**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

135 **CRM-M-22730-2022**
Date of decision: 01.06.2022

MOHAN LAL JAIN

... Petitioner

Versus

SERIOUS FRAUD INVESTIGATION OFFICE

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Vinod Ghai, Sr. Advocate with
Mr. Edward Augustine George, Mr. Amulya Dhingra, and
Mr. Vajyang Ajay, Advocates for the petitioners.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Shobit Phutela, Advocate for Union of India/SFIO

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<u>VINOD S. BHARDWAJ. J. (ORAL)</u>

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 read with Article 226 of the Constitution of India for quashing of the summoning order dated 16.08.2021 (Annexure P-1) passed against the petitioner by the Additional Sessions Judge-II-cum-Special Judge (under Companies Act 2013) Gurugram, in the matter of 'Serious Fraud Investigating Office Vs. SRS Limited and others' bearing No.COMA-18 of 2021 dated 11.06.2021

Learned Senior Counsel appearing on behalf of the petitioner *inter alia* urged that petitioner Mohan Lal has been summoned under a case of mistaken identity and that as per the list of accused, the name of the petitioner has been mentioned at Sr. No.81 of the summoning order. Even though the Director Identity Number of the petitioner is separate and distinct from the person, who was actually sought to be arraigned as accused by the Serious Fraud Investigating Office. It is further contended that the petitioner had no concern with SRS Mines Overseas Pvt. Ltd. at any point of time and that the person who ought to have been summoned as accused is bearing DIN No.05281066 and his parentage and address is Mohan Lal son of Mathura Prasad resident of House No.305, Bhagat Singh Colony, Ballabhgarh, Faridabad and that instead of summoning the said Director Mohan Lal who was associated with SRS Mines Overseas Pvt. Ltd, the trial Court has summoned the petitioner Mohan Lal Jain bearing DIN No.00063240 and his parentage being that of son of late D.P. Jain, resident of House No.T-3/V-1 LA Tropicana Magazine Road, Khyber Pass, Civil Line, North Delhi-110054.

The matter had come up for hearing on 25.05.2022 when the learned Additional Solicitor General of India had appeared on behalf of Union of India and had sought time to verify the said aspect. Resultantly, the matter was posted for today i.e. 01.06.2022.

Today, on resumed hearing, Additional Solicitor General of India has appeared on behalf of Union of India and has handed over a reply on behalf of respondent Serious Fraud Investigating Office and has admitted that it was a case of mistaken identity and the petitioner has been wrongly summoned as an accused and that the actual Director who was required to be summoned is Mohan Lal bearing DIN No.05281066. It is further evident from a perusal of the reply so furnished that there is no role attributed nor any allegation is levelled against the petitioner herein. The relevant extract of the said reply is reproduced herein below:

> *"5. That the aforesaid investigation revealed about as to how affairs of a company under investigation SRS Mines Overseas Ltd were conducted in fraudulent manner and*

falsified balance sheets were also filed qua the affairs of the said companies.

In this regard, it was further revealed that the said company also violated provisions u/s 92, 128, 129, 134, 137 of the Companies Act, 2013 which provides for liability of its officers in case of such violation/default by the Company Accordingly, criminal prosecution was recommended against the officer/directors of the said company u/s 92, 128, 129, 134, 137 of the Companies Act, 2013.

6. It is revealed that one Mohan Lal, having address H.No. 305, Bhagat Singh Colony Ballabgarh Faridabad Haryana India 121004. was also amongst the directors of the said company during relevant Period of default. The copy of form DIR-2 along with KYC Details filed by said Mohan Lal has been annexed herewith as Annexure - R-1.

7. That the MCA, in exercise of its power's u/s 212 (14) of the Act of 2013, vide its order dated 10.06.2021, issued the directions to the SFIO to file and initiate prosecution against the persons identified in the investigation report including against the aforementioned Mohan Lal

8. That, accordingly, the complaint under reference le,, COMA 18/2021 along with one another complaint i.e., COMA 17/2021, were filed before Ld. Special Court (Companies Act), and the aforesaid Mohan Lal was arrayed as an accused in complaint COMA 18/2021 however, inadvertently with a wrong address i.e. H.No.T-3/V-1 LA Tropicana Magazine Road, Khyber Pass, Civil Line, North Delhi 110054 which actually pertains to the petitioner herein.

It is submitted that the said wrong address was mentioned in the criminal complaint inadvertently as the *petitioner herein was also summoned by the Inspectors for recording of his statement of oath, however, his role was not found in any of the offences revealed in the investigation under reference. A copy of the criminal complaint bearing no. COMA 18/2021, inadvertently mentioning the address of the petitioner herein, has been annexed as an Annexure P-2 to the petition.*

9. That in view of the aforesaid inadvertent error regarding the address of the accused, the Ld. Special Court, though has rightly taken cognizance against the Mohan Lal, director in SRS Mines Overseas Ltd, however, instead of the said Mohan Lal, the petitioner herein/Mohan Lal Jain, has been summoned by way of the summons issued by the Ld. Special Court.

10. That in view of the above, it is prayed that the impugned cognizance dated 16.08.2021 may not be quashed as such against the Mohan Lal, director in SRS Mines Overseas Ltd, however, the summons issued against the petitioner herein may be quashed and the answering respondent may be permitted to provided fresh address before the Ld. Special Court so that fresh summons may be issued against the Mohan Lal, director in SRS Mines Overseas Ltd."

In view of the averments contained in the reply furnished by Serious Fraud Investigation Office, wherein they have admitted to their mistake and have no objection to the petition being allowed to the extent that the order of summoning against the petitioner only be quashed, the present petition is allowed. The order of summoning dated 16.08.2021 passed by the Additional Sessions Judge-II-cum-Special Judge under Companies Act, 2013, Gurugram is set aside to the extent whereby the petitioner herein has been ordered to be summoned against the accused

Mohan Lal son of Mathura Prasad resident of House No.305, Bhagat Singh Colony, Ballabhgarh, Faridabad bearing DIN No.05281066.

Petition stands allowed in the terms aforesaid.

Needless to mention that the Serious Fraud Investigation Office would be at liberty to seek the appropriate modification/amendment in the matter/proceedings pending before the trial Court so as to arraign the actual culprit/suspect as accused amongst the other persons sought to be prosecuted by them.

(VINOD S. BHARDWAJ)
JUDGE

June 01, 2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No