IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M-18351-2022 (O&M)
Date of Decision- 01.08.2024

KULDIP KUMAR BASSI

…..PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.K.Mann, Sr. Advocate with
Ms. Simrat Kaur, Advocate
Mr. Gursharan Singh, Advocate and
Mr. Jansher Singh Bajwa, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

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<u>SANDEEP MOUDGIL, J</u>

<u>CRM-43091-2023</u>

1. This application seeking placing on record a copy of notification dated 05.05.2020 of the Government of India, Ministry of Finance (Department of Revenue), Annexure P-17, is allowed for the reasons mentioned therein.

2. Application stands disposed off.

<u>CRM-M-18351-2022</u>

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.0024 dated 18.03.2022 under Section 419/468/471 of the Indian Penal Code, 1860 (for short 'IPC'), and Section 66D of the Information Technology (Amendment) Act, 2008 (for short 'IT Act'),

registered at Police Station Khamano, District Fatehgarh Sahib (Annexure P-2) with all subsequent proceedings arising therefrom.

2. Briefly stated the present petition has been filed by the Liquidator of Lakshmi Energy and Foods Limited (Corporate Debtor), a company incorporated under the Companies Act, 1956, and is currently in liquidation under the Provisions of the Insolvency and Bankruptcy Code, 2016 (for short 'IB Act') and its underlying relations. Previously, the petitioner was also acting as the resolution professional of the Corporate Debtor. The petitioner is a senior citizen of 65 years of age and is a reputed insolvency professional, registered with the Insolvency and Bankruptcy Board of India (for short 'IBBI') with a total work experience of 35 years in overseeing finance functions viz. Strategic Management, Financial Planning & Management, Budgeting and as well as routing finance functions. Respondent No.2 is the Director of the Corporate Debtor duly established from the master data of the Corporate Debtor, which is available on the Ministry of Corporate Affairs (Annexure P-1), and is the complainant in FIR No.24 of 2022 under Section 419, 468, 471 IPC, 1860, read with Section 66D of the IT Act, 2000 (Annexure P-2).

3. The allegations, in brief, in the impugned FIR, Annexure P-2, are that on 09.07.2020, an Inspector from the office of Excise and Taxation Department, Fatehgarh Sahib, visited the complainant and enquired about an application filed in his name for issuance of new GST Registration number in the name of M/s Lakshmi Energy & Foods Ltd., which allegedly was not done by him. However, the visiting official informed that an online application has been moved vide ARN No. AA0306200221327 on

01.07.2020 and he has come to verify the same with respect to his name, father's name, address, PAN number, DIN number, Mobile Number, email id etc. duly filled in the on-line application for applying GST number. He requested the visiting Inspector to provide him the details of online application and also inform as to who has used his personal data but he refused to do so and advised to seek the information under RTI Act. On doing so, complainant received the information vide letter dated 10.10.2020 and thereupon, it revealed that one Mr. Kuldip Kumar Bassi has used his personal data and information for obtaining new GST number in the name of M/s Lakshmi Energy and Foods Ltd. It is further alleged that though Kuldip Kumar Bassi has been appointed as Resolution Professional of the Company and is in possession of company office/plant and records since 4.9.2019 and also may have procured these documents and used without complainant's permission and also aware of the GST number of the Company but his action in applying for fresh GST number by using complainant's documents secretively reflect his intentions to cheat the complainant and governmental authorities with oblique motives. Therefore, Kuldip Kumar Bassi has committed a very serious offence by his illegal acts of making a forged application to obtain a new GST number with a total dishonest intention by forging the valuable documents and by using/forging/fabricating complainant's personal data/information by falsely projecting the forged application to be genuine and being made in complainant's name. Hence,FIR No.0024, Annexure P-1, has been registered under the above sections and Act against the accused – Kuldip Kumar Bassi.

4. The petitioner – Kuldip Kumar Bassi has approached this Court to seek quashing of FIR inter alia on the ground that the petitioner, being the Resolution professional of the Corporate Debtor, was merely fulfilling the obligations and duties imposed upon him under the Notification No.11/2020 dated 21.03.2020 issued by the Central Board of Indirect Taxes and Custom, Ministry of Finance, Govt. of India and Section 20 of the IB Code, therefore, the petitioner was acting in good faith by submitting the application for registration to obtain the new GST Number of the Corporate Debtor in compliance of Notification dated 21.03.2020.

5. It is contended by the learned Senior counsel for the petitioner that registration of FIR is barred by the provisions of Section 233 of IB Code which categorically prohibits any prosecution against insolvency professional, liquidator etc. for anything which is done or intended to be done in good faith under the IB Code or the rules or regulations made thereunder. It is further contended that it is duly disclosed on the GST portal that the new GST number is being sought for the Corporate Debtor in his capacity as Resolution Professional of the said Corporate Debtor and for the initiation of CIRP of the said Debtor. The motive to get lodged FIR against the petitioner by the complainant – respondent No.2 is an unfounded and mischievous act of the complainant to defeat and stall the working of Resolution Professional. Arguing further, the learned Senior Counsel for the petitioner contends that the present complaint/FIR is yet again another instance of causing harassment by the respondent no.2 to the petitioner for the sole purpose of diverting attention from his own wrong doing and for derailing the process of resolution and liquidation which is being carried

through the petitioner under the IB Code. Even otherwise, the stakeholders have filed a claim under Financial Creditor (ICICI, Canara Bank, Axis Bank, PNB, Hinduja); Operational Creditor (National Spot Exchange, Punjab State Civil Supply, the Punjab State Warehousing Corporation, Stock Exchanges, Power Care), Employees, share-holder against the Corporate Debtor with the petitioner and the list of such claimants/stakeholders is at Annexure P-3.

6. Kind attention of this Court is invited by the learned Senior Counsel to the notification No. 39/2020 – Central Tax, dated 05.05.2020 of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, according to which certain amendments in the earlier notification of the Government of India, dated 21.03.2020, have been made, which read as under:-

> *"In the said notification:*
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> *(i) in the first paragraphs, the following proviso shall be inserted, namely:*
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> *"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP".*
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> *(ii) for the paragraph 2, with effect from the 21st March, 2020, the following paragraph shall be substituted, namely:-*
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> *"2. **Registration**: The said class of persons shall, with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union Territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is earlier."*

7. On the contrary, learned State Counsel has submitted that the FIR has been registered after conducting an enquiry with respect to the representation filed by respondent No.2 made to the Senior Superintendent of Police, Fatehgarh Sahib. During enquiry, it revealed that ICICI Bank Ltd. had filed an application before the NCLT, Chandigarh Bench, Chandigarh, against the Company named M/s Lakshmi Energy & Foods Company, for initiation of Insolvency and Bankruptcy Code, 2016 and vide order dated 27.02.2020, petitioner was appointed as Resolution Professional by NCLT, Chandigarh Bench. FIR was registered after verifying that the petitioner had used the detail and address, Aadhar Card number etc. of the respondent No.2, who was the Director of the Company, for new GST number and this verification was got done through an Inspector of the department and after verification it revealed that the details of the respondent No.2 were used by the petitioner without the consent of respondent No.2 nor he at any point of time authorized the petitioner to do so, as such, there is nothing wrong with the registration of FIR. It is further submitted that the challan has already been presented and there are total 18 witnesses and the case is fixed for further proceedings before the learned trial Court. Therefore, the present petition is liable to be dismissed.

8. There is no representation on behalf of respondent No.2.

9. Heard learned counsel for the respective parties at length and Case file also perused.

10. Perusal of the case file shows that FIR has been registered on the complaint made by respondent No.2 against the petitioner due to using the details and other particulars of respondent No.2 after respondent No.2

came to know from the Inspector of the GST Department who personally contacted respondent No.2 to verify as to whether he had applied for new GST number or not. It was the duty of the respondent No.2 to apprise the Department about the appointment of petitioner as the Resolution Professional of the Corporate Debtor but he intentionally did not do so and with ulterior motive made a written complaint in order to get lodge the FIR against the petitioner. The earlier notification dated 21.03.2020 at Annexure P-10, which is prior to the registration of FIR, specifically provides that:-

> *"Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP".*

Therefore, appointed IRP/RP is required to take registration after his appointment as such within thirty days. However, the above proviso was amended by the Govt. of India with the following amendment, vide notification dated 05.05.2020 at Annexure P-17, wherein amended proviso reads as under:-

> *"Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP".*

11. Thus, in view of the new amendment, it is the corporate debtor who has to furnish statements under Section 37 and returns under section 39 of the said Act, however, the respondent No.2 in view of the amended proviso has chosen to stay away from the proceedings of this petition before this Court. In his reply, respondent No.2 has not stated anything new other

than what he has alleged in the complaint contemplated into FIR, Annexure P-2, therefore, even though respondent No.2 has not chosen to cause appearance yet argument on his behalf would not be different from what he has stated in his complaint and written statement.

12. It is a settled proposition of law that in situations where the FIR is demonstrably fabricated and maliciously implicates the petitioner, the High Court may intervene to quash it and prevent a miscarriage of justice.

13. In "***Achin Gupta Vs State of Haryana, 2024 SCC Online SC 759***" the Apex court has held that:-

> *"20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (i) to prevent abuse of the process of Court, and ii) to otherwise secure the ends of justice.*
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> *21. ...It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr. P.C. for the purpose of quashing the criminal proceedings."

14. In view of the above position, this Court is of the considered view that FIR, in the present case is result of ulterior motive and biased mind of respondent No.2 against the petitioner, who was appointed as Resolution Professional by the appropriate Forum as such any activity done/undertaken by him was under bona-fide belief and in a dutiful manner and his conduct is found to be in accordance with the provisions of notifications at Annexures P-10 and P-17.

15. Hence, FIR (Annexure P-2) stands quashed qua the petitioner, alongwith all subsequent proceedings arising therefrom.

16. In the aforesaid terms, the present petition stands allowed.

01.08.2024 **(SANDEEP MOUDGIL)**
Poonam Negi **JUDGE**

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