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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2023

PRONOUNCED ON : 27.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.Nos.11432 & 6820 of 2021
and Crl.M.P.Nos.4551, 6637 & 8359 of 2021

R.Subramanian ... Petitioner
[in Crl.O.P.No.11432 / 2021]

1.P.Augustine
2.R.Venkataramanan ... Petitioners
[in Crl.O.P.No.6820 / 2021]

versus

1.Union of India,
Represented through the Secretary,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.

2.Director,
Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.



3.M.V.K.Reddy,
Assistant Director (Investigation),
Hyderabad Regional Office,
Serious Fraud Investigation Office,
Corporate Bhawan, Bandalagunda,
Hyderabad - 500 068.

...

Respondents
[in both Crl.OPs]

PRAYER in Crl.O.P.No.11432 of 2021: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to quash the show cause notice No.SFIO/STSL/INV/HYD/2016-3676 dated 27.01.2021 issued by the third respondent to the petitioner.

PRAYER in Crl.O.P.No.6820 of 2021: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to quash the show cause notice Nos.SFIO/STSL/INV/HYD/2016-3677 and SFIO/STSL/INV/HYD/2016-3675 dated 27.01.2021 issued to the petitioners together with the order dated 17.12.2012 respectively.

For Petitioner : Mr.R.Subramanian
[in Crl.O.P.No.11432 / 2021] [Party-in-person]

For Petitioners : Mr.R.Subramanian
[in Crl.O.P.No.6820 / 2021]

For Respondents : Mr.ARL.Sundaresan
[in both Crl.O.Ps] Additional Solicitor General
Assisted by Mr.B.Sudhir Kumar
Senior Panel Counsel

COMMON ORDER

These Criminal Original Petitions have been preferred to quash the
show cause notice Nos.SFIO/STSL/INV/HYD/2016-3675;



SFIO/STSL/INV/HYD/2016-3676 and SFIO/STSL/INV/HYD/2016-3677
dated 27.01.2021 issued by the third respondent to the petitioners
respectively.

2. The petitioner in Crl.O.P.No.11432 of 2021 was the Managing Director of Subhisksha Trading Services Limited [hereinafter referred to as 'STSL'], a company under winding up as per the order of this Court dated 29.02.2012, the winding up has become final; the first respondent is the Ministry of Corporate Affairs and the second respondent is the Head of Serious Fraud Investigation Office [hereinafter referred to as 'SFIO'] has given statutory status under Section 211 of the Companies Act, 2013 [hereinafter referred to as "Act"]; prior to Act 2013, SFIO was functioning as an office under the first respondent with no statutory authority; in respect of SFIO, an order of investigation under Section 235 of the Act 1956 was passed on 17.10.2012 by the first respondent and the same was stayed until the order for winding up of the company has become final; when the proceedings were pending, the company was represented by the Official Liquidator and investigation had taken place and based on the complaint of



the prosecution a case is pending on the file of the Special Court in E.O.C.C.No.2/2018 against various accused including the petitioner; the proceedings were stayed by this Court in various Criminal Original Petitions filed by the persons set out as accused therein.

2.1. The petitioner was receiving summons from the third respondent from the year 2018 for a supplementary investigation said to have been ordered on 05.05.2017 and 23.11.2017 under Section 212 of the Act 2013; those summons were served upon the petitioner and he was not in receipt of the orders for supplementary investigation; whenever the summon was served upon the petitioner, he used to seek copies of the orders for supplementary investigation, however he was not furnished with the same; even though the petitioner was sending replies for each of the summons, the summons are being repeatedly sent to him; the supplementary order for investigation has been made without reference to Section 212 (16) of the Act and without jurisdiction; as per the proviso to Section 212 (16) of the Act, there is a complete bar on any order of supplementary investigation and



there cannot be any order of investigation in respect of a company under winding up.

2.2. In view of Section 212 (16) of the Act 2013, ordering supplementary investigation under Section 212 of the Act itself is a bar; because the matter is governed by SFIO investigation under the Act 1956 only; there cannot be any investigation in respect of the company which has been already wound up; the petitioner has received the show cause notice dated 27.01.2021 issued by the third respondent under Section 217(8) of the Act for non compliance with the summons; when the very order of summons itself was without jurisdiction, the action contemplated under Section 217(8) of the Act is not correct; any investigation or other action initiated under the Act 1956 will be governed only by that Act and hence the petitioner was forced to seek a quash of the show cause notice dated 27.01.2021 as illegal, as it is only consequential to the summons and the orders dated 05.05.2017 and 23.11.2017 which themselves are illegal.



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2.3. The petitioners in Crl.O.P.No.6820 of 2021 have also filed a petition to quash the proceedings on the same ground raised by the other petition in Crl.O.P.No.11432 of 2021 for quashing the summons issued to them dated 27.01.2021 by the third respondent. Hence the show cause notice Nos.SFIO/STSL/INV/HYD/2016-3675; SFIO/STSL/INV/HYD/2016-3676 and SFIO/STSL/INV/HYD/2016-3677 issued by the third respondent should be quashed.

3. The Registrar of Companies [hereinafter referred to as 'ROC'] Chennai, sent a report to the Central Government (Ministry of Corporate Affairs) under Section 234 (6) of the Act 1956. Based on the report of the ROC Chennai, Ministry of Corporate Affairs vide its Order No.1/81/2010-CL-II dated 23.07.2010 ordered an investigation under Section 235 of the Act 1956 into the affairs of STSL by SFIO and designated officers of SFIO as Inspectors to carry out the investigation.

4. The above order of investigation was challenged by STSL in W.P.No.18813 of 2010 before this Court. In the said Writ Petition,



directions have been issued to MCA to pass fresh orders under Section 234(1) and (7) of the Act 1956 separately. In compliance of the said directions, MCA vide Letter No.1/81/10-CL.II dated 03.03.2011 withdrew the investigation order dated 23.07.2010 and ROC Chennai issued fresh notices under Section 234 (1) and (7) of the Act 1956.

5. When the ROC Chennai submitted a report dated 17.02.2012 under Section 234(6) r/w Section 234(1) of the Act 1956 to MCA through the Regional Director (SR) Chennai and the Regional Director (SR) Chennai vide letter dated 24.04.2012 forwarded the report of ROC Chennai to MCA recommending for investigation by SFIO into the affairs of STSL. MCA vide Order of No.4/88/2011-CL-II dated 17.10.2012 ordered for investigation under Section 235 of the Act 1956.

6. Once again STSL filed a Writ Petition in W.P.No.4651 of 2013 against the order dated 17.10.2012 and got an order of stay. However, the stay was vacated on 23.09.2015. In the said order, it is clarified that the Inspectors appointed by the impugned order can go on with the investigation



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and file a final report with the Central Government and until further orders are passed by the Court the Central Government shall not issue any further orders. In pursuant to the above directions, MCA vide its orders bearing No.5/23/2012-CL.II dated 10.12.2015 and 30.09.2016 appointed team of Inspectors to carry out investigation into affairs of STSL. The team of Inspectors appointed by MCA conducted investigation into affairs of STSL and submitted the investigation report dated 31.03.2017 to MCA.

7. One of the lenders of STSL moved a winding up petition before this Court. This Court passed an order on 31.03.2009 in C.P.No.68 of 2009 by appointing the Official Liquidator, High Court of Madras as the provisional Liquidator of STSL and directed him to take charge of the assets of the company. The provisional Liquidator has been appointed as a Liquidator of the company by its order dated 29.02.2012 in C.P.No.68 of 2009. An Appeal has been filed against the winding up order dated 29.02.2012 before the Division Bench of this Court by STSL. The appeal filed against the order passed by this Court was dismissed. SFIO had moved a petition in W.M.P.No.18 of 2015 in W.P.No.4651 of 2013 to vacate the stay and the said petition was allowed on 11.09.2017; since the company



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was wound up, the Official Liquidator representing for the original petitioner. While dismissing the Writ Petition, this Court gave liberty to the respondents to proceed against the violations in terms of the report and deal it in accordance with law.

8. In respect of the order dated 11.09.2017, MCA has considered the investigation report dated 31.03.2017 submitted by the investigation team of SFIO and directed the SFIO to file a complaint against the persons vide its letter No.F.No.5/8/2017-CL-II dated 23.11.2017. SFIO vide its letter No.SFIO-1/6/2010-Pros.[Vol-III]/I/13882/2018 dated 23.05.2018] authorised the third respondent for filing complaints for the violations reported in the investigation report. Accordingly, the third respondent filed a complaint before the learned XV Additional Judge, City Civil Court, Chennai, which is a designated Special Court by the Central Government pursuant to Section 435 of the Act 2013 vide Notification No.SO 3529(E) dated 03.11.2017 and the complaint is taken on file in C.C.No.2 of 2018.

9. Mr.ARL.Sundaresan, learned Additional Solicitor of India submitted that during the course of investigation, SFIO had obtained



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permission under Section 240(1-A) of the Act from the Competent Authority vide F.No.SFIO/permission/2012/5556 dated 17.12.2012 in respect of 68 entities with which STSL had various transactions; the details of such entities and the permission obtained under Section 240 (1-A) of the Act 1956 was also mentioned in the investigation report dated 31.03.2017 under para 2.3 of Chapter-II of the investigation report.

9.1. MCA had addressed a letter in F.No.5/8/2017-CL-II dated 05.05.2017 to the Director of SFIO with reference to the investigation into the affairs of STSL and instructed SFIO to submit supplementary investigation report on certain issues; MCA has also sent another letter dated 23.11.2017 in F.No.5/8/2017-CL-II to the Director SFIO to convey the instructions of the Ministry for necessary action; the Director of SFIO vide its order dated 10.07.2018 in F.No.SFIO/INV/AOI/2017-18 had reconstituted the investigation team by appointing the third respondent and two other officers of SFIO as Inspectors under Section 212 (1) of the Act 2013 to carry out supplementary investigation into the affairs of STSL in



terms of instructions received from MCA vide letters dated 05.05.2017 and 23.11.2017.

9.2. The third respondent, who is named as one of the Inspectors to conduct supplementary investigation, had issued two summons to the petitioners dated 26.02.2019 and 23.10.2020 for the appearance of the petitioners and the Regional Office of SFIO, Chennai for further examination and for recording their statement under oath; the petitioners failed to comply with the summons and the investigation team received a letter dated 08.03.2019 from the counsel of the petitioners, who has stated that the petitioners were not aware of the orders referred in the summons and requested a copy of the order issued by the first respondent under Section 212(1) of the Act 2013 and a copy of the orders issued by the respondents 1 and 2 under Section 212(1) of the Act 2013.

9.3. Section 217(4) of the Act 2013, MCA empowers the third respondent to compel the presence of any person to appear before him personally and non compliance of the same is punishable under Section



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217(8) of the Act 2013; despite being summoned several times, the petitioners failed to appear before the third respondent and hence the third respondent issued separate notices dated 27.01.2021 calling upon them to offer their explanation as to why action under Section 217 (8) of the Act 2013 shall not be initiated against them; the petitioners continuously sent replies to the third respondent by stating that they cannot make their appearance without the copies of orders dated 05.05.2017 and 23.11.2017 are furnished to them; the petitioners' intention is just to protract the litigation and frustrate the process of investigation.

10. The Companies Act 2013 came into force with effect from 12.09.2013 by replacing various provisions of the Companies Act 1956 with corresponding provisions under the Act 2013. Section 212 and Section 217 of the Act 2013 came into force with effect from 01.04.2014. According to Section 465 of the Act 2013 *“unless something has been done under a repealed enactment which is inconsistent with the provisions of the Act 2013, the said Act shall be deemed to have been done or taken under the corresponding provisions of the Act 2013”*. In view of the above said



provision it is submitted by the learned Additional Solicitor of India that the petitioners' objection for passing orders for investigation under Section 212 of the Act 2013 is baseless.

11. The SFIO has been established by the Central Government (Ministry of Corporate Affairs) in accordance with the Resolution No.45011/16/2003-Admn-I dated 02.07.2003 and it has also been accorded with statutory recognition under Section 211 of the Act 2013. Letters of the first respondent dated 05.05.2017 and 23.11.2017 to the second respondent, order of the second respondent dated 10.07.2018 appointing the third respondent and others as Inspectors under Section 212(1) of the Act 2013 are in accordance with law and they are inter communications between the respondents 1 and 2.

12. By raising the very same claim for the copies of the above communications, one Rajender Kumar has filed W.P.No.444 of 2020 by an order dated 05.03.2020 and that was dismissed on the ground that both the communications are nothing but inter communications between the Ministry



of Corporate Affairs and Serious Fraud Investigation Office and the Investigation Officer for appointing the Investigation Officer to investigate the case and it is held that the petitioners are not entitled to get the copies of those communications.

13. The third respondent has got the powers of the Civil Court under Section 217(5) of the Act 2013 and competent to issue summons and he is not expected to respond to the letters of the petitioners and seek explanation and information on behalf of the petitioners. Even though the investigation initiated by the second respondent under the Act 1956 was carried out in the year 2012, the inspection report was filed on 31.03.2017.

14. The points that have been raised in both the petitions are one and the same. The petitioners were summoned to show cause as to why action should not be taken against them under Section 217(8) of the Companies Act, 2013. It is stated in the show cause notice dated 27.01.2021 that the petitioners have been summoned by the third respondent to make their appearance at about 3.00p.m. on 11.03.2019 for examination and



recording statement. Since the petitioners omitted to appear before the third respondent, the show cause notices have been issued under Section 217(8) of the Act.

15. The third respondent was appointed as an Inspector within the meaning of Section 212(1) of the Companies Act, 2013, to carry out investigation into the affairs of the STSL and 42 Companies in which the petitioners are the Directors.

16. Mr.R.Subramanian, who appeared as a party-in-person in Crl.O.P.No.11432 of 2021 and as counsel for the petitioners in Crl.O.P.No.6820 of 2021 submitted that originally the investigation has been ordered under Section 235 of the Companies Act, 1956, and the investigation was assigned to SFIO and an officer of SFIO was appointed as an Inspector under the Act; in the meanwhile, a creditor of the Company has filed a petition before this Court to wind up the petitioners' Company and the winding up petition was allowed.



17. There is no quarrel on the point that winding up has become final and hence the petitioners' Company is being represented by an Official Liquidator. The point raised on behalf of the petitioners is that from the very inception of the investigation into the alleged violations, notice has been issued and investigation is ordered to be done only under Section 235 of the Companies Act, 1956 and not under Section 212 of the Act. Admittedly, the Companies Act, 1956 was in force during the year 2010. The corresponding provision that was incorporated in the new Act for Section 235 of the old Act is Section 210. Section 210 of the Act speaks about the investigation into the affairs of the Company on receipt of the report from the Registrar / Inspector under Section 208 of the Act. Section 208 of the old Act states that the Central Government may at the expense of the Company appoint a person to inquire into and report to the Central Government for sanctioning any payment of interest on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions. But under Section 212 of the Act, it is stated that the investigation into affairs of the Company should be done by SFIO, whenever the Central Government is of the opinion without prejudice to the provisions of Section



212, it is necessary to investigate into the affairs of the Company by SFIO.

But in both the cases, action will be taken on the report of the Registrar / Inspector.

18. Section 212(2) of the Act states that if any case is assigned by the Central Government to SFIO, no other agency shall proceed with the investigation. However, in case any such investigation has already been initiated, it shall not be continued further and the concerned agency shall transfer the relevant documents and records in respect of such offences to SFIO. So it is claimed by the petitioners that the investigation shall not be done by any authority appointed in terms of Section 212, but only by an authority who undertakes the investigation in accordance with Section 235 of the old Act.

19. So, the crux of the submissions of the learned counsel for the petitioners is that petitioners have to be dealt only under Section 235 of the old Act and they could not make their appearance before the third respondent, as the earlier summons have been issued in accordance with



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Section 212 of the Act. The third respondent is appointed as Inspector by the Director of SFIO in terms of Section 217(4). The only difference between Section 235 of the old Act and Section 212 of the new Act is that the officer appointed under Section 212 is the officer appointed by the Director of SFIO and not by the Central Government directly. So it is claimed by the petitioners that they are not answerable to the summons issued by invoking Section 212 of the Companies Act for the action initiated against them under Section 235 of the old Act. The learned counsel for the petitioners submitted that as per Section 212 (16), any investigation or any other action taken or initiated by SFIO under the provisions of the Companies Act, 1956 shall continue to be proceeded under that Act.

20. Mr.ARL.Sundaresan, learned Additional Solicitor of India has submitted that the petitioners are causing unnecessary delay to the proceedings by filing one petition or other and by not allowing the investigative agency to investigate further. It is further submitted that under Section 465 of the Companies Act, anything done or any action taken or any operation undertaken or any direction given or any proceedings taken or



forfeiture or fine imposed under repealed enactments shall, insofar as it is not inconsistent with the provisions of the new Act, shall be deemed to have been taken or done under the corresponding provisions of the new Act. It is further submitted that prior to the enactment of the Companies Act, 2013, the officers of SFIO were appointed as Inspectors under Section 235 and 237 of the Companies Act, 1956. The officers of SFIO appointed as Inspectors by the then Central Government shall exercise all powers of the Companies Act, 1956 with regard to investigating the affairs of the Companies. Therefore, the officers of SFIO appointed as Inspectors by the Central Government shall have all powers similar to their statutory powers of the Inspectors calling for the records of the Company, investigation, summoning and enforcing attendance.

21. The learned counsel for the petitioners submitted that the petitioners' absence before the third respondent was not wanton, but they were repeatedly requesting the third respondent to furnish copies of certain orders relating to the case and that was not given.



22. Before advertizing to find out which of the provisions of the Company law is applicable to the case of the petitioners, nothing will bar the petitioners to go and appear before the third respondent and answer his summons. The constant submission made by the learned counsel for the petitioners is that even when the petitioners received the first summon, they were in the mood to attend the proceedings, but the third respondent did not provide the relevant materials and their request to furnish the copies also turned down. Irrespective of the provisions applicable to the case of the petitioners, the petitioners ought to obey the summons issued to them under Section 212 of the Act.

23. The learned Solicitor General of India, submitted that the letters dated 05.05.2017 and 23.11.2017 are just interdepartmental communications and hence furnishing of copies of those materials is not possible. The connected application filed in this regard to seek copies of the document is also turned down by this Court.



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24. But the records would show that the investigation has already completed and the final report filed and the case in E.O.C.C.No.2/2018 is also pending. It is during the pendency of the said proceedings, the Central Government has ordered to do further investigation and on that score, the petitioners have been summoned under Section 212(4) of the New Act. The very object of the notice itself is to show cause why action should not be taken as against the petitioners under Section 212(8). So, it is always open to the petitioners to put forth all such submissions that have been now made before this Court as their grounds for withholding action against them under Section 217(8) of the Companies Act, 2013 and leave it to the appreciation of the third respondent.

25. But, the petitioners without opting to abide the summons issued under Section 212(4), continues to claim that the correct provision applicable to their case is old Section 235 which is equivalent to Section 210 of the new Act. Such technicalities need not be adverted into at this stage of the proceedings. Since the petitioners have been called upon to give statement in view of the further investigation that has been ordered by the Central Government, it will be appreciable if they could cooperate with the



investigation. However, the third respondent can also consider furnishing the copies of essential documents to the petitioners, if they are not secret documents and the interest of justice requires the copies to be furnished upon the petitioners.

26. Since the investigation has already been completed and the complaint has been given and on which, a case is also pending on the file of the Special Court in E.O.C.C.No.2/2018 and for certain reasons, further investigation has also been ordered, it is natural on the part of the petitioners to know the reasons on which further investigation has been ordered. After all they are informations need to be given to the petitioners at any time during the proceedings. If the informations are furnished, no harm will be caused to the proceedings of the Central Government which directed the SFIO to conduct further investigation.

27. The communication dated 10.07.2018 is the appointment of the third respondent as the Inspector for conducting investigation and that can at best be an inter-departmental communication and the petitioners cannot have any interest, except to know who is the Inspector. But the petitioners



cannot stretch the days on the pretext that it is not possible for them to appear before the third respondent, as they have not been furnished with the copies of some proceedings.

28. As stated already, the petitioners firmly believe that the action has to be taken only in accordance with Section 210 of the new Act which corresponds to the Section 235 of the old Act and not under Section 212 of the New Act, it is always open to them to appear before the third respondent in compliance of the summons issued to them without prejudice to their above contention.

29. With the above observations, the Criminal Original Petitions in Crl.O.P.Nos.11432 and 6820 of 2021 are disposed. Consequently, connected Miscellaneous Petitions are closed.

27.04.2023

Speaking order

Index : Yes

Neutral Citation : Yes

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23/25



To

1. Union of India,
Represented through the Secretary,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.
2. Director,
Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.
3. M.V.K.Reddy,
Assistant Director (Investigation),
Hyderabad Regional Office,
Serious Fraud Investigation Office,
Corporate Bhawan,
Bandalagunda,
Hyderabad - 500 068.
4. The Public Prosecutor,
Madras High Court,
Chennai.



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Crl.O.P.Nos.11432 & 6820 of '21



R.N.MANJULA, J.

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Pre-Delivery Common Order made in
Crl.O.P.Nos.11432 & 6820 of 2021
and Crl.M.P.Nos.4551, 6637 & 8359 of 2021

27.04.2023