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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 119/2016 and Crl. M.A. Nos.3351-52/2016

SERIOUS FRAUD INVESTIGATION OFFICE

..... Petitioner

Through: Mr. Ajay Digpaul, CGSC.

versus

PRASHANT KULKARNI & ORS

..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

% **24.03.2017**

1. The Serious Fraud Investigation Office has preferred the present petition to seek leave to appeal against the order dated 12.12.2014 passed by the learned ACMM (Special Acts), Central, Tis Hazari Courts, Delhi in CC No.14/3 titled *SFIO Vs. Prashant Kulkarni & Others*. By the impugned judgment, the respondents have been acquitted of the charges levelled against them.

2. The petitioner had preferred a complaint under Section 240(3) of the Companies Act, 1956 on the premise that the accused had failed to answer the summons issued to them under Section 240(1). A perusal of the impugned order shows that the learned ACMM has not only dealt with the

aspect of the accused not being served with the summons adequately but has also gone into the aspect that the accused had no knowledge or information which could have been provided in response to the notice under Section 240(1) of the Companies Act.

3. On the aspect of service of summons, the finding returned by the learned ACMM reads as follows:

> "*H) Accused have further argued stated that the summons was not received by him well within time and the distance between his address and Delhi is more than 1000 k.m. that is why he could not appear before the IO. The plea of the accused appears to be correct. From bare perusal of summons as well as record reveals that summons dated 30.08.2012 were issued to accused no.1 and 2 calling accused no.1 to appear on 11.09.2012 and accused no.2 to appear on 10.09.2012. No postal receipt placed on record which could reflect the date of delivery of the said summons. Thereafter, another summons dated 06.11.2012 were issued to accused no.1 and 3 directing them to appear on 12.11.2012. In this regard copy of postal receipt is placed on record which shows that summons to accused no.1 was delivered on 09.11.2012 and summons to accused no.3 was delivered on 10.11.2012.*
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> *Likewise another summons dated 11.09.2012 issued to accused no.1 calling him to appear on 18.09.2012 but not postal receipt is placed on record. Again summons dated 6.11.2012 was issued to accused no.1 calling him to appear on 12.11.2012 and postal receipt placed on record shows the date of delivery on dated 09.11.2012. Another summons dated 12.09.2012 issued to accused no.2 calling him to appear on 19.09.2012. Again summons dated 31.10.2012 issued to accused no.2 calling him to appear on 09.11.2012 but no postal receipt is placed on record to show the date of delivery of these summons. Bare perusal of summons, its dispatch and its delivery date show that the summons were never sent to the*

accused persons well in advance and they were not give sufficient time as the summons were never issued to the accused persons well within time as all the accused are resident of out of Delhi having their residence more than 500 km to 1000 km away from Delhi; The complainant has not examined any witness from the said company which could show that the IO has visited the office of the said company for the purpose of investigation nor any witness from of office of EOW Crime Branch, New Delhi or from PS Paschim Vihar to find the true fact or that accused no.2 have not joined the investigation before EOW. From the aforesaid discussions, it is clear that no field investigation was done by the IO. Moreover, the investigation was concluded as stated by complainant without examining the accused when their role was so crucial. In absence of sufficient opportunity by the IO to the accused persons to appear and explain the facts and in view of the aforesaid discussed facts and circumstances, accused persons can not be held guilty for the offence u/s 240(3) of the Act as it can not be said that their non-appearance before inspectors was wilfull."

4. From the aforesaid extract, it would be seen that invariably the summons were served upon the accused after the date on which they were returnable. In respect of the summons dated 12.09.2012 issued to accused No.2, requiring him to appear on 19.09.2012, and in respect of summons dated 31.10.2012 issued to accused No.2 requiring him to appear on 09.11.2012, no postal receipts were placed on record to show delivery of summons. The learned ACMM has observed that a perusal of the summons and its despatch and delivery date that they were not served to the accused persons well in advance and they were not given sufficient time as the summons were not issued to the accused persons in time. The accused persons were residing out of Delhi at distances more than 500 to 1000 Kilometres away from Delhi.

5. The submission of Mr. Digpaul is that the learned ACMM apart from going into the aspect of issuance and delivery of summons upon the accused has also discussed the merits advanced that the accused could have taken had they complied with the summons. According to Mr. Digpaul, the learned ACMM could not have gone into the said aspect while passing the impugned judgment.

6. I do not find any merit in this submission of Mr. Digpaul. The accused were entitled to show in their defence that they were duly served and also to show, in any event, they were not liable to be summoned and they had no information or document which could have been produced in response to the notice under Section 240 of the Companies Act. Therefore, even if they had been served with the summons adequately, their non-appearance could not have invited penal action against them.

7. A perusal of the impugned judgment shows that the accused Nos. 2 & 3 were mere investors in the company M/s ABC Indiya Networks Pvt. Ltd. No prior approval from the Central Government was produced on record by the IO authorising him to examine the accused persons for the purpose of investigation. The reason for summoning accused Nos.2 & 3 was stated to be that they were found in possession of material information required for investigation. It was urged that to find out whether any money has been siphoned off from the said company, or not, the records of the said company were scrutinised and it transpired that accused No.1 was given Rs.11 Lakhs in cash and accused Nos.2 & 3 were also given money in cash. Pertinently, no material was produced before the learned ACMM to substantiate this allegation. Consequently, the learned ACMM concluded that it could not be

said that the accused persons were in possession of the requisite information and their personal appearance was required for the purpose of investigation in their capacity as officer, employee or agent of the aforesaid company.

8. For all the aforesaid reasons, I find absolutely no merit in this petition.

9. Dismissed.

VIPIN SANGHI, J

MARCH 24, 2017
B.S. Rohella