

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-20405-2022  
Date of Decision: 26.05.2022

Abhishek Goyal

.....Petitioner

Versus

Serious Fraud Investigation Office

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Rohit Sud, Advocate, for the petitioner.

Mr. Ishwar Singh, Advocate, for  
Mr. Shobit Phutela, Advocate, for the respondent.

**Harnaresh Singh Gill, J.**

The petitioner seeks quashing of the complaint filed by the respondent and pending in the Court of learned Special Judge (under the Companies Act, 2013) Gurugram; summoning order dated 16.08.2021 and the order dated 11.03.2022 and the order dated 22.03.2022, passed by the said Court.

Learned counsel for the petitioner contends that no role has been attributed to the petitioner in the impugned complaint as also in the summoning order; that the provisions of Section 448 of the Act, are not attracted; that there is no allegation of wrongful motive or wrongful gain or undue benefit against the petitioner; that the petitioner, who remained Director of the two Companies, for a very short period i.e. from 02.09.2014 to 01.06.2016, cannot be said to be a beneficiary, in

any of the alleged transactions in the impugned complaint; that there is no material or evidence on record to establish that the petitioner had knowingly and willfully committed any offence under the Act and that the allegations of non-disclosure in the audit report, does not pertain to the petitioner and can be explained only by the auditors only.

It is further submitted that if the complaint and the summoning order, are taken on face value, even then, they would not result in the finding of guilt and hence, the entire prosecution against the petitioner is liable to be quashed. Reliance is placed upon the judgment of the Hon'ble Apex Court in State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604.

It is further submitted that when the Company itself has not been arraigned as an accused in the complaint, the complaint against the petitioner, without any allegation, is liable to be quashed. Reliance is placed upon the judgment of the Hon'ble Apex Court in Sharad Kumar Sanghi vs. Sangita Rane, Law Finder DOC Id# 653165.

Still further, relying upon the judgment of the Hon'ble Supreme Court in R.K. Kalyani vs. Janak C. Mehta and others, (2009)1 SCC 516, it is contended that if the petitioner, being the Director of the Company(ies) is sought to be prosecuted or being prosecuted, then in order to determine the vicarious liability, the impleadment of the Company is sine-qua non and in the absence thereof, the prosecution of the petitioner cannot be said to be legally justified.

On the other hand, learned counsel for the respondent, who is present in the Court on account of service of advance notice, submits that the proceedings are at the initial stage and the petitioner has only been summoned and that the petitioner has a liberty to raise all pleas, as have been raised before this Court, during the trial, to establish his innocence.

I have heard learned counsel for the parties.

The learned trial Court has passed a detailed order dated 16.8.2021, observing that the accused have not only misused the public money, but also misled the Government agencies through their fraudulent/mischievous documentary transaction and that even they did not spare from this fraud the innocent buyers of flats in their projects. It was further observed that there is sufficient prima-facie evidence, that shows involvement of all the accused in the conspiracy coupled with other crimes allegedly committed by them.

The petitioner has been summoned to stand trial for the offence under Section 448 of the Act. It is the case of the petitioner that he has committed no offence, as he though remained Director of the Company(ies) for a brief period, yet was not beneficiary in any manner.

The summoning order passed by the trial Court is based on the investigation report filed with the complaint and, therefore, at the stage of summoning, it would not be proper to quash the proceedings against the petitioner. Of course, the petitioner has as liberty to raise all the points, as have been

raised in the present petition, before the trial Court. The petitioner may lead evidence, before the trial Court in this regard.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

**(HARNARESH SINGH GILL)**  
**JUDGE**

26.05.2022  
ds

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| Whether Speaking/ Reasoned: | Yes/ No |
| Whether Reportable:         | Yes/ No |