IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 28.02.2020

1. CRM-M No.27309 of 2019 (O&M)

Vijay Kumar Joshi and another

....Petitioners

Versus

State of Punjab and another

....Respondents

2. CRM-M No.27878 of 2019 (O&M)

Gaurav Vasishta

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Bipan Ghai, Sr. Advocate with
Mr. V.S. Virk, Advocate
for the petitioners (in CRM-M-27309-2019)

Mr. S.C. Nagpal, Advocate
for the petitioner (in CRM-M-27878-2019)

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

Mr. Sunil Chadha, Sr. Advocate
with Mr. Rahul Bhargava, Advocate
for respondent No.2 (in CRM-M-27309-2019)

Mr. J.S. Bedi, Sr. Advocate
with Mr. G.S. Brar, Advocate
for the complainant (in CRM-M-27878-2019)

Mr. P.S. Ahluwalia, Advocate
for the intervener.

<u>ARVIND SINGH SANGWAN, J. (Oral)</u>

Prayer in these petitions is for grant of anticipatory bail to the petitioners in FIR No.47 dated 09.05.2019 registered under Sections 406, 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (in short 'IPC') and 66 of the Information Technology Act, 2000, at Police Station Phase-8, SAS Nagar, Mohali.

While issuing notice of motion (in CRM-M No.27309 of 2019), the following order was passed by this Court on 26.06.2019:-

> *"Prayer in this petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioners in case FIR No. 47 dated 09.05.2019, under Sections 406, 420, 465, 467, 468, 471 and 120-B of the IPC and Section 66 of the Information Technology Act, 2000, registered at Police Station Phase-8, S.A.S. Nagar, Mohali, Punjab.*
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> *Learned senior counsel, inter alia, contends that admittedly for the last four years, the petitioners and the complainant are having business transactions and prior to registration of the present FIR, a complaint was lodged with the Securities and Exchange Board of India (for short 'SEBI'), wherein the petitioners were directed to deposit certain penalties, which have already been deposited by them.*
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> *Learned senior counsel for the petitioners further submits that as per Section 26 of the Security (Regulations) Act, 1956, a complaint for launching prosecution can be initiated only on a complaint given by the Central Government/State Government or by SEBI.*
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> *Learned senior counsel for the petitioners has further referred to IRGP proceedings dated 26.04.2019, wherein the following observations were made:*
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> > ***"The complainant all through has been***

harping on the fact that he has given the money for reaping assured returns, if that be the case, then his statement is inconsistent with the terms and conditions signed by him in the KYC form and other documents. Further, he also contended that no pre trade consent was obtained from him for the trades done in his account. Since he had signed the KYC form, the stand taken by him that the money was invested for assured returns is contradictory. The panel is of the view that the said contention of the complainant is belied and he was aware of the opening of the trading account with associated risks and he was also making pay-in and taking pay-outs from the trading member."

Notice of motion.

Mr. Akshay Bhan, Senior Advocate, assisted by Mr. Rahul Bhargava, Advocate, is present in Court and accepts notice on behalf of the complainant.

Learned senior counsel for the complainant submits that the FIR has been registered primarily on the ground that the petitioners have forged the signatures of the complainant on various occasions.

List again on 01.08.2019.

Meanwhile, in the event of arrest, the petitioners be released on interim bail subject to their furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

The petitioners are also directed to hand over their passports to the Investigating Officer."

Similar relief was granted by this Court to the petitioner namely Gaurav Vasishta (in CRM-M No.27878 of 2019) on 04.07.2019.

Learned senior counsel for the petitioners has argued that in pursuance to the orders dated 26.06.2019 and dated 04.07.2019, the petitioners have appeared before the Investigating Officer and have joined the investigation.

Learned Senior counsel for the petitioners has argued that the complainant – Deepak Gupta was having a business dealing with M/s. Vikson Securities Private Limited since 2012 and from the year 2012 till 2018, the business dealing was going on and there was no complaint between the parties. However, in the year 2018, when the share market was down, the complainant has got the present FIR registered with the allegations that there are many flaws in the dealing of the petitioner including the fact that the mobile number has been wrongly given in KYC Form as well as certain information has not been provided correctly.

Learned senior counsel for the petitioner has further argued that the dispute was referred to the Investor Grievance Resolution Panel (hereinafter to be referred as 'IGRP') and in the proceedings initiated by IGRP dated 26.04.2019, the claim from both the sides was heard and the following observation was made by the IGRP:-

> ***"ORDER OF THE IGRP***
>
> ***Observations of IGRP:***
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> *The earlier meeting held on 23.04.2019 was postponed to 26.04.2019 so as to provide an opportunity to both the parties for mutual reconciliation. Since no headway in this regard could be made, the matter is taken*

up today on merits.

The complainant in person and the authorized representatives of TM are present for the IGRP.

During the IGRP proceedings, the complainant repeated the grievances mentioned in the complaint. The complainant while concluding his submissions mentioned that he had given an amount of Rs.60 lac in December 2016 and Rs.80 Lac in May 2017 to the TM. He further asserted that he was only given a payout amounting to Rs.9,00,000/- in all till 27.02.2018. He also mentioned that the trades were done his account without his consent and knowledge and there were LIQUID Bees worth Rs.56,00,000/- purchased in his account and then later the AP gifted the same to himself by getting the blank Instruction slips signed from him.

However the representatives of the TM contradicted the stand taken by the complainant. He reiterated the stand taken by him in his detailed reply that all post trade confirmations were sent although no voice recordings are available.

In this regard the pleadings, the documents on record and the arguments of the parties reveals that the major allegations levied by the complainant against the TM pertains to unauthorised purchase of 5600 Liquid bees on 04.04.2018 and the gift of the same by the AP to himself during May 2018 on different dates. Though the complainant having signed the blank slips, the panel is of the view that since the Delivery Instruction Slips are duly signed by the complainant and based thereon the shares were transferred from his account. Since the said transaction is an off-market and the TM has also alleged that the Liquid bees worth Rs.30 Lac were transferred to different accounts of the relatives/family friends from the Demat Account of the AP. In our considered opinion, the

IGRP cannot dwell on the said issue as the said transaction is off market and hence the complainant is at liberty to, approach the appropriate authority for the redressal of his above-mentioned grievance. Heace, no benefit on this account can be afforded to the complainant.

The other major allegation levied against the TM pertains to unauthorised trade in his trading account after 31.03.2018. He further alleged that no proof of pre-trade confirmations have been shared by the TM till date, including the voice recordings which are mandatorily to be done after 01.04.2018 as per SEBI guidelines. In this regard, the panel is of the view that though the TM has placed on record the emails and SMSs Logs showing that the complainant was duly intimated about the post trade confirmations, none the less he has been unable to place on record the voice recordings/written instructions/CCTV footage as the case may be, to show the pre-trade consent given by the complainant. In the present matter undisputedly, there is no proof of prior consent available with the TM for the trades in terms of SEBI circular dated 22.03.2018 effective from 01.04.2018. It is pertinent to mention herein that there is a serious lapse on the part of the TM in not complying with the ibid circular of SEBI and hence the contentions of the complainant holds substance and that of the TM are not tenable.

Further, we note that the amount of Rs. 2 crore claimed by the complainant is exaggerated and without any basis. The panel is not inclined to accept the same.

The panel is of the considered view that in the absence of record of pre-trade consent, the trades in question subsequent to 31.03.2018 are considered unauthorized and hence claim of the complainant is partly allowed.

In the present complaint, the capital balance as on

31.03.2018 was Rs.1,57,07,175/-. However, the panel is not considering the claim of Rs. 56 Lac pertaining to the off market transaction for the reasons mentioned herein above. Subsequently, balance as on 31.01.2019 was reduced to Rs.8995,38P and thereafter no trading has taken place. The difference in amount of Rs. 1,57,07,175/- and Rs.56,00,000/- is equal to Rs.1,01,07,175/- Further the difference of Rs.1,01,07,175/- and balance as on 31.01.2019 is Rs.1,00,98,179.62P and the said amount is considered as admissible claim in favour of the complainant.

<u>Orders given by the IGRP:</u>

In view of the above discussion, Rs.1,00,98,179.62P is considered as admissible in favour of the complainant.

Admissible Claim:

Rs.1,00,98,179.62P (Rupees One Crore Ninety Eight Thousand One hundred Seventy Nine and paise sixty two only.)"

Learned Senior counsel for the petitioners has further argued that similarly in a complaint given by the complainant – Deepak Gupta, the following observations are made:-

Observations of IGRP:

The earlier meeting held on 23.04.2019 was postponed to 26.04.2019 so as to provide an opportunity to both the parties for mutual reconciliation. Since no headway in this regard could be made, the matter is taken up today on merits.

The authorized representatives of the complainant and the TM are present for the IGRP.

During the IGRP proceedings, the authorized representatives of the complainant repeated the grievances mentioned in the complaint. In addition, they were also given an opportunity to record their contentions orally *during the IGRP as stated herein above.*

The authorized representatives of the complainant while concluding submissions mentioned that the TM was alluring the complainant with false returns on monthly basis and fudging the yearly statements in order to get more funds invested from the complainant as well as to make more money as brokerage and other charges and levies. However the representatives of the TM contradicted the stand taken by the complainant.

In this regard the pleadings, the documents on record and the arguments of the parties reveals that the major allegations levied by the complainant against the TM pertains to forged and fabricated statements of account sent by the AP to the complainant on various occasions, unauthorized trade and lack of assured returns as promised by the TM.

The complainant all through has been harping on the fact that he has given the money for reaping assured returns, if that be the case, then his statement is inconsistent with the terms and conditions signed by him in the KYC form and other documents. Further he also contended that no pre trade consent was obtained from him for the trades done in his account. Since he had signed the KYC form, the stand taken by him that the money was invested for assured returns is contradictory. The panel is of the view that the said contention of the complainant is belied and he was aware of the opening of the trading account with associated risks and he was also making pay-in and taking pay-outs from the trading member.

It is not in dispute that the complainant has been filing ITRs on the basis of the Statement of Account provided by the AP. However, the allegations of fraud and fudging/forgery levied by the complainant against the TM *and the filing of the Income Tax returns (ITRS) based upon such alleged forged statement of accounts showing profits cannot be decided by the IGRP. In our considered opinion, the complainant is at liberty to approach the appropriate authority for the redressal of his above-mentioned grievance.*

The other major allegation of the complainant is regarding unauthorized trades in his account by the TM throughout. In this regard, the panel is of the view that the said allegation is wrong and is far from truth as the TM has been sending emails and SMSs regularly on the registered email ID and mobile number mentioned in the KYC form which is duly signed by the complainant. It is imperative to mention herein that the contention of the complainant regarding signing of blank KYC form etc. cannot be established at this stage. Upon perusal of the documents placed on record by the TM with its reply, it is seen that the TM has placed on record the SMSs and email logs to substantiate the fact that complainant was duly intimated about the transactions regularly. However, the TM was categorically asked to place on record the voice recordings/written instructions/CCTV footage as the case may be, to show the pre-trade consent given by the complainant. But the TM could not produce any proof whatsoever that orders for trades were placed by the complainant.

In the present matter undisputedly, there is no proof of prior consent for the trades in terms of SEBI circular dated 22.03.2018 effective from 01.04.2018 is available. It is pertinent to mention herein that there is a serious lapse on the part of the TM in not complying with the ibid circular of SEBI.

The panel is of the considered view that in the absence of record of pre-trade consent, the trades in *question subsequent to 31.03.2018 are considered unauthorized and hence claim of the complainant is partly allowed.*

Further, we note that the amount of Rs. 1,11,46,455/- claimed by the complainant is exaggerated, and the panel is not inclined to accept the same. Further, there is a difference in the balances as on 31.03.2018 provided by the complainant (after relying upon the statements provided by the AP) and the TM. The panel has considered it prudent to rely upon the balances provided by the TM for all intents and purposes.

In the present complaint, the capital balance as on 31.03.2018 was Rs.5,33,477.56 P as provided by the TM, Subsequently, balance as on 31.05.2018 was reduced to Rs.116.15P and thereafter no, trading has taken place. Further a payout of Rs.2,60,000/- was made on 03.05.2018 by the TM. The difference in the balance as on 31.03.2018 and 31.05.2018 minus the payout of Rs. 2,60,000/- is Rs.2,73,361.4IP and the said amount is considered as admissible claim in favour of the complainant.

Admissible Claim:

Rs.2,73,361.41P (Rupees Two Lac Seventy Three Thousand Three Hundred Sixty One and Paisa Forty One Only)"

Learned senior counsel for the petitioners has also submitted that as per the order of the IGRP, the petitioners had already deposited the admissible claim with the competent authority.

It is further submitted that the petitioners have appeared before the Investigating Officer as and when required and they have not misused the concession of interim bail.

Counsel for the State, on the basis of the affidavit of the

Deputy Superintendent of Police, City-II, SAS Nagar, Mohali has argued that the present FIR was registered by Jai Gopal Goyal and Deepak Gupta along with other family members of HUF that the petitioners by fudging the KYC documents have concealed the correct information from the knowledge of the complainant and has supplied a forged a profit and loss statement pertaining to the year 2012-2018 and on the basis of the same, the complainants have filed their Income-tax returns for the year 2015-16. It is also argued that as per the statement supplied by the petitioner, the complainants were shown to be earning profit whereas to the contrary in reality, they were in losses. It is further submitted that two similar FIRs are also registered against the petitioner(s) at Ludhiana.

Learned senior counsel for the complainant has also submitted that the information given by the petitioners regarding their investment and profit was believed by them from the year 2012-2018 and whatever information was supplied to them, the same was relied upon by them for filing their Income-tax returns and later on, they came to know that the fake figures were given in the said statement.

However, counsel for the State as well as learned senior counsel for the complainant could not dispute that the complainants have already lodged their complaints with the IGRP and the aforesaid order dated 26.04.2019 has been passed on a complaint given by the complainant in which interim liability/claim has been settled.

After hearing the counsel for the parties and considering their submissions and also in view of the fact that the complainants are having a dealing with the petitioners since 2012 whereas the present

FIR was registered in the year 2019, these petitions are ***allowed***, the orders dated 26.06.2019 and dated 04.07.2019 are made absolute as the dispute *inter se* parties is already pending before the IGRP and some interim order has already been passed regarding the admissible claim.

(ARVIND SINGH SANGWAN)
28.02.2020 **JUDGE**
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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No