IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1048 of 2017(O&M)
Date of decision: 09.09.2019

Securities & Exchange Board of India

… Appellant

Versus

Jagjit Singh and others

… Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Ashwani Kumar Chopra, Senior Advocate, with
Mr. Mayur Kanwar, Advocate; and
Mr. Ankit Midha, Advocate, for the appellant.

Mr. Gagandeep Singh Sirphikhi, Advocate,
for respondents No.3, 4, 5, 7, 8 & 10 to12.

Mr. Lokesh Narang, Advocate,
for respondent No.21.

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KRISHNA MURARI, C.J. (Oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the order dated 17.05.2017 passed by the learned Single Judge, issuing notice to the appellant herein to show cause as to why he should not be proceeded under Section 340 Cr.P.C. and also initiating contempt proceedings and imposing a cost of Rs.30,000/-.

The aforesaid impugned order was passed by the learned Single Judge in a writ petition filed by the respondent herein seeking the following main reliefs:

> **"(i) This Hon'ble Court may be pleased to call for the entire record of the case.**

(ii) Issue a writ in the nature of Mandamus to appoint an commission/committee consisting of judicial member or any such other members as this Hon'ble Court deems fit, to probe/ inquire into economic offences/ financial irregularities committed by the respondent company- Nature heights Infra limited (respondent no.7) including its parent company & subsidiaries and to function as a official receiver/liquidator to take possession of assets of the respondent company, collect records & dispose off/sale such assets & properties and thereby act as nodal agency to disburse the sale proceeds to the investors & other stakeholders therein.

(iii) for issuance of appropriate writ, direction in the nature of mandamus to respondent no.3 i.e. SEBI to take action against respondent company & to identify other such companies operating in the state, for operating *'Collective Investment Scheme'* in contravention with statutory guidelines & regulations (Annexure P-10) and thereby direct the respondent company to immediately stop such schemes & refund the amount so collected fraudulently from the public at large including petitioners herein.

(iv) For issuance for appropriate direction to transfer/entrust the investigations arising out of the criminal cases/FIRs, as detailed in para no.4 of the instant petition including any future complaint of like nature, to any independent agency like Central Bureau of Investigations [CBI] or any such independent agency in view of inter-state operation of such schemes by the respondent company which carries interest of public at large & in order to do complete justice and enforce the fundamental rights, with a further direction to respondent no.5 & 6 probe into angle of International money laundering.

(v) Notably, issuance of such direction is desirable to instill confidence of public at large & provide credibility to such investigation.

(vi) With a further prayer that this Hon'ble Court be pleased to pass an appropriate direction to the respondent state to protect the life & liberties of the persons who merely acted as 'commission agents' of the respondent company or received salaries thereof, without being real beneficiaries of any assets of company; with a further direction to respondent state to not register any criminal case against any such person without due inquiry & such identification.

(vii) Further prayer that this Hon'ble Court may monitor such investigations/inquiry as enunciated by the Hon'ble Supreme Court, inter alia, in *"Babu Bhal Jamna Das Patel v. State of Gujarat; (2009)9 SCC 610"*.

The aforesaid writ petition was initially disposed of vide order dated 31.08.2016 by making following observations:

> **"Having heard the learned counsel for the petitioners and without expressing any opinion on merits of the case, lest it should prejudice the rights of either of the parties, present writ petition is disposed of, with a direction to the Chairman, Securities and Exchange Board of India (SEBI) – respondent No.3 to look into the matter, consider the grievance raised by the petitioners, which prima facie seems to be genuine and decide the same by passing an appropriate order thereon, strictly in accordance with law, at an early date and in any case within a period of four months from the date of receipt of certified copy of this order."**

However, subsequently on an application made by the Chairman, Security & Exchange Board of India that he is not the appropriate authority but instead Whole Time Member would be competent to take appropriate decision, the earlier order was modified vide order dated 03.02.2017 by substituting 'Whole Time Member' in place of 'Chairman'.

In pursuance to the aforesaid order dated 03.02.2017, the Whole Time Member became ceased with the matter. Subsequently, an application dated 08.05.2017 was made by Whole Time Member indicating that on a careful examination of the matter, it has been found that the case has all the ingredients of a fraud and does not partake the characteristics of a collective investment scheme as per Section 11 AA of SEBI Act, 1992 and thus the case is beyond the jurisdiction of the applicant-SEBI and it lacks necessary jurisdiction to pass any effective order to redress the grievance of the petitioner under Section 11B of the SEBI Act, 1992. It was further stated that in order to protect the interest of the respondent-petitioners as also other investors, the SEBI has brought this matter to the notice of the Chief Secretary, Govt. of Punjab with a copy to the State Level Coordination Committee (Punjab), RBI, Chandigarh, vide letter dated 02.05.2017.

The averments made in the aforesaid application was taken by the learned Single Judge to be violative of the earlier directions of the Court and accordingly not only contempt proceedings were directed to be initiated against the Whole Time Member, but a further direction was issued to initiate proceedings under Section 340 Cr.P.C. and a cost of Rs.30,000/- was also imposed.

Learned senior counsel for the appellant vehemently contends that the provisions of Section 340 Cr.P.C. is not at all attracted inasmuch as the said provisions can only be invoked in case any offence referred in clause (b) of section 1 of Section 195 has been committed in, or in relation to a proceeding in that Court. Section 195 Cr.P.C. pertains to prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

In the present case in hand, an application duly supported by affidavit setting out the decision taking in pursuance to an order passed by this Court was brought on record.

We are in respectful agreement with the argument advanced by learned senior counsel for the appellant that it was not a case falling under Section 195 so as to attract the provisions of Section 340 Cr.P.C. Filing of an affidavit setting out the decision taken in compliance of the order passed by this Court can by no stretch of imagination said to be an offence committed in, or in relation to any proceeding in any Court. Neither the affidavit filed could be said to be a document produced or given in evidence in the proceeding in Court. Thus, in our considered view, neither Section 195 was attracted nor the provisions of Section 340 Cr.P.C., and the learned Single Judge has committed a manifest error of law in directing initiation of a proceeding under Section 340 Cr.P.C.

The other aspect of the matter is with respect to contempt. We do not find any willful disobedience by the Whole Time Member of any of the directions issued by this Court. The direction was to take a decision and decision no doubt has been taken, any decision taken in a particular manner can by no stretch of imagination said to be a contempt of this Court, thus, in so far as initiation of contempt proceedings are concerned again we do not find any justification for the learned Single Judge to have directed the same.

When neither case under Section 340 is liable to be initiated nor there was any contempt for which the proceedings could be drawn, we also find no justification for the learned Single Judge who have imposed a cost of Rs.30,000/-.

Learned counsel for respondents No.3, 4, 5, 7, 8 & 10 to 12 stated that the view taken by the Whole Time Member with respect to provisions of Section 11 and 11 AA of the SEBI Act, 1992 is patently erroneous.

Be that as it may, it is not the subject matter of this appeal because the scope of this appeal is only confined to the impugned order dated 17.05.2017 passed by the learned Single Judge, issuing direction to initiate proceedings under Section 340 Cr.P.C., contempt proceedings and imposing cost.

In view of the above facts and discussion, the impugned order dated 17.05.2017 passed by the learned Single Judge is not liable to be sustained and is hereby set aside. The appeal accordingly stands allowed.

Since the main appeal itself has been disposed of, no orders are required to be passed in CM-2228-LPA-2017 for adducing additional evidence.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

09.09.2019
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO