants.

8. Sri Aaroahi Bhalla along with Sri Sunil Kumar Singh learned counsel for the petitioner has primarily urged :-

That the trial court has taken cognizance and issued summoning order against the petitioner under Sections 406, 420, 468 IPC.

9. The submission is that none of the aforesaid Sections are attracted specially in light of the averments contained in the chargesheet. Elaborating his submissions, Sri Bhalla has urged that the Company amongst its main objects was authorized to carry business related to seeds, fertilizers, chemical and other material and business related to agricultural and horticulture implements and other tools, equipments, business of contract farming and acquire land on ownership or lease to take development of modern farms.

10. It is further urged that the secured business loan as extended by SIDBI was to provide quick dispensation of credit to MSMEs requiring assistance for the planned and unplanned expenditure.

11. It is further stated that as per the loan agreement only certain utilizations of financial assistance was specifically excluded i.e. speculating and investing in stock markets non

business related commodity trading, commercial real estate activity and this was not done and the company had furnished a utilization certificate which was duly authenticated by the Company auditors and Chartered accountant.

12. It is also submitted that since M/s Fortek Biosciences Pvt ltd was a sister concern of the Company which was also engaged in agricultural and allied business, thus, even if at all the amount of loan received from SIDBI in the account of the Company was transferred in the account of the M/s Fortek Bioscience Pvt ltd, it still would not attract any provision nor it will make out any offence under Sections 406, 420, 468 IPC. The only restriction imposed on the Company while granting the said loan was utilising the loan money for activities which were strictly excluded.

13. It has further been urged that the agreement which was entered between the Company and SIDBI clearly used phrase 'or any other bona fide business need etc' indicated in the purpose for which the loan was extended. Since the Company as well as Fortek Biosciences Pvt ltd which was a sister concern and it was engaged in similar business of agriculture and allied activities, hence, the transfer of the funds from the Company to Fortek Biosciences was clearly covered under the phrase 'any other bonafide business need etc'.

14. It is further submitted that it may be one thing to say that business decision may not have wise but that does not involve any mens rea for commission of an offence, thus, the Sections invoked against the petitioner i.e Sections 420, 406, 468 IPC are clearly not attracted and as such the summoning order is bad and moreover since on the own showing as well as the contents of the chargesheet does not make out an offence at the behest of the petitioner hence the charge sheet deserves to be quashed.

15. Learned counsel for the petitioner has further submitted that from the perusal of the contents in the chargesheet, it would indicate that the conclusions drawn by the Investigating Officer could not have been arrived at without conducting a forensic audit. In absence of any proper investigation and material before it, the chargesheet has been filed which is bad in the eyes of law so also the summoning order which needs to be set aside after allowing this petition.

16. Sri Anurag Kumar Singh learned counsel appearing for the CBI has refuted the aforesaid submissions.

17. It has been submitted that the Company and its Directors are the same who are the Directors and authorised Signatories in M/s Fortek Pvt Ltd.

18. It is further submitted that on 15.04.2015, a sum of Rs.10 Crores were transferred into the account of the Company and on the very same day Rs.80 lacs was withdrawn in cash. Rs.5 Crores was utilized to create fixed deposit in the name of Fortek Biosciences, on the very same day, a sum of Rs.1.35 Crores was credited to the over draft account of Fortek while a sum of Rs.1.35 Crore was credited to the over draft account of the Company. On the very next day i.e 16.04.2015, this loan received was transferred to the account of Rohtas Infra Projects Ltd. Rs.4 lacs were transferred to account of Andes Town Planner. Rs.30 lacs was credited to the account of Rohtas Project Ltd. Once again, on 17.04.2015, a sum of Rs.4 lacs was transferred to the current account of Rohtas Project Ltd. Rs.1.75 lacs in the account of Andes Town Planner and a sum of Rs.3.60 lacs was again credited in the account of the Company while Rs.23 lacs was transferred to Clarion Project Pvt Ltd.

19. It has further been submitted that during investigation, statement of employees of Rohtas Group was recorded who

stated that Rs.80 lacs cash was withdrawn from Karnataka Bank Lucknow vide a Cheque from the current account of Fortek Biosciences Pvt ltd.

20. The said cheque was signed by Sri Piyush Rastogi, the Director of the Company and the cash amount was handed over to Sri Sudhir Srivastava the then Cashier of Rohtas Group. The statements of other witnesses namely Sudhir Srivastava was recorded who stated that the loan amount which was received from SIDBI was used by the Directors for their financial assistance in respect of other Companies owned and not for the Company in whose name the loan was sanctioned and disbursed.

21. Sri Anurag Kumar Singh further submits that Fixed Deposits to the tune of Rs.5 Crores (5 FDs of Rs.1 Crores each) were created and all the aforesaid FDs were prematurely closed on 10.07.2015 and the whole amount was credited to the over draft account of the M/s Fortek Biosciences Pvt Ltd.

22. It is further submitted that the investigations revealed that the loan amount which was received from SIDBI were utilized by the Company primarily not for its own need, rather the amount was diverted into the account of other sister companies and clearly it was in violation of the loan contract. It is further submitted that it is incorrect to suggest that the amount received by the Company and transferred to the other Company Fortek Biosciences does not amount to diversion of funds. Companies have a distinct identity separate from that of its Directors and even though the two companies namely Hydric Farms and Fortek Biosciences may be sharing certain business objectives but nevertheless they are two separate entities and diversion of funds from one into the other is clearly not permissible.

23. It has further been submitted that this fact apart making incorrect disclosures regarding undisputed income tax dues and on the basis of such incorrect disclosure loan was taken. When the Company was confronted with the aforesaid incorrect disclosure, it was stated by the Company that it was bonafide lapse on the part of the Chartered Accountant, but had it been a bona fide lapse, corrective measures should have been taken at the relevant time. Only when it was confronted then the explanation was tendered and thus it was a clear case of the Company to obtain the loan and thereafter divert the funds for other purposes which was not permissible and it also amplifies the intent of the Company.

24. Sri Singh further urged that the charge sheet along with the statements of the employees clearly stated that the amount was withdrawn from the account of Hydric which was utilized for other purposes including making investments in shares may be of a sister concern but that was not permissible and ample evidence was collected which has been noticed by the trial court while passing the summoning order. In such circumstances, the only endeavour of the petitioner is to delay the trial, hence, the petition is bad and deserves to be dismissed.

25. The learned counsel for the CBI has relied upon the decision of the Apex Court in the cases of ***K.Ramakrishna and others vs State of Bihar and another***; (2008) 8 SCC 547, ***Sanghi Brothers (Indore) Pvt.Ltd vs Sanjay Choudhary & Ors*** (2008) 10 SCC 681; ***Akbar Hussain vs State of J&K and other***; (2018) 16 SCC 85; ***Kaptan Singh vs State of U.P and others***; (2021) 9 SCC 35 and ***State of UP vs Akhil Sharda and ors***; 2022 SCC Online SC 820.

26. The Court has heard learned counsel for the parties and also perused the material on record.

27. At the very outset, it will be apposite to notice the scope of the Court exercising powers under Section 482 Cr.P.C while dealing with the matter whereby charge sheet is sought to be quashed including the summoning order.

28. In ***K. Ramakrishna and others (supra)***, the Apex Court in Paragraphs No.3 and 4 observed as under:-

“3. The inherent powers of the High Court under [Section 482](#) of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the [Code of Criminal Procedure](#) and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved.

4. The Trial Court under [Section 239](#) and the High Court under [Section 482](#) of the Code of Criminal Procedure is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in [Rajesh Bajaj v. State NCT of Delhi & Ors.](#) [1999 (3) SCC 259], the High Court or the Magistrate are also not supposed to adopt a strict hyper-technical approach to sieve the complaint through a cullendar of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.”

29. In ***Kaptan Singh (supra)***, the Apex Court held in Paragraphs No.9.1 and 9.2 and the same are reproduced hereinbelow for ready reference:-

9.1 If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after

conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2. In Dhruvaram Murlidhar Sonar after considering the decisions of this Court in Bhajan Lal , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna and in XYZ , referred to hereinabove.

30. In **State of U.P. vs Akhil Sharda and Ors. (supra)**, the observations of the Apex Court in Paragraphs 28 and 29 are quoted hereinbelow:-

“28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under [Section 482](#) Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under [Section 482](#) Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under [Section 482](#) Cr.P.C.

jurisdiction and at the stage of deciding the application under [Section 482 Cr.P.C.](#), the High Court cannot get into appreciation of evidence of the particular case being considered.

29. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under [Section 482 Cr.P.C.](#), we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in quashing the criminal proceedings in exercise of powers under [Section 482 Cr.P.C.](#)”

31. Having taken a note of the scope with the aid of the above mentioned decisions of the Apex Court and applying the principles to the instant case, it would reveal that the entire submission made by the counsel for the petitioner is speculative in the sense that all the submissions made require to be adjudicated after leading of evidence. It could not be disputed by the counsel for the petitioner that the Company Hydric and Fortek Biosciences may be having common Directors but the fact remains that they are two separate entities. It could also not be disputed that the purpose for which the loan was extended by SIDBI was for the Company Hydric and it was not for window dressing or clearing the dues of another sister concern M/s Fortek.

32. Whether the investments made and FDRs created to the tune of Rs.5 crores in the name of Fortek and then prematurely closing the said FDRs, withdrawal of cash amount utilized for the purposes other than the one indicated in the utilization certificate submitted by the Company are all issues which require evidence and can be tested only during course of trial.

33. Learned counsel for the petitioner also could not dispute the fact that the balance sheet submitted by the Company for the financial year 2014 did not disclose the undisputed income tax dues which were to the extent of Rs.1.5 Crores.

34. It is on the basis of the said balance sheet that SIDBI had to form its opinion to grant or not to grant the loan. Once, it is

admitted that the balance sheet submitted was not accurate rather it did not disclose the undisputed income tax dues whether it was deliberate or bona fide lapse is again a question which can be considered and adjudicated only during trial based upon the evidence led.

35. It is also not disputed by the learned counsel for the petitioner that the amount which was credited in the account of the Company Hydric as part of the loan the same was utilized for different purposes within the next three days as indicated in the chargesheet itself. The record further indicates that the statements of the employees of the Rohtas Group has been recorded who had stated the movement and ultimate use of the funds and it could not be disputed that the funds received in the account of the Company Hydric was credited into the accounts of not only Fortek Biosciences but even other Companies such as Andes Town Planner, Rohtas Project ltd and Rohtas Infra Project Ltd.

36. It is in this context, if the averments made in the charge sheet and the corresponding evidence which has been referred to indicate that prima facie the offences for which the summoning order has been passed does not suffer from any error.

37. It will be worthwhile to note that at this stage, this Court is not required to hold a mini trial which is in the domain of the trial court. Unless and until, there are clear evidences which taken on its face value leads to a situation where the ingredients required as per law for commission of the offence is not made out at all and under no circumstances, the Sections under which the summoning order has been issued can be held to be attracted nor on the strength of the material available on record the Court can safely arrive at a conclusion that conviction for

certainty cannot be made only in such circumstances the chargesheet can be quashed.

38. For the reasons aforesaid, this Court cannot persuade itself to arrive at such a conclusion that the Sections for which the petitioner has been summoned are not made or that the chargesheet can be quashed as the matter involves triable issues.

39. Hence, this Court is unable to accede to the prayer made by the petitioner and the petition is liable to be dismissed.

40. The petition is devoid of merits and is, accordingly, **dismissed**. Costs are made easy.

Order Date :- 09.05.2024

Harshita