IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.694 of 2019

Ravindra Savla .....Petitioner
versus
Central Bureau of Investigation and ors. .....Respondents

Mr. Y. C. Naidu I/b. Ms. Sarosh Damania, advocate for the petitioner.
Ms. Rebecca Gonsalvez, advocate for the respondent No.1.
Dr. Sujay Kantawala along with Ms. Neha Ahuja, advocate for the intervenor.

CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

DATE : 5th March, 2019.

P. C. :

1. The petitioner has preferred this writ petition under Articles 226 and 227 of the Constitution of India seeking following prayers :

> "a. This Hon'ble Court may be pleased to strike down Section 5 of DSPE Act, in so far as requires further Orders from Central Government despite issuing Notification under Section 5 for the State of Maharashtra and thereby creates fetters on the powers and jurisdiction of Magistrate under Section 156(3) and consequently of CBI as well, for being manifestly arbitrary and unreasonable on the vice of Article 14 and 21 of the Constitution of India;
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> b. This Hon'ble Court may be pleased to read down Section 5 in light of the Notifications and Consent of

State at Exhibits “O” dated 6/11/1956, “P” dated 21/01/1961 and “Q” dated 02/07/1960 so that the same does not create fetters on the powers and jurisdiction of Magistrate under Section 156(3) and consequently of CBI as well, and to save it from unconstitutionality;

c. This Hon'ble Court be pleased to set aside the impugned Order passed by Learned Magistrate's Court at Exhibit “M” dated 05/05/18 and direct the Respondent No.1 to further investigate against the accused Respondents, OR in the alternative to direct the Respondent No.1 to register a fresh FIR in the offences punishable U/s.419, 420, 467, 468, 120(B) of IPC;

d. This Hon'ble Court be pleased to direct continuing mandamus to monitor the investigation done by Respondent No.1 and also to direct the Respondent No.1 to file progress reports from time to time with this Hon'ble Court.

e. Any other reliefs as this Hon'ble Court may deem fit and proper.

f. For costs.”

2. Admittedly, after investigation into the allegations under Sections 419, 420, 467, 468 and 120-B of the Indian Penal Code, 1860 (for short "the IPC") in FIR No.198 of 2013 (EOW CR No.37 of 2013) filed by the HSBC, the EOW, Mumbai had filed a 'C' Summary Closure Report dated 20.07.2013, concluding the case as "Mistake of facts and civil in nature". The protest petition filed by HSBC was dismissed by the Trial Court vide an Order dated 05.05.2018. Essentially further investigation, now by CBI, is sought against the respondent Nos.2 to 5, and for this purpose, the petitioner impugns the said order dated 5th May, 2018, passed by the magistrate accepting the closure report dated 20th July, 2013 filed by EOW. The petitioner is also seeking monitoring of such further investigation, if directed by this Court.

3. The petitioner's case is that he himself and through his family members had invested in 5,75,000 equity shares of the respondent No.2-Avitel Post Studioz Ltd. at an aggregate consideration of Rs.1,81,25,000/- in 2008. The respondent No.2 is engaged in the business of (i) production (including pre-production and post-production) of animated works, (ii) media past production and (iii) film restoration services. The respondent No.2 is the parent company of the Avitel Group and owns 100% shares in Avitel Holdings Ltd., Mauritius, which in turn owns 100% of the shares in Avitel Post Studioz FZ LLC, Dubai. The respondent Nos. 3 to 5 have always been and continue to be the promoters of the respondent No.2.

The respondent No.2 also received huge investments by issuance of their shares to various other shareholdres and investors including the HSBC PI Holdings (Mauritius) Ltd. ("for short "HSBC"). In 2013, HSBC initiated arbitration proceedings against the respondent Nos.2 to 5. An Emergency Arbitrator, appointed by Singapore International Arbitration Centre, by an order dated 28th May, 2012, concluded that there was a strong case of dissipation of assets by the respondents and passed orders for freezing the assets of the respondents. The same was followed in the orders dated 22nd January, 2014 and 31st July, 2014 passed by this Court in arbitration proceedings initiated by HSBC.

In the follow-up operations by the petitioner, being concerned about the investments, he was informed by the respondents that they had an excellent prima facie case, and therefore, had preferred SLP No. (C) 24961 of 2014 before the Hon'ble Supreme Court in the matter. It was further informed that the EOW had already filed a closure report in the FIR filed by HSBC. The records of proceedings, interim award dated 28th May, 2012, closure report dated 20th July, 2013 filed by EOW, final award dated 27th September, 2014 in SIAC Arbitration No.88 of 2012, SLP filed by the respondents and arbitration petition filed by HSBC etc. were provided to the petitioner. These documents showed serious allegations of fraud and misrepresentation against the respondent Nos. 2 to 5 herein. The representations of the respondents to HSBC, with regard to the contracts with BBC, the utilization of funds to be invested by HSBC, the customers and suppliers of Avitel were alleged as false and fraudulent. The respondent Nos.2 to 5 were alleged as guilty of siphoning off investor funds in companies controlled and owned by the respondent Nos.2 to 5. HSBC has in the arbitration proceedings at Singapore submitted a report dated 25th October, 2013 from Roger Best who has valued the shares of Avitel India as Nil.

This directly impacts the investment of the petitioner and his family members. That the Arbitral Tribunal at Singapore in their final award dated 27th September, 2014 has recorded detailed allegations and the affirmative findings thereon in Paragraph Nos.8.19, 8.20, 8.25, 8.26, 8.32 and 8.72 while ordering the respondents to pay USD 60 million along with interest and other sums to HSBC and has further ordered that upon payment of all sums awarded to HSBC to cancel the shares held by HSBC. These prima facie conclusions of serious fraud and criminal wrong-doing were not interfered with by this Court. The investments of the petitioner and his family members, are also prejudiced by this fraudulent conduct of the accused respondents.

4. Being dissatisfied, the petitioner asked for return of his amounts along with interest. On refusal, the petitioner invoked Section 9 of the Arbitration Act to seek directions against the accused respondent Nos. 2 to 5. However, the said Section 9 application was dismissed by an order dated 03.08.2016. Vide order dated 2nd September, 2016, the Punjab and Haryana High Court also dismissed FAO No.4746 of 2016 filed by the petitioner against the same. Civil Appeal No.5158 of 2016 filed by the petitioner before the Hon'ble Supreme Court is pending and tagged with the SLP of the respondent No.2.

5. This Court vide order dated 13.04.2017 had set-aside an order of Trial Court granting permission to the respondent Nos.2 to 5 to assist the public prosecutor in the proceedings before the magistrate for consideration of protest petition of HSBC, and directed the Magistrate to decide the protest petition in accordance with law. Subsequently, the magistrate by a reasoned order dated 5th May, 2018 accepted the said closure report dated 20th July, 2013 filed by EOW, Mumbai and rejected the protest petition.

6. The petitioner contends that since the consideration of the closure report was pending in the meanwhile, and the basis of the petitioner alleging fraud and seeking reliefs was the case of HSBC, he

had not initiated criminal proceedings. Now, having learnt about the impugned Order dated 5th May, 2018, he has immediately approached this Court. The petitioner contends that the case has international ramifications, and is of fraud, misrepresentation, cheating and the like involving very large amounts. The offences are notified by the Central Government vide notification dated 6th November, 1956 under Section 3 of the Delhi Special Police Establishment Act 1946 (for short "the DSPE Act") amongst the offences which could be investigated by CBI. The Central Government has also issued an order dated 21st January, 1961 under Section 5, extending the powers and jurisdiction of CBI for the investigation of the alleged offences in Maharashtra State. Vide letter dated 2nd July, 1960, their exists an express consent issued by the State Government to the Central Government under Section 6 of the DSPE Act, to enable CBI to exercise powers and jurisdiction in Maharashtra State. Thus, learned counsel for the petitioner contends that the writ petition merits admission and further directions.

7. The learned counsel for the CBI opposed the petition. It was submitted that the matter has already been investigated and closure report has been filed. The magistrate has rightly accepted the closure report with reasoned order. The record shows that the matter is essentially civil in nature. The amount has been paid for buying shares and it is not the case that after receipt of the money, the shares are not transferred to the petitioner or HSBC or any other shareholder. The arbitration proceedings were invoked by HSBC as well as the petitioner. The civil proceedings in that regard are pending before this Court as well as the Hon'ble Supreme Court. The rights and liabilities in such transactions related to any misrepresentation of sale of shares can be agitated in the Civil Court or under the Companies Law before the NCLT.

8. Our attention was also invited to the order dated 18th February, 2019 passed by the Apex Court in criminal appeal No. 294 of 2019 in the matter of Director, Central Bureau of Investigation versus Krishna Kumar Mishra and ors. and the observations contained in paragraphs 6 and 7 reads thus :

> *"6. The High Court by the impugned order dated 26th May, 2017 has ordered the CBI to conduct the investigation into the matter. Aggrieved, the CBI has filed the present appeal.*
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> *7. While the jurisdiction of the High Court to order an investigation by CBI cannot be doubted, the said jurisdiction is to be very sparingly exercised with great care and caution keeping in mind that the premier investigating agency is primarily engaged in investigation of anti-corruption cases and cases of vital importance for the nation. In the present case, with regard to the disappearance of the "Lock-in-Amplifier", the law had been set in motion by the Raja Ramanna Centre for Advanced*

Technology, Department of Atomic Energy, Indore by filing an FIR and the result of the investigation has not been accepted by the learned Court which had ordered for further investigation."

9. The learned counsel for the respondent Nos. 2 to 5 also opposed the petition on the ground that arbitration petition No.833 of 2015 filed by HSBC against the respondent Nos. 2 to 5 is pending before this Court which is being contested by the respondent Nos. 2 to 5.

10. Having considered the submissions of learned counsel appearing for the respective parties and on consideration of the record, it is clear that this is not a fit case where the issue of validity of Section 5 of the DSPE Act is required to be gone into.

11. Having gone through the closure report dated 20th July, 2013 filed by EOW, Mumbai and reasoned order dated 5th May, 2018 passed by the Trial Judge accepting the said closure report, we do not find any merit in the submission of the petitioner.

12. There is no merit in the submission that interference is required because the impugned order has been passed merely by relying upon the findings of the police without looking into the allegations of fraud and misrepresentation. The finding in the arbitration

related proceedings cannot be the basis for consideration of the closure report. The impugned order shows that after considering the nature of transaction, the allegations and finding in the closure report, the Court came to a justifiable conclusion that the case was essentially civil in nature.

13. There is merit in the submission made on behalf of the CBI. The dispute raised in the petition is only private dispute which is already being investigated by the EOW at the instance of HSBC which did not merit further investigation by the CBI. After investigation on various aspects, detailed “C” summary closure report dated 20th July, 2013 concluding the case as “Mistake of fact and civil in nature” has been filed by the EOW. The learned magistrate heard HSBC in their protest petition and, thereafter, rightly accepted the closure report with a reasoned order. There is a categorical finding to show that the representative of HSBC showed interest in investing in shares of the respondent No.2. It is not the case where no due diligence was carried out before investing huge amount in private company. We are satisfied that even as per the records, the case is essentially civil in nature. There is no dispute on the fact that the amounts were paid for acquiring shares and after receipt of the money, shares were indeed allotted/transferred to HSBC and in the case of the petitioner, the shares were allotted to him or his family

members as the case may be. Moreover, the arbitration proceedings were invoked by HSBC alleging misrepresentation by the respondent No.2 in these transactions, before invoking any criminal proceedings. The civil proceedings in that regard at the instance of HSBC, petitioner and respondent No.2, are admittedly being contested and are pending being before this Court and before the Hon'ble Supreme Court. The rights and liabilities in such transactions mainly alleging misrepresentation for seeking investment in the shares and alleged misrepresentation thereof by a private company can be agitated in a civil proceeding before a Civil Court and/or before the NCLT under Companies Act. The attempt to seek directions to CBI to further investigate such private civil dispute is sheer abuse of process of law.

14. In totality, we find that it is not a fit case which warrants interference at the hands of this Court in exercise of jurisdiction conferred upon it under Article 226 of the Constitution of India, in the impugned order dated passed by the Trial Court or to direct further investigation by the CBI. The petition is devoid of merits and the same is accordingly dismissed.

[SMT. BHARATI H. DANGRE, J.] **[RANJIT MORE, J.]**