IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

260-1 & 2 **CWP-15165-2022 (O&M) &**
CWP-12709-2022 (O&M)

O.P. SRIVASTAVA

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

<u>A N D</u>

260-3 **CWP-15700-2022 (O&M)**
Date of Decision: 11.04.2023

ALAKH KUMAR SINGH

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

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Present: Mr. Vaibhav Narang, Advocate and
Mr. Simranjeet Singh, Advocate
for the petitioner(s) in CWP-15165-2022 &
CWP-12709-2022.

Mr. Sunil Chadha, Sr. Advocate with
Ms. Tara Dutt, Advocate for the
petitioner in CWP-15700-2022.

Mr. Vivek Chauhan, Addl. AG, Haryana.

Mr. Suneet Kumar, Advocate
for the respondent No.3 in all cases.

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

Three petitions are being decided by a common judgment. CWP-15165-2022 titled as ‘O.P. Srivastava Vs. State of Haryana and others’ and CWP-15700-2022 titled as ‘Alakh Kumar Singh Vs. State of Haryana and others’ have arisen from FIR No.733 dated 04.09.2021 under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 registered at Police Station Yamuna Nagar City and the CWP-12709-2022 titled as 'O.P. Srivastava Vs. State of Haryana and others' has arisen from FIR No.0290 dated 12.07.2021 registered at Police Station: Ambala Cantt, Ambala for the commission of offence punishable under Sections 406, 420 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC'). Learned counsel for the parties contend that the issue involved in the above mentioned three writ petitions is identical and that the only difference is that the FIRs against the petitioners have been lodged at two different places. For the facility of reference the facts are being noticed briefly from CWP-15165-2022.

The petition seeks quashing of FIR No.733 dated 04.09.2021 under Sections 406, 420 and 120-B of the IPC registered at Police Station Yamuna Nagar City alongwith all consequential proceedings arising therefrom. It has been averred in the above mentioned writ petition that the cases in question arise on account of failure on the part of Multi State Cooperative Society to pay the dues of the FDs on their maturity. The petitioner O.P. Srivastava, who is alleged to be the Vice Chairman of the Sahara Group alongwith other office bearers/Directors of the different companies and societies of Sahara Group are alleged to have illegally withheld the deposits submitted by the complainants-investors on the assurance of good rate of interest. Upon completion of the period of the FDs, the principal alongwith interest was not disbursed to the investors. The abovesaid FIRs are the outcome of the said failure. The petitioner has averred that there are three Multi State Cooperative Societies of the Sahara Group namely: (i) Sahara Credit Cooperative Society Limited registered at Lucknow, (ii) Hamara India Credit Cooperative Society registered at Kolkata and (iii) Saharayan Universal

Multi-Purpose Society Limited registered at Bhopal (hereinafter collectively referred to as Multi State Cooperative Societies). The gist of the FIR reads thus:

i) The complainants had invested in different schemes in form of Fixed deposits.

ii) The Sahara India Company office is situated in Yamuna Nagar.

iii) The complainants have deposited their hard earned money in these schemes in form of Fixed Deposits at different rates of interests and were to receive a different specified sum of money in respect of investment in different schemes on maturity at a particular date.

iv) At the time of making the investments in the schemes the complainants were told by the officials of Sahara India Parivar that the schemes are very beneficial and were assured that the money along with interest would be returned on maturity and assured them that the money invested in the schemes would earn them a lot of profit.

v) The complainants were assured that the company is registered and on the basis of the assurances by officials of Sahara India Parivar they had made investment in Fixed Deposit form in the company and also received a certificate by the officials.

vi) That on maturity of the schemes the complainants made a demand to Accused no 9-11 i.e. Mr. Sanjay Tyagi (Regional Manager), Mr. Ajay Kumar Singh (Sector Manager) and Ms. Jayashree Prasad(Franchise Head). The above stated Accused no 9-11 made an excuses regarding the payments and assured the complainants that after investigation and as per policy and terms and conditions of the company they will release the amount to the complainants but till the filing of the present FIR they have been making excuses and giving false promises.

vii) The complainants again spoke to Accused no.9-11 and they were allegedly threatened by the Accused no. 9-11 that do what you can, you can't do anything to us and threatened the complainants not to come again or else the Accused no.9-11 will file a false case against them and get them arrested.

viii) The officials blatantly refused to make payments because of which the complainants are facing a lot of difficulties and that the complainants are worried that their other investments which are also due for maturity will also be seized by the company.

ix) It is alleged that all the Accused persons in consonance with each other, first sell the policy to innocent people and then seize their investments.

x) The complainants have found out that there are other cheating cases registered against the Accused persons all over India where they have settled their claims to evade criminal liability.

xi) The officers have told the complainants that there is stay by court on new schemes or giving money in respect of old schemes but few agents of complainant company are still taking money from the public for new schemes.

The FIR was filed by 7 persons led by Gurcharan Singh. Though it is mentioned that the FIR is registered after investigation, the document is completely silent about nature, manner, content of such inquiry which led to registration of this FIR. It is again reiterated at the cost of repetition that there was no grievance/allegation direct or indirect expressed against the petitioner in the FIR.

It is averred that the Government had enacted a Multi State Cooperative Societies Act, 2002 repealing the earlier Act of 1994 providing a complete code for protection of rights/obligations/privileges and duties of the Cooperative Societies and their members. It is contended that the necessary ingredients for the commission of the offences in question are not made out considering the relevant facts extracted as under:

2002	Multi-State Cooperative Societies Act, 2002 was enacted.
2010-2014	Three subject Multi State Cooperative Societies as mentioned in the above para are registered.
2012	Supreme Court passes an order in Civil Appeal number 9813 and 9833 of 2011 in case of two companies which are also referred to in the FIR namely (Sahara India Real Estate Corp (SIREC) and Sahara Housing Investment Corp (SHIC) directing them to refund the amount of investors taken on OFCB (Optional Fully Convertible Bonds). In short, the issue before the Supreme Court was issuance of these bonds by these two companies without getting the company listed under the provisions of Companies Act and bringing it under the scanner of SEBI. The relevant order is running into many pages and is still sub-judice for many further directions. But if so required, all the orders would be produced before this Hon'ble Court. It shall be pertinent to highlight that the direction of returnof refund led to constitution of SEBI Sahara Fund to be controlled by SEBI. It is clarified that this order of Supreme Court pertains to only

	two companies as mentioned above and has in no way any embargo on any working or settlement of dispute of members of these cooperative societies. However the embargo came in only on 21.11.2013 when the Hon'ble Supreme Court restrained the entire Sahara Group of Companies not to part with any of its moveable and immovable properties. And as result of which the companies of the Sahara Group in which the Subject societies had invested their monies also came to standstill due to the said order and release of monies/investment from these companies became difficult for the subject societies. And so as there are some money investments from these cooperative societies to Sahara SEBI Fund and SEBI admittedly is not able to disburse the investment amount to the claimants of those two companies in 10 years, there are genuine difficulties faced to return the amount of members of the Societies. Despite that, the Societies are doing their best to return the matured amount of members as much as possible.
22.07.2020 to 23.12.2020 **(Ann. P-9)**	As the society was not able to return the amount of members on time because of difficulties mentioned above, some members approached the office of Central Registrar of Cooperative Societies, New Delhi and the Registrar has passed various orders from 22:07 2020 to 23.12 2020. In these orders the Central Registrar had initially restrained the Society from taking fresh new deposits but permitted them

	to renew the existing deposits, if so, desired by the depositors In one of such order dated 24.09.2020, the Registrar has also proceeded to initiate proceedings under section 86 of the Act meant to wind up the Multi-State Cooperative Societies. In the subsequent orders, the Central Registrar restrained the Society even from renewing the deposits of existing members.
15.01.2021 19.01.2021 **(Ann. P-10)**	The Societies preferred writ petitions against the order of Central Registrar in the Delhi High Court and the Hon'ble Court taking note of the submissions made therein stayed the further proceedings before the Central Registrar and permitted the Societies/ petitioners to carry on their business activities in accordance with law and the byelaws of the Society.
24.03.2021 **(Ann. P-11)**	A cancellation report is prepared in FIR No.69 dated 18.02.2021 under section 406, 409, 420, 467, 468, 471, 120-B IPC at P.S. Malviya Nagar, District Jaipur City. The relevant content of the cancellation report prepared is attached herewith as Annexure P-11. The allegations in this FIR also pertained to not returning of money by the Cooperative Society and it was specifically mentioned in the cancellation report that the dispute is Civil in nature.
04.09.2021	Present FIR is registered which is attached as Annexure P-2.
14.03.2022 **(Ann. P-4)**	In a Civil Writ Petition No.5008 filed by M/s Saharayan Universal Multipurpose Society Limited against the order of State Consumer Disputes Redressal Commission, this Hon'ble Court has passed an order issuing notice of motion with a

	direction of no coercive steps to be taken by executing court in implementation of impugned award under Consumer Protection Act. The main argument in the petition is that the members of Societies are not consumers and therefore, cannot redress the grievance under the Consumer Protection Act despite the presence of complete legal framework of Multi-State Cooperative Societies Act. A copy of the order is already attached as P-3.
22.03.2022 **(Ann. P-13).**	Delhi High Court passed a new order in those pending writs of 2021 mentioning that some depositors have intervened in the proceedings and in the light of submissions recorded in the order, vide para 14, the Hon'ble High Court restored the order passed by the Central Registrar, directing the petitioners not to collect any further deposits and also directed the societies to return the money to the claimants/depositors forthwith.
	The matter is subjudice before the Hon'ble Delhi High Court and the pleadings on the subsequent developments by way of Status report by the Central Government, the counter affidavit of the petitioner societies, and the subsequent orders passed are collectively annexed as Annexure P-14.
01.06.2022 **(Ann. P-12)**	This Hon'ble High Court has taken cognizance in an identical matter after arising from different FIR but under same circumstances.

It is contended that the necessary ingredients of the offences are not made out and no allegations have been levelled against the petitioner. The process of criminal law has been misused to sensationalize the issue by involving the top management of the Cooperative Societies notwithstanding that the default in payment on attaining maturity was not attributable to any willful or deliberate act/omission on the part of the Authorities concerned. Inability to reimburse/defray the amount was on account of events that have taken place pursuant to the orders passed by competent Courts.

Various other aspects on the merits of the case have also been agitated in the writ petitions, however, the same are not being referred to in view of the subsequent developments in the light whereof, this Court does not feel necessary to venture into the said merits.

A status report by way of affidavit was filed by DSP, Yamuna Nagar, wherein they reiterated the allegations levelled in the FIR and submitted that the payments having not been made, the cases have been rightly registered. It is further contended that the investigation of the case is at its early stage and determination of liability can only be ascertained after conclusion of the investigation.

A separate written statement has been filed on behalf of the complainant who has agitated his grievance and has averred that the hard earned money was deposited by him with the Multi State Cooperative Societies on being allured of higher rate of interest and that the said payment has not been released to him.

Learned counsel for the petitioner contends that the aforesaid FIR has been registered purportedly on account of failure on the part of the Multi State Cooperative Societies to refund the deposits on their attaining maturity.

He contends that the respective Multi State Cooperative Societies were not in a position to refund the amounts since the accounts of the group had been frozen by the orders of the Competent Authority and the entire corpus of Rs.23,937 Crores have been kept in "**Sahara-SEBI Refund Account**". He further submits that ***Writ Petition (Civil) No.191 of 2022*** titled as ***"Pinak Pani Mohanty vs. Union of India and others"*** is pending before the Hon'ble Supreme Court of India, wherein IA No. 56308 of 2023 had been filed by the Union of India, Ministry of Corporation for appropriate direction to transfer an amount of Rs.5000/- Crores of the abovesaid un-employees amount to be disbursed against the legitimate dues of depositors of Sahara Group Cooperative Societies. While hearing the aforesaid IA, Hon'ble the Supreme Court passed the following directions in its order dated 29.03.2023:

> *(i) Out of the total amount of Rs. 24,979.67 Crores lying in the "Sahara-SEBI Refund Account", Rs. 5000 Crores be transferred to the Central Registrar of Cooperative Societies, who, in turn, shall disburse the same against the legitimate dues of the depositors of the Sahara Group of Cooperative Societies, which shall be paid to the genuine depositors in the most transparent manner and on proper identification and on submitting proof of their deposits and proof of their claims and to be deposited in their respective bank accounts directly.*
>
> *(ii) The disbursement shall be supervised and monitored by Justice R. Subhash Reddy, Former Judge of this Court with the able assistance of Shri Gaurav Agarwal, learned Advocate, who is appointed as Amicus Curiae to assist Justice R. Subhash Reddy as well as the Central Registrar of Cooperative Societies in disbursing the amount to the genuine depositors of the Sahara Group of Cooperative Societies. The manner and modalities for making the payment is to be worked out by the Central Registrar of Cooperative Societies in consultation with Justice*

R. Subhash Reddy, Former Judge of this Court and Shri Gaurav Agarwal, learned Advocate.

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(iv) *We direct that the amount be paid to the respective genuine depositors of the Sahara Group of Cooperative Societies out of the aforesaid amount of Rs. 5,000 Crores at the earliest, but not later than nine months from today. The balance amount thereafter be again transferred to the "Sahara-SEBI Refund Account".*

Learned counsel for the petitioner submits that since the Hon'ble Supreme Court has directed release of an amount of Rs.5000 Crores for settlement of the claims of the depositors of the Multi State Cooperative Societies and a committee had already been constituted to oversee release of the aforesaid amount, it would rather be appropriate that the complainant/other similarly placed aggrieved depositors may submit their claims with the Central Registrar of Cooperative Societies along with the requisite documents so that the same can be verified and the due amount be released in their favour.

Taking into consideration the order passed by the Hon'ble Supreme Court in IA No.56308 of 2023 permitting the depositors of the Sahara Group Cooperative Societies to submit their claims along with the requisite proof of such deposit and with a specific direction to the Central Registrar of Cooperative Societies to disburse the aforesaid amount under the supervision of a former Judge of Hon'ble the Supreme Court and assisted by the Amicus.

Learned counsel for respondent No.3-complainant contends that his grievance permeated only on account of non refund of the due amount despite attaining maturity. He would have no objection to the quashing of the aforesaid FIR in the event, the amount in question is released to him. He further contends that some of the requisite documents to establish the deposit by the complainants are in possession of the petitioner and that in order to verify the aforesaid claims, the committee so constituted by the Hon'ble Supreme Court might require verification/assistance of the petitioner's herein.

Learned counsel for the petitioner submits that they are willing to extend all cooperation and to share all information in their possession and extend assistance as may be required by the concerned authority/committee.

Learned State Counsel, however, contends that there are as many as 182 depositors who had submitted their claim against the Multi State Cooperative Societies and that there may be others as well and that merely the 'no objection' on the part of the complainant to the quashing of the FIR cannot be construed as redressal of the grievances of all other depositors/aggrieved persons.

Learned Senior Counsel appearing on behalf of the petitioners contends that the orders passed by the Hon'ble Supreme Court clearly shows that the unused deposit lying in the Sahara and SEBI refund account is nearly Rs.24,979.67 crores and that a sum of Rs.5,000/- crores has been released to settle the claims of the depositors. He contends that the total claim of the depositors i.e. the persons aggrieved herein would be much less than the amount ordered to be released by the Hon'ble Supreme Court to settle their dues/claims and that there is no occasion for the State as well as the investors to feel apprehensive. He further submits that the apprehension expressed is pre-emptive and without any objectivity. Once the fact stands established that the depositors' right has to be supervised by the aforesaid Committee constituted by the Hon'ble Supreme Court, the petitioners cannot be said to be in default for not releasing the dues. The claim of the individual investors/depositors is yet to be verified by the concerned Committee and that an additional amount of Rs.9,000/- crores is still pending in the account (beyond Rs.5,000/- crores ordered to be released), therefore, there is no valid foundation to support the aforesaid apprehension. It is, however, not the claim of the complainant(s) or the State that the amount payable to the depositors would exceed the abovesaid amount of Rs.5,000/-. Hence, the continued incarceration of the petitioners is not likely to advance any interest of justice. He further submits that the petitioners shall take appropriate steps to ensure that the depositors should be made aware of the orders passed by the Hon'ble Supreme Court so that they can submit their claims before the authorised Committee alongwith the requisite documents and seek refund accordingly. He further contends that the dispute being a money dispute, the issue having been resolved and the amount being released, the FIR(s) ought to be quashed at this juncture and further that the petitioners may be put to such terms and conditions as this Court may feel necessary for safeguarding the interests/apprehensions of the complainants(s)/investors.

Taking into consideration the submissions advanced by the learned counsel for the respective parties as also the order passed by the Hon'ble Supreme Court directing release of amount of Rs.5,000/- crores to settle the dues of investors and the fact that the present dispute is a money dispute and it has been given to explain the petitioners that the amount of Rs.5,000/- crores ordered to be released by the Hon'ble Supreme Court exceeds the claims of the depositors who had invested with the Multi State Cooperative Societies, the present petitions are allowed with the following directions:

(i) The petitioners/Multi State Cooperative Societies shall issue a publication of the abovesaid order dated 29.03.2023 passed by the Hon'ble Supreme Court in IA No.503 of 2023 so as to apprise the depositors in both the districts i.e. Yamuna Nagar and Ambala to submit their claims with the Central Registrar, Cooperative Societies in the manner prescribed. The publication shall be carried in the Hindi Newspaper "Dainik Bhaskar" and English daily "The Tribune" having wide circulation in the abovesaid regions.

(ii) Additionally, the Multi State Cooperative Societies shall also send a letter/communication to the depositors by registered post in order to inform them about the abovesaid order and to afford them an opportunity to submit their claims.

(iii) The impugned FIRs and all consequential proceeding are quashed at this stage to settle all the claims of the depositors/persons aggrieved. The complainant/depositors would, however, be at liberty to seek revival of this present petition(s) for adjudication of the dispute on merits in the event their grievance still survives.

(iv) The petitioners shall file a response alongwith affidavit qua the publication of the order as well as having sent the letter/ communication to the depositors in both the districts at the addresses available in their record within a period of 08 weeks from the date of receipt of certified copy of this order.

Petitions stand allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

11.04.2023
ritu/rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No