

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**M.A.T 12 of 2022
IA No: CAN 1 of 2022**

**Suresh Kumar Kinra
-versus
The Regional Provident Fund Commissioner and
others**

Mr. Sandeep Dutta
Mr. K. Bhattacharjee
Mr. Abhisek Palit

...For the appellant.

Mr. Bhaskar Roy Mahashaya
...for the respondent no.1 to 4.

Mr. Subir Kumar Saha
Mr. Momenur Rahman

...for the State.

The present appeal is against the order of a learned Single Judge dated 20th December, 2021 in a writ petition filed by the appellant. By the said order, the learned Judge was pleased to dispose of the writ petition by holding that the matters agitated by the appellant can well be urged before the learned court where the proceedings are pending. The appellant is aggrieved in being denied relief from the proceeding initiated by the Enforcement Officer.

According to learned counsel appearing for the appellant, the appellant served as a Special Director in the Company which was subsequently declared a sick

industry. Counsel submits that the appellant should be protected from criminal proceedings since the appellant was not involved in the denial of Provident Fund dues to the workers of the Company after it was declared a sick industry. Counsel submits that although few of the charges may be traced to the period in which the appellant served as a Special Director, most of the charges were of a time when the appellant did not have any involvement at all with the Company.

Learned counsel appearing for the defacto complainant submits that the appellant has been named in the chargesheet as well as the FIR and there are admitted cases of wrongdoing on the part of the appellant.

Learned counsel appearing for the State submits that the writ court can only interfere and stay criminal proceedings in exceptional cases and that the present case does not fulfill the said criterion.

We have considered the respective submissions made on behalf of the parties before us. First and foremost, the appellant's name admittedly finds a place in the FIR as well as the charge-sheet. Second, the criminal proceedings were underway and the investigation had in fact been completed on the date of the impugned order under appeal. Most important, the first court did not take any adverse view of the appellant's alleged role or involvement in the charges and

only held that the contentions may be urged and decided by the trial court at an appropriate stage of the proceedings. The appellant was also given leave to take all points urged in the writ petition before the trial court.

We are hence unable to appreciate the exact nature of the prejudice suffered by the appellant. The appellant has the liberty not only of urging all points before the trial court but also praying for quashing of proceedings if the appellant is so advised.

We agree with the view taken by the first court that the case urged by the appellant/writ petitioner does not fulfill the standard of an exceptional case warranting interference with an ongoing criminal proceeding which were continuing at the material point of time and stay the same. The circumstances must be compelling enough for a writ court to exercise its extraordinary jurisdiction for quashing of the chargesheet and stall the criminal proceedings on clear evidence of an apprehended miscarriage of justice or abuse of process.

The facts in the present case do not indicate either of the aforesaid. The decision relied upon by the appellant namely *Kapil Agarwal vs. Sanjay Sharma; (2021) 5 SCC 524* does not assist the appellant since the facts before the Supreme Court involved lodging of a subsequent FIR which the Supreme Court found was done only to harass the accused. We hence find no

similarity with the facts of *Kapil Agarwal* with those of the present case.

In view of the above reasons, we find no merit in the appeal which is accordingly dismissed without any order as to costs.

CAN 1 of 2022 is also disposed of in terms of this order.

(Kesang Doma Bhutia, J.)

(Moushumi Bhattacharya, J.)