2023:DHC:6264

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: August 21, 2023
% ***Pronounced on: August, 29, 2023***

\+ **W.P.(CRL) 2365/2023**

NARESH KUMAR MITTAL & ORS. **..... Petitioners**
Through: Mr. Madhav Khurana, Mr. Karan Khaitan and Mr. Talik Khan, Advocates.

Versus

CENTRAL BUREAU OF INVESTIGATION **..... Respondent**
Through: Mr. Ravi Sharma, SPP for CBI with Mr. Anjani Kumar Rai and Ms. Madhulika Rai Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

CRL.M.A. 22227/2023 (exemption)

1. Allowed, subject to all just exemptions.

2. Application stands disposed of.

W.P.(CRL) 2365/2023 & CRL.M.A. 22226/2023

3. By way of the present petition the petitioners are seeking issuance of Writ of Mandamus quashing the impugned FIR/ RC bearing no.RC0592022A0011 dated 30.09.2022 registered under Section 406/420/468/471/120-B of the Indian Penal Code, 1860 and Section 13(2)/13(1)(d) of the Prevention of Corruption Act, 1988 and all the proceedings emanating therefrom.

4. The petition has been taken up for final hearing with the consent of the learned counsels appearing for the parties.

5. The facts reveal that the aforesaid FIR was registered on the complaint made by Indian Bank. As per FIR, the petitioner no.1 was the Managing Director of one M/s Hi Tech Grain Processing Pvt. Ltd. [***HTGPPL***], which was engaged in the business of processing various kinds of pulses and grains. As per Forensic Audit, the said HTGPPL while enjoying a credit of Rs.305 Cr. from a consortium of banks, siphoned funds and defrauded the Indian Bank situated at 17, Parliament Street, New Delhi to the tune of Rs.11.36 Cr. Thereafter HTGPPL was declared as a Non-Performing Asset on 29.05.2018.

6. Learned counsel appearing for the petitioners submits that the impugned FIR has been registered in non-compliance of the CVC Circular's dated 06.01.2022 and 14.03.2022 providing for recommendation of the Advisory Board of Banking frauds [***ABBF***], which is the governing body over the CBI. He also submits that no offence under Section 13(1)(d) of The Prevention of Corruption Act, 1988 [***PC Act***] is made out as no allegations have been levelled against a public servant in the impugned FIR and in any event, the said Section 13(1)(d) of the PC Act has itself been removed from the Statute and thus the registration of the RC under the said provision is itself an abuse of the process of law.

7. He further submits that the impugned FIR/ RC was registered without grant of any sanction under Section 17A of the PC Act and as the HTGPPL was declared fraud by Indian Bank without following the due procedure of law, the entire basis of registration of the impugned FIR/ RC is itself bad. He then submits that as per settled principle of law, when the base is removed, the

superstructure itself falls.

8. He also submits that the registration of the FIR/ RC was illegal as there was an order dated 20.07.2020 of stay of operation in favour of HTGPPL passed by a learned Single Judge of this Court in W.P.(C) 4317/2020 titled "***Naresh Kumar Mittal & Anr vs. Reserve Bank Of India & Ors***". He then submits that though the respondent/ CBI was not a party but the complainant Bank involved was very much a party therein. He also submits that the said order took note of the 7th meeting dated 01.07.2020 of Committee of Creditors, wherein the complainant Bank was a party. He, thus, submits that the complainant Bank was aware of the said order at the time of registration the present FIR/ RC as it was very much in existence at the time of registration of the FIR. In view thereof, he further submits that the said order was passed after recording the aforesaid wherein the complainant Bank herein was a party and wherein all the respondents, including the complainant Bank, were directed not to take any further steps or actions which were prejudicial to the interest of the petitioner therein, i.e. the petitioner no.1 before this Court. He submits that, therefore, the registration of the FIR/ RC is bad in law. Relevant extracts of the said order are as under:-

> *"3. ..... However, in the 7th meeting of COC on 01.07.2020, respondents No.2, 3 and 4 informed that they have declared the account in question as a fraud.*
> *xxx…….*
> *6. xxx Accordingly, in view of the afore-noted order of this court. Respondents No.2 to 8 shall not take any further steps or actions prejudicial to the petitioners based upon the account in question being declared fraud until the next date of hearing."*

9. Learned counsel for petitioners submits that the facts involved in this case are different from the case of ***State Bank Of India vs Rajesh Agarwal & Ors.*** (2023) 6 SCC 1 as that was a case wherein a promotor took financial assistance from the banks therein, whereafter, his account was declared NPA and he was not aware of criminal complaint lodged with the CBI and thus it was held that the classification of an account as fraud not only results in reporting that fact to investigation agencies and there is a liability under the Master Direction on frauds but also has other penal and civil consequences for the borrower. The facts are different as there was already an earlier order of this Court dated 20.07.2020 in existence prior in point of time to the subsequent registration of the FIR. According to the learned counsel for petitioners, the said registration of the FIR is bad in law.

10. Relying upon ***Himanshu Yadav vs State Rajasthan*** 2022 SCC OnLine Raj 1303 and ***Prabhat Chandra Chaturvedi vs CBI*** [order dated 31.08.2020 in W.P.(Crl) 1354/2020], the learned counsel for petitioners submitted that registration of FIR under Section(s) 13(1)(d)/13(2) without following the mandate under Section 17A of the PC Act is barred by law.

11. Learned counsel for petitioners then, relying upon judgment dated 02.08.2022 in Criminal Petition No. 919 of 2021 entitled ***Steel Hypermart India Pvt. Ltd. and Ors. vs Central Bureau of Investigation and Ors.*** passed by the Karnataka High Court, submitted that since the petitioners had a stay operating in their favour, the respondent could not have registered the FIR/RC.

12. Learned SPP appearing for the CBI on advance notice, after accepting notice submits that in view of what has been held by the Hon'ble Supreme Court in ***State Bank of India (supra)*** that no opportunity of being heard is

required to be given to the accused before registration of an FIR and there is no requirement of the principle *audi alteram partem* being observed before registration of the FIR/ RC.

13. Thence, handing over a copy of the Standard Operating Procedures dated 03.09.2021 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions to counter the arguments addressed by the learned counsel appearing for the petitioners, the learned SPP for the respondent/ CBI submits that Section 17A of the PC Act is not applicable qua the petitioners since they are private parties.

14. This Court has heard the matter at length on the main petition and has gone through the documents on record and perused the judgements cited by them.

15. From the facts before this Court, *prima facie* what emerges is that under Section 17A of the PC Act, prior sanction is required for registration of FIR/ RC against a public servant and what is issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions is only a Standard Operating Procedures dated 03.09.2021, the applicability whereof is unclear as of now.

16. Further, *admittedly*, Section 13(1)(d) of the PC Act has since been substituted in the year 2018 and moreover, it is not in dispute that the present FIR/ RC has been registered under the said provisions of law subsequent thereto, i.e., on 30.09.2022.

17. In any event, this Court finds that, *admittedly*, the FIR/ RC does not contain/ mention name(s) of any public servant and they have a direct bearing and connection of the registration thereof in the FIR/ RC with the provisions of Section 13(1)(d) and Section 17A of the PC Act. The same is

relevant as per what is contained in the Office Order No.06/08/19, relevant contents thereof are reproduced hereunder: -

> *"4.2 In matters which the CBI suo moto propose to take cognizance by way of PE I RC, the procedure u/s 17A of the PC Act, 1988 [as amended w.e.f. 26.G7 .2018], vide S03664(E) dated 26 07 2018! would be followed by CBI and the concerned authorities in the PSBs and, therefore, such matters shall not be referred to the Board"*

18. Now, adverting to the most relevant factor for consideration in the facts involved, which is the earlier order dated 20.07.2020 passed by this Court in an earlier proceeding being in W.P.(C) 4317/2020. It is an admitted fact that there was an order of stay operating in favour of HTGPPL passed by a learned Single Judge of this Court in W.P.(C) 4317/2020. Though the respondent/ CBI was not a party but as the complainant Bank involved herein was very much a party therein and was thus aware of the order of stay binding it at the time of registration of the present FIR/ RC, it was the duty of the said complainant Bank to have brought the said order to the knowledge of the respondent/ CBI. It is also an admitted fact that the said order duly takes note of the 7th meeting dated 01.07.2020 of Committee of Creditors wherein the complainant Bank was also a party and it was recorded that *"The representative of Indian Bank present in the meeting also apprised that they are also in process in taking the matter to CBI which is pending for want of some internal approval/process/reports.*".

19. Even otherwise, under the said circumstances, the respondent/ CBI had an earlier order dated 20.07.2020 passed by this Court in an earlier proceedings being in W.P.(C) 4317/2020 staring at its face at the time of registration of the subsequent FIR/ RC.

20. This Court is mindful of the proposition of law laid down by the Hon'ble Supreme Court in ***State Bank of India (supra)***, *however*, the only issue before this Court is qua applicability thereof to the facts of the present case. On a careful consideration of ***State Bank of India (supra)***, this Court finds that the facts and circumstances involved therein were completely different from those involved herein before this Court as in that case, there was no pre-existing order/ judgment standing in the way of the subsequent registration of the FIR and thus the Hon'ble Supreme Court once again, *rightly*, reemphasized the mandate of the Statute and the trite position of law. The facts in the present case are different *as, admittedly*, there was already an existing order dated 20.07.2020 which was passed by this Court much prior to the registration of the FIR/ RC after specifically recording that *"....in the meeting of COC it was mentioned in response to a query raised by the RP that some of the members of COC had not reached a stage where the said entity could be declared as a wilful defaulter or the account declared a fraud"* and thus finding "*... ...that there is prima facie no compliance with the principles of natural justice.*" before passing the order of stay in favour of the petitioner no.1. The said order was indeed in existence and though respondent/ CBI was unaware of the same, it was certainly the duty of the complainant Bank to have brought forth the same to the knowledge of the respondent/ CBI.

21. Thus, taking note of the factual matrix involved in the present case and the law laid down by the Hon'ble Supreme Court in ***State Bank of India (supra)***, the reliance placed by the learned SPP under the facts and circumstances involved herein is misplaced.

22. Accordingly, in view of the existing facts and the legal position

involved, especially in view of the pre-existing subsisting order dated 20.07.2020 passed by a Coordinate Bench of this Court in W.P.(C) 4317/2020, the present writ petition is allowed and the FIR/RC bearing no.RC0592022A0011 dated 30.09.2022 under Section 406/420/468/471/120-B IPC and 13(2)/13(1)(d) of the PC Act and all the proceedings emanating therefrom are quashed.

23. Accordingly, the present petition stands disposed.

SAURABH BANERJEE, J.

AUGUST 29, 2023
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