

20.11.2024
Item No.9
gd/ssd

MAT/1049/2024
SERIOUS FRAUD INVESTIGATION OFFICE
VS
KAVITA JAGATRAMKA & ORS.
IA NO: CAN/1/2024

Mr. Asok Kumar Chakraborti, ld. ASGI,
Mr. Vipul Kundalia,
Mr. Tapan Bhanja,
Mr. Soumava Ghosh,
Ms. Isabella Pal,
Ms. Swagata Roy,
Mr. Anurag Roy,
Mr. Anindya Karan,
Mr. D. Chaudhuri
..for the Appellant.

Mr. Suddhasatva Banerjee,
Mr. Abhishek Kabir,
Mr. Arindam Paul,
Ms. Puja Rajbhor
..for the Respondent Nos.1 and 2.

1. This intra court appeal by the Serious Fraud Investigation Office is directed against the order passed by the learned Single Bench in CAN 6 of 2024 which was filed for direction upon the appellant to supply the writ petitioners a copy of the investigation report submitted to Central Government and for a direction to preserve all CCTV recordings of all the examinations conducted by the appellant as per the order dated 21.06.2023 until the matter is finally closed by the Central Government.

2. The learned Single Bench by the impugned order held that the writ petitioners are entitled to copy

of the investigation report at the relevant time when the report was still pending consideration of the Central Government in terms of sub-section (14) of Section 212 of the Companies Act, 2013 (the Act).

3. On going through the order passed by the learned Single Bench, we are of the prima facie view that a more deeper examination is required into the statutory provisions to examine as to at what stage of the matter a person concerned is entitled to a copy of the investigation report. The scheme of the Act as could be seen from Section 212 shows that on completion of the investigation, SFIO shall submit the investigation report to the Central Government. This is as stipulated under sub-section (12) of Section 212. Sub-section (13) commences with a non-obstante clause stating that notwithstanding anything contained in this Act or in any other law for the time being in force, copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court. Sub-section (14) states that on receipt of the investigation report, the Central Government may, after examination of the report and after taking such legal advice, as it may think fit, direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the

company or any other person directly or indirectly connected with the affairs of the company.

4. The learned Single Bench was of the opinion that sub-section (13) precedes sub-section (14) and, therefore, regardless of the fact whether the investigation report is accepted by the Central Government or not any person concerned is entitled to the copy of the investigation report.

5. The question would be while interpreting a statute whether the seriatim in which the various sub-sections fall would be a ground to ascertain the actual intention of the legislation. However, this is a deeper issue which needs to be examined after taking into consideration various other factors including the scheme of the entire Act. While we are on this, we need to take note of the definition of “court” which has been defined in Section 2(29)(iv) of the 2013 Act.

6. The learned Single Bench has noted clause (i) of Section 2(29) but, however, we are to take note of the other sub-clauses as well which are relevant for the case on hand, namely, (ii) (iii), (iv) and (v). While on this issue we also have to take note of Section 435. We also take note of the fact that sub-section (13) of Section 212 has to be given a restrictive meaning as it deals with the court before which such an application has to be made. This gets amplified if we examine sub-

section (15) of Section 212 which also commences with the non-obstante clause and takes that notwithstanding anything contained in the said Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing charges shall be deemed to be a report filed by a police officer under Section 173 of the Code of Criminal Procedure.

7. In this background, we need to take note of Section 435 of the Act which deals with establishment of Special Court.

8. Therefore, we are unable to persuade ourselves to accept the interpretation given by the learned Single Bench in the impugned order that the word “court” mentioned in sub-section (13) of Section 212 shall mean the High Court. It would also be relevant to point out that the word “court” cannot be meant to be the High Court, since the writ petitioners had approached this court seeking for various reliefs in the writ petition and admittedly at that stage the Central Government had directed the appellant/SFIO to investigate into the matter and the appellant’s main grievance was that the matter was being prolonged for a long time without any reasonable time period and, therefore, the main prayer sought for in the writ petition was to conclude the investigation by submitting a report within a reasonable time. The next prayer was not to harass the

family members, men, agents, staffs of the company. Thirdly, the writ petitioners sought for supply of certain documents and for a direction to investigate into the nexus between the respondent nos.3 to 8 in the writ petition and to direct disciplinary action against the respondent nos.3 to 6 in the writ petition.

9. Therefore, considering the prayer sought for and the purpose for which the writ petitioners approach this court, we have no hesitation to hold that the word “court” used in sub-section (13) of Section 212 cannot mean the High Court.

10. Having said so, we find that as of now the legal issue has become academic in so far as the writ petitioners case is concerned.

11. The learned Advocate appearing for the writ petitioners submitted that the appellant had argued before the learned Single Bench that the writ petitioners are not the persons concerned and this was dealt with by the learned Single Bench and it was held that the writ petitioners were the persons concerned and this finding is also put to challenge in this appeal.

12. However, when we examine the memorandum of appeal more particularly in ground (V), we find that the tenor of challenge to the order passed by the learned Single Bench is by contending that the investigation report has been submitted to the Central Government and it is the prerogative of the Central

Government to accept the investigation report or not. Further, after examination of the investigation report, the Central Government may form an opinion to proceed further or not or directions are to be given to SFIO to launch prosecution or not and at that stage, the investigation report was being examined by the Central Government and, therefore, the writ petitioners have no locus standi to get a copy of the investigation report as no such direction is received yet from the Central Government to initiate prosecution and hence, the writ petitioners do not fall under the category of “any person concerned” as per Section 212(13)(c) of the Act. As of now the investigation report has been accepted by the Central Government, direction has been issued to the appellant to initiate prosecution and prosecution has already been initiated before the Special Court in Criminal Case No.18 of 2024 and cognizance of the case has already been taken. Therefore, the issue as to whether the writ petitioners were persons concerned has become academic since the writ petitioners have been arrayed as accused in Criminal Case No.18 of 2024 on the file of the Court of the Judge, 2nd Special Court, Calcutta.

13. For the above reasons, the appeal is allowed to the extent indicated above and all the findings rendered by the learned Single Bench in the impugned order are set aside in toto.

14. Taking note of the fact that the case has already been taken cognizance by the Special Court in Criminal Case No.18 of 2024, we direct the writ petitioners to file an appropriate application before the concerned court and upon such application being filed in proper form, the concerned court is directed to furnish a soft copy of the investigation report to the applicant within a period of two weeks from the date on which such application is made before the Special Court.

15. We have directed soft copy of the investigation report to be furnished as it is stated by the learned Additional Solicitor General that the report is voluminous running to more than 4000 pages.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)