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

Date of Order: February 06, 2019

\+ CRL.M.C. 647/2019 & CRL. M.A. 2713/2019

VIKAS AGARWAL ..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Ajit Sharma, Mr. Adnan Siddiqui and Mr. Ashutosh Senger, Advocates

Versus

SERIOUS FRAUD INVESTIGATION OFFICE ..... Respondent

Through: Mr. Amit Mahajan, CGSC with Mr. Randeep Sachdeva and Ms. Mallika Hiremath, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R
(ORAL)

Impugned order of 24th January, 2019 summons petitioner for commission of offence under Sections 418/120B of IPC and under Section 447 of the Companies Act, 2013.

Learned senior counsel for petitioner submits that the only allegation leveled against petitioner, as noticed in the impugned order, is that petitioner who is arrayed as A-27 with his co-accused A-24, A-25 & A-26, were partners in the mining firm which was indulging in illegal mining activities and were part of a larger conspiracy. It is alleged against petitioner and his co-accused that they had provided unsecured loan to the Trust.

The submission advanced on behalf of petitioner is that any prosecution under the Companies Act, 2013 is to be confined to the Companies only and not to private individuals. Attention of this Court has been drawn to Section 447 of the Companies Act, 2013 to point out that the fraud is in relation to the affair of the company and not in respect of any individual. So, it is submitted that the impugned order qua petitioner is liable to set aside, as the trial court has no jurisdiction to summon the petitioner.

It is pointed out that the Central Government vide order of 8th January, 2016 has limited the investigation into the affairs of the company, and not in respect of any private individual. It is also pointed out that vide order of 23rd / 24th February, 2016, Central Government has confined the investigation qua 104 companies and not against any private individual and the investigation has been carried out beyond the time stipulated by the Central Government in the aforesaid communication. It is also submitted that no other allegation against petitioner is there in the complaint filed by respondent. It is further submitted that as per Section 212 of the Companies Act, 2013 sanction has to be taken for prosecution in respect of the offences under this Act and the said sanction has to be in relation to the company or its officer, employees or any person directly or indirectly connected with the affairs of the company and not against any private individual.

On the contrary, learned standing counsel for respondent supports the impugned order and submits that that as per Section 447 of the

Companies Act, 2013 the definition of fraud includes any person who connives in any manner to deceive or to gain undue advantage from any company and so the trial court has the jurisdiction to summon petitioner and in any case, petitioner has efficacious remedy to raise the pleas taken herein before the trial court at the charge stage. It is next submitted that at the summoning stage, indepth examination of the case is not required to be undertaken. Learned Standing counsel for respondent submits that sanction for prosecution of petitioner has been granted after satisfying that a *prima facie* case for prosecution of petitioner is made out.

Upon hearing and on perusal of impugned order, material on record and the relevant provisions of the Companies Act, I find that the definition of fraud provided in the explanation to Section 447 of the Companies Act, 2013 makes it clear that the prosecution is to relate to the companies in the first instance and also to other persons who have in any manner connived in commission of the offence to gain undue advantage.

A bare perusal of Section 212 of the Companies Act, 2013 reveals that there is no bar of limitation to proceed under Sections 212 or 447 of the Companies Act, 2013. What is the larger conspiracy cannot be prejudged at this initial stage and is required to be examined at trial. At the summoning stage, limited scrutiny is required to be undertaken. Upon doing so, I find no illegality or infirmity in the impugned order. This Court finds that the trial court has jurisdiction to proceed against petitioner, as sanction for the prosecution has already been taken. In the considered opinion of this Court, trial court does not lack the jurisdiction to proceed against petitioner.

Finding no illegality and infirmity in the impugned order, the petition and application are accordingly dismissed, while not commenting on the merits of the case, lest it may prejudice petitioner at trial.

(SUNIL GAUR)
JUDGE

FEBRUARY 06, 2019
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