24.03.2023

CRR 1112 of 2023

M/S Rashmi Metaliks Ltd. & Ors.
-Vs-
Central Bureau of Investigation, Anti Corruption Branch, Kolkata

For the petitioner:	Mr. Satish Maneshinde, Sr. Adv., Ms. Smriti Sinha, Adv., Ms. Anandini Fernandes, Adv., Ms. Namita Maneshinde, Adv., Ms. Sutapa Sanyal, Adv., Mr. Ayan Bhattacharya, Adv., Mr. Siddhartha Datta, Adv., Ms. Surabhi Binani, Adv., Ms. Trisha Mukherjee, Adv., Ms. Sanjana Jha, Adv.

An order dated 18th March, 2023 passed by the learned Judge (in-charge), Spl (CBI) Court No.1, Calcutta in Spl (CBI) Case No.02 of 2018 is impugned in the instant revision.

By passing the impugned order the learned Judge took cognizance of offence under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act and Sections 120B/420/471 against the accused persons and issued notice upon them fixing 29th March, 2023 for appearance of the accused persons and supply of copy under Section 207 of the Code of Criminal Procedure.

It is not in dispute that the opposite party/CBI filed charge-sheet in connection with an FIR registered as RC Case No.0102012A0002 dated 10th January, 2012.

A dispute arose between the Ministry of Railways and the petitioners when the Ministry of Railways issued Rate Circular No.36 of 2009 on the basis of "Dual Freight Policy" whereby charges were set for iron ore transportation by the Ministry of Railways. At this stage it would be sufficient to remember that two separate rate charges were fixed by the railways for traffic of iron ore meant for domestic consumption and other than domestic purposes. The controversy arose when Ministry of Railways alleged that the petitioner No.1 had paid a lower freight for transportation of iron ore for the purpose "other than domestic use". Demand cum show cause notice was issued to the petitioner No.1 directing the company to show cause as to why it should not pay higher charges for transportation of iron ore which was not used for domestic purposes. The said show cause notice was challenged by the petitioner No.1 by filing Writ Petition No.14656(W) of 2011. The said writ petition was disposed of by a Coordinate Bench of this Court on 29th September, 2014. The petitioner No.1 challenged the said order passed in WP No.14656(W) of 2011 in Mandamus Appeal being M.A.T No.1970 of 2014. The said appeal was disposed of by the Division Bench of this Court with certain modification giving liberty to the appellant/petitioner No.1 to satisfy the railway authority about the end use of such iron ore as per its own declaration. If it is found that the iron ore was used for domestic purpose, railway authority would refund the amount which the authority realised on account of distance base charges to transportation of iron ore under the relevant consignment. In the said appeal it was contended by the Ministry of Railways that the dispute between the parties is essentially civil in nature and the Civil Court is appropriate forum for determining the evaded freight amount and for realization thereof. In fact the Ministry of Railways filed a Civil Suit No.311 of 2014 with a prayer for realization of freight amount and other incidental reliefs.

In the mean time, being aggrieved by certain observations made by the Division Bench of this Court in M.A.T 1970 of 2014, both the parties moved the Hon'ble Supreme Court by way of SPL (Civil) No.15869 of 2015 and SPL (Civil) No.19925 of 2015 respectively. The said two civil appeals are presently pending before the Hon'ble Apex Court for final adjudication. In SPL (Civil) 19925 of 2015 filed by the Ministry of Railways, the Union of India had also filed a Transfer Petition seeking transfer of 23 writ petitions filed in various High Courts in India and the Civil Suit No.311 of 2014. The said Transfer Petitions was tagged along with the aforesaid civil appeals. By an order dated 14th December, 2015 all the proceedings in various Courts were stayed by the Hon'ble Supreme Court including the suit filed by the Ministry of Railways. It is contended on behalf of the petitioners that the validity of the Rate Circular containing "Dual Freight Policy" is the subject matter of all the proceedings pending before the Hon'ble Supreme Court. During the pendency of Writ Petition No.14656(W) of 2011, the CBI registered an FIR against the petitioners on 10th January, 2012. This was the first FIR lodged by the CBI against the petitioner No.1 under Sections 120B/420/467/468/471/477A of the IPC read with Section 13(2) and 13(1)(d) of the PC Act against the petitioner No.1. The petitioners filed WP No.4652(W) of 2012 challenging the validity of the said FIR and praying for issuance of writ in the nature of mandamus directing the respondents to forthwith rescind, cancel, revoke and/or withdraw the FIR being R.C No.2 of 2012. By an order dated 16th March, 2012 in WP No.4652(W) of 2012, this Court passed a direction permitting the CBI to proceed with the investigation under reference and restraining it from submitting any charge-sheet/final report without the leave of this Court. The said order dated 16th March, 2012 is still in force. On 6th April, 2016 CBI filed an application before this Court in the aforesaid writ petition seeking for leave to the CBI, Anti-Corruption Branch, Kolkata to file charge-sheet against the petitioners. On 28th April, 2017 this Court granted liberty to the CBI to file supplementary affidavit in the above mentioned writ petition enclosing the proposed charge-sheet and Memo of Evidence. Finally the CBI moved the Hon'ble Supreme Court in SLP (Crl) No.4654 of 2018 against the order dated 28th April, 2017 passed in WPA No.4652 of 2012. On 16th May, 2018 the Hon'ble Supreme Court passed an ex parte order in SLP (Crl) NO.4654 of 2018 as follows:-

> "Heard learned Additional Solicitor General for the petitioners. The grievance in this petition is that the filing of the charge-sheet is held up on account of interim orders which have been continued for a long time. In view of the above, we permit the charge-sheet to be filed before the concerned Court which may be dealt with in accordance with law. This impugned order is modified accordingly. The special leave petition is disposed of in above terms".

Subsequently, on 31st May, 2018 CBI filed charge-sheet on the basis of the order of the Hon'ble Supreme court as quoted above against the petitioners and the learned Special Judge (CBI) took cognizance of offence and issued process to the petitioners. The petitioners No.1 have no knowledge about the order dated 16th May, 2018 passed by the Hon'ble Supreme Court in SLP (Crl) No.4654 of 2018. Immediately after having such knowledge, the petitioners filed an application before the Hon'ble Supreme Court praying for recalling of the order passed in the said SLP (Crl) No.4654 of 2018. The Hon'ble Supreme Court was pleased to recall the ex parte order dated 16th May, 2018 and fixed the matter on 27th August, 2018. On 27th August, 2018 the Hon'ble Supreme Court passed the following the order:-

> "Leave granted. Heard learned counsel for the appellants. After recalling our previous order, we have been shown the fact that order dated 16th March, 2012 passed by the High Court is final order, in that the appellant has not filed any appeal challenging the said order.

> This being the case, the drill of the said order has to be followed. Despite the fact that Shri Maninder Singh, learned ASG tells us that a charge-sheet has been filed and cognizance order issued despite this order, we set-aside the cognizance order and direct the appellants to go back to the High Court and apprise it of the fact that a charge-sheet has since been filed and get permission for formally filing the same. The appeal is disposed of accordingly. Pending applications, if any, shall stand disposed of."

In the mean while, CBI had registered a second FIR being FIR No.RC0102014A0015 dated 14th June, 2014 under Section 120B, 420 of the IPC read with Section 13(2) and Section 13(1)(d) of the PC Act against the petitioners which culminated in Charge-sheet No.12 of 2016 dated 31st March, 2016. The said charge-sheet was challenged by the petitioner No.1 under Section 482 of the Cr.P.C being CRR No.1089 of 2017 along with all connected applications with WPA 4652 of 2012 with the connected applications for hearing on 24th March, 2023. It was submitted on behalf of the petitioners that this Court in WPA No.4652 of 2012 restrained the CBI to file charge-sheet/final report as the case may be without the leave of the court. Instead of that, CBI submitted charge-sheet to the learned trial court upon which the learned trial judge took cognizance of offence and issued process against the accused persons. A Coordinate Bench fixed 12th April, 2023 for hearing of an application being CAN 4 of 2023 arising out the WPA 4652 of 2012.

It is further stated by the petitioners that on 27th September, 2022 a Coordinate Bench of this Court passed an order in WPA 4652 of 2012 granting leave to the CBI to file charge-sheet. Accordingly on 18th March, 2023, CBI resubmitted the charge-sheet in the trial court.

It is the grievance of the petitioners that the submission of charge-sheet in the trial court against the petitioners was in complete violation of the orders dated 16th March, 2012, 28th April, 2012, 23rd June, 2017, 21st July, 2017 in WPA No.4652(W) of 2012 as well as passed by the Hon'ble Supreme Court in SLP (Crl) No.4654 of 2018.

I have heard the learned Senior Counsel on behalf of the petitioners at length. I have also carefully perused the judgment and order passed by the Apex Court and this Court in different proceedings time to time. It is needless to say that vide order dated 16th March, 2012 in Writ Petition No.4652(w) of 2012 this Court was pleased to direct that the CBI shall be at liberty to proceed with the investigation under reference but were restrained from submitting any charge-sheet/final report as the case may be without the leave of this Hon'ble Court.

The Hon'ble Supreme Court in SLP (Crl) No.4654 of 2018 held the order dated 16th March, 2012 final as the appellant has not filed any appeal challenging the said order.

In view of such fact the Hon'ble Supreme Court was pleased to direct that the drill of the said order has to be followed, meaning thereby the CBI was restrained from submitting any charge-sheet/final report as the case may be without the leave of this Hon'ble Court. It is found from paragraph-8 of the instant revision that vide order dated 27th September, 2022, a Coordinate Bench of this Court passed an order in WPA 4652 of 2012 granting leave to file report in final form (C.S) after completion of investigation. It is specifically ordered:-

> "The CBI is at liberty to file charge-sheet after submission a copy of the charge-sheet along with all documents to the learned advocate for the petitioner. The CBI would submit the charge-sheet within the adjourned date."

Accordingly, CBI filed charge-sheet in the trial court on the basis of leave granted in WPA 4652 of 2012 vide order dated 27th September, 2022. Thus, the Hon'ble Supreme Court's direction to the effect that the "drill of the said order has to be followed" was substantially complied with by the petitioners.

Moreover, the petitioners have prayed for quashing/setting aside of the order dated 18th March, 2023 passed by the learned Judge (in charge), Special (CBI) Court No.1, Calcutta on the basis of the order dated 16th March, 2012 passed in WPA 4652 of 2012. The said WPA 4652 of 2012 is pending before a Coordinate Bench. The said Bench granted leave to the CBI to file charge-sheet. Accordingly, charge-sheet was filed and cognizance of offence was taken and notice was issued against the petitioners.

In view of such circumstances, I do not find any merit in the instant revision. No order passed by either High Court or the Supreme Court was disobeyed by the trial judge.

In view of such circumstances, the instant revision is summarily dismissed.

(Bibek Chaudhuri, J.)