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

Date of decision: 18th November, 2019

+ **CRL.M.C. 5833/2019 & CRL.M.A. 40458/2019**

TARUN SADANA & ORS.

..... Petitioners

Through

Mr. Nidhesh Gupta, Sr. Adv. with Mr. Atul Kumar, Mr. Abhinmanyu Shamra, Adv. with petitioner no.1 in person

versus

STATE & ORS.

..... Respondents

Through

Mr. Hirein Sharma, APP for State Insp. Ahswani Kumar with SI Varun, EOW
Mr. Rushab Aggarwal, Adv. for R-2 with Mr. Rajesh H. Bansal, Vice president of R-2 company

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 40459/2019

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

CRL.M.C. 5833/2019 & CRL.M.A. 40458/2019

3. Vide the present petition, the petitioners seek direction thereby to quash FIR no. 0202 dated 15.10.2019 , registered at Police Station EOW, New Delhi for the offences u/s 420 /120 B IPC and Sec 66 IT Act, 2000 and

all consequent proceedings emanating therefrom.

4. It is not in dispute that the investigation is ongoing and chargesheet is yet to be filed and vide the present petition, the petitioners seek quashing of FIR No.202 dated 15.10.2019 registered at Police Station EOW, for the offences punishable under Section 420/120B IPC and Sec. 66 IT Act, 2000 and all consequent proceedings emanating therefrom.

5. It is not in dispute that in case of *Gagan Harsh Sharma and Another Vs. Stae of Maharashtra Though Sr. Police Inspector and Anr, in criminal writ petition 4361/2018*, High Court of Bombay vide order dated 26.10.2018 held that “ *the ingredients of an offences under which are attracted by invoking and applying the section 420, 408, 379 of the Indian Penal Code are covered by Section 66 of the Information Technology Act, 2000 and prosecuting the petitioner under both the Indian Penal Code and Information Technology Act would be a brazen violation of protection against double jeopardy.*”

6. Accordingly, the said Court set aside the FIR insofar as the investigation into the offences punishable under the Indian Penal Code.

7. The said judgment of Bombay High Court was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 10264-

10265/2018 and the same was dismissed vide order dated 07.12.2018. Thus, according to the law of the land, regarding the protection against double jeopardy, the accused cannot be prosecuted under Indian Penal Code and Information Technology Act simultaneously.

8. Since the investigation is pending in the present case, I am not inclined to pass any order. However, it is made clear that the investigating agency is at liberty to investigate the matter under Section 66 of IT Act, 2000 and under the other provisions of the said Act. The offences punishable under the Indian Penal Code are not maintainable.

9. It is made clear that if the investigating agency comes to the conclusion that the offences under Section 66 of the IT Act are not made out but offences under the Indian Penal Code are made out, then the investigating agency is at liberty to take steps accordingly.

10. In view of above, the petition is disposed of.

11. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 18, 2019

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