IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.42565 of 2019 (O&M)
Decided on: 25.10.2021

Amit Jain

....Petitioner

Versus

Central Bureau of Investigation and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Rai, Sr. Advocate
with Mr. Rajiv Malhotra, Advocate
for the petitioner.

Mr. Rajeev Anand, Advocate
for the respondent – CBI.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the FIR No.RC2192017E008 dated 02.05.2017 registered at Police Station CBI/EO-I, New Delhi, initially under Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code, 1860 (in short 'IPC'), as well as the challan dated 31.12.2018 submitted under Section 173 (2) Cr.P.C.

Brief facts of the case are that the aforesaid FIR was registered at the instance of Branch Manager, Union Bank of India, Muktsar Sahib, Punjab with the allegations that M/s. Goyal Food Stuff Industries (hereinafter to be referred as 'the firm') through its partner Vijay Kumar Goyal and Ranjiv Kumar Goyal, were availing various credit facilities from the complainant – Bank. It is further stated in the

FIR that M/s. Star Agri Warehousing Collateral Management Limited (hereinafter to be referred as 'the warehouse'), are the collateral management agents of the bank and Davinder Singh and Harpreet Singh are its employees and entered into an agreement dated 26.11.2012 with the bank to manage the securities of the bank pledged by various borrowers of the bank. The details of the credit facilities availed by the firm through its partner are detailed in the FIR and as per the details, the outstanding amount was Rs.20,40,43,44,11.90/-. It is also stated in the FIR that the bank maintains a stock movement register in which each and every release order issued by the bank for release of pledged stock is entered which is authenticated by 02 of the officers of the bank, who maintained the record. It is also stated that the release order as and when issued by the bank were handed over to M/s. Star Agri Warehousing Collateral Management Limited i.e. its employees namely Davinder Singh and Harpreet Singh, who used to visit the bank to collect the release order and their signatures were obtained on the office copy of the release order. The complainant when inspected the godowns, it was found that there is a huge gap between the pledged stock and the actual stock available in the godown and it was also found that as per the statement of pledged stock dated 14.07.2015 issued by M/s. Star Agri Warehousing Collateral Management Limited, there were 1,50,000 bags of paddy and 3,000 bags of rice stored in the godowns and as per the subsequent statement dated 16.10.2015, there were 38,000 bags of paddy lying in the godowns whereas, as per the record of the bank, there should be 1,31,000 bags of paddy and 3,000 bags of rice and thus, the accused persons illegally, fraudulently and dishonestly swindled 93,000 bags of pledged paddy and 3,000 bags of pledged rice from the godowns in conspiracy with each other. The details of the release order and stock register is also given in the FIR.

Later on, the report under Section 173 was submitted on 31.12.2018 against Vijay Goyal (A-1), Ranjeev Goyal (A-2), Davinder Singh (A-3), Amith Aggarwal (A-4), M/s. Star Agri Warehousing and Collateral Management Limited through its Director Amith Aggarwal (A-5), the petitioner – Amit Jain (A-6) and the persons, who were not charge-sheeted were Harpreet Singh and Pawan Wadhwa.

Para 16.24 and Para 16.35 of the report under Section 173(2) Cr.P.C., relating to the petitioner – Amit Jain, are reproduced as under:-

> *"**16.24.** It is revealed that M/s. GFSI during 2014-15, shown business with 02 dummy firms namely M/s. SMBJ International and M/s. Vasundhara Overseas. They had been shown purchased rice worth Rs.1,07,12,477/- and Rs.2,30,43,840/- respectively from M/s. GFSI during year 2013-14. Accused Amit Jain of Sonipat, Haryana during 2012-13, had opened two properietorship firms namely M/s. Vasundhara Overseas and M/s. SMBJ International in dummy name of Sonu and Avinash, opened two bank accounts at HDFC Bank, Naya Bazar and State Bank of Mysore, Naya Bazar, Delhi. M/s. SMBJ International and M/s. Vasundhara Overseas have been shown in the list of sundry debtors of M/s. GFSI as on 01.04.15 to 31.07.15. Similarly aforesaid two firms have been in the list of sundry debtors of M/s. GFSI as on 01.04.14 to 31.01.15. The name of two firms was fraudulently mentioned in the list of sundry debtors of M/s. GFSI as on 31.01.15 and 31.07.15. Accused Amit Jain did not produce any bills, transportation slip, etc. relating to*

> *the rice purchased from M/s. Goyal Food Stuff Industries.*
>
> ***16.35.*** *Investigation further revealed that accused Amit Jain had conspired with Vijay Goyal and Ranjeev Kumar. He impersonating as "Sonu" and fraudulently opened bank accounts in the name of M/s. SMBJ and M/s. Vasundhara in HDFC and State Bank of Mysore Naya Bazar, Delhi. Fake business with these accounts to M/s. GFSI was shown to inflate the turnover and maintain the Drawing Power for release of CC Limits. The Firms have been reflected in the list of sundry debtors."*

Learned senior counsel for the petitioner has submitted that initially the FIR was registered under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Sections 420, 467, 468, 471 read with Section 120-B IPC. It is further submitted that the petitioner was not named in the initial FIR and the allegations are against the firm and the warehouse only. It is also submitted that since the account of the firm was going on smoothly, therefore, the bank has provided various credit facilities to the firm. It is further submitted that there are certain entries of the account of Rajwant Singh, which are in fact, fraudulent entries. Learned senior counsel for the petitioner has thus, prayed for quashing of the FIR as well as the challan, primarily on the ground that the petitioner has never obtained any loan from the complainant – bank and there is no transaction between the petitioner and the complainant – bank. It is also argued that there is no meeting of mind of the petitioner with the accused persons and the allegation that there are 02 dummy firms owned by the petitioner i.e. M/s. SMBJ International and M/s. Vasundhara Overseas, have nothing to do with the petitioner and the CBI obtained the disclosure statement of the petitioner under coercion and the same cannot be read against the petitioner. It is further stated that the firms of the petitioner i.e. M/s. SMBJ International and M/s. Vasundhara Overseas, have purchased material from the co-accused in the year 2013-14 and 2014-15 and the statement was duly given to the Investigating officer and nothing was found against the petitioner and the petitioner has not played any active or passive role in commission of the offence.

Learned senior counsel for the petitioner has further argued that the aforesaid 02 firms i.e. M/s. SMBJ International and M/s. Vasundhara Overseas, are not dummy firms as they are in the name of Sonu Kumar, having bank account with HDFC Bank and State Bank of Mysore Naya Bazar, Delhi and the petitioner is wrongly connected with Sonu Kumar.

With reference to certain documents, like statement of one Satish Kumar, Chief Manager of State Bank of Mysore where the account of M/s. SMBJ International and M/s. Vasundhara Overseas, was lying, it is argued that in his statement, it is stated that the accounts were opened in the name of Sonu Kumar, showing himself to be sole proprietor and the documents which were submitted while opening the account were PAN Card, Election ID Car, rent agreement, etc. of Sonu Kumar. The statement of account of the firm submitted by the petitioner to the Investigating Officer is also relied upon to show the details of the sundry debtors as on 31.03.2015 of M/s. SMBJ International and M/s. Vasundhara Overseas.

In reply, counsel for the respondent – CBI has argued that during the investigation, the conspiracy between the petitioner and Amit Jain and partners of the firms Vijay Kumar Goyal and Ranjiv Kumar in fraudulent and dishonest manner in opening 02 firms i.e. M/s. SMBJ International and M/s. Vasundhara Overseas in the dummy name of Sonu and Avinash has come on record and it is found that the accounts opened at HDFC Bank, New Delhi and State Bank of Mysore, New Delhi, accused – Vijay Kumar Goyal and Ranjiv Kumar, in conspiracy with the petitioner has shown the aforesaid 02 dummy firms in the list of sundry debtors of the firm to inflate the turnover and maintain the drawing power of the firm from the bank whereas in fact, there was no business transaction between the 02 firms as the petitioner could not produce any bills, transportation slip, etc. to show any business transaction. It is also argued that the petitioner by setting up 02 dummy firms has, in fact, facilitated the borrower firm in an illegal and fraudulent manner to misappropriate the loan amount granted to the borrower as there is ample evidence on record that M/s. SMBJ International and M/s. Vasundhara Overseas, were in fact, operated and managed by the petitioner – Amit Jain and even the accounts were opened in the name of Sonu Kumar by the petitioner to show bogus transaction. It is also submitted that the petitioner is relying upon certain documents which are not part of 173(2) Cr.P.C. report and cannot be termed as documents of unimpeachable character and therefore, cannot be relied upon in a petition filed under Section 482 Cr.P.C., for quashing of the FIR.

Lastly, it is argued that during the investigation, the role of the petitioner is duly defined in Para 16.24 and 16.35, reproduced above that the petitioner in active conspiracy with the other accused persons has helped them in misappropriating the bank accounts.

After hearing the learned counsel for the parties, considering the serious allegations against the petitioner as per Para 16.24 and 16.35 of 173(2) report which is based on investigation as well as the fact that the documents relied upon by the petitioner cannot be taken as documents of unimpeachable character, at this stage as the same can be produced during the defence evidence or in the cross-examination of the prosecution witnesses while confronting them with the same and therefore, in view of the guidelines laid down by the Hon'ble Supreme Court of India in ***"State of Haryana vs Bhajan Lal",*** **1991(1) RCR (Criminal)383,** no ground for quashing the impugned FIR as well as the report submitted under Section 173(2) Cr.P.C. is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

25.10.2021
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No