IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Original Side

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Prasenjit Biswas

APOT 385 of 2024
IA GA 2 of 2025
Punjab National Bank and Anr.
Vs.
Vikas Agarwal

With

APOT 8 of 2025
IA GA 2 of 2025
Punjab National Bank and Anr.
Vs.
Vishambhar Saran

For Appellant-Bank	: Ms. Parna Roy Choudhury, Adv.
For the Respondent	: Mr. S. N. Mookherjee, Sr. Adv. Mr. Sabyasachi Choudhury, Sr. Adv. Mr. V. V. V Sastry, Adv. Mr. Tridib Bose, Adv. Mr. Debojyoti Saha, Adv. Mr. Aniruddha Goyal, Adv.
For CBI	: Mr. Anirban Mitra, Adv. Mr. Manabendranath Bandyopadhyay, Adv.
Hearing Concluded on	: August 05, 2025
Judgment on	: August 21, 2025

DEBANGSU BASAK, J.:-

1. Two appeals, both at the behest of the same appellant, directed against two judgement and orders of the learned single judge dated May 15, 2024 passed in WPO 415 of 2024 and

November 17, 2023 passed in WPO 1626 of 2023, have been heard analogously, as similar issues are involved.

2. Learned advocate appearing for the appellant has submitted that, the challenge in the two writ petitions is limited to a complaint dated June 18, 2021 lodged by the appellant with the Central Bureau Investigations (CBI) for registering a First Information Report in respect of offences committed by the accused therein.

3. Learned advocate appearing for the appellant has contended that, the appellant is mandated under section 39 of the Criminal Procedure Code to inform the investigating agency as to the commission of offences including Sections 120B and 409 of the Indian Penal Code, 1860. She has submitted that, the appellant performed its statutory duty by lodging the complaint dated June 18, 2021 with the CBI.

4. Learned advocate appearing for the appellant has contended that, CBI acted on the complaint and registered a First Information Report on August 18, 2023. The investigations are in progress with CBI having complete dominion as to the report to be submitted before the jurisdictional court under Section 173 of the Criminal Procedure Code.

5. Learned advocate appearing for the appellant has contended that, submitting information of commission of cognizable offences to the investigating agency under Sections 39 and 154 of the Criminal Procedure Code does not give rise to any judicially enforceable legal right in favour of any accused for filing a writ petition. She has contended that, the complaint lodged by the appellant with the CBI has not affected any right of the accused therein.

6. Learned advocate appearing for the appellant has contended that, the private respondents cannot and in fact have not contended that, the complaint did not disclose commission of cognizable offences. The contention of the private respondents that, since the complaint to the CBI is based on a forensic audit report and since such forensic audit report has been criticised in different fora, the same cannot form basis of a complaint. According to her, such a test should not be applied for quashing criminal proceedings or a complaint.

7. Learned advocate appearing for the appellant has contended that the private respondents did not make CBI as a party respondent to the writ petition. According to her, in absence of the CBI it is not open to grant reliefs on the consequential decision and actions taken by the CBI pursuant to the complaint dated June 18, 2021.

8. Learned advocate appearing for the appellant has contended that, same set of facts can give rise to different liabilities under different statutes. Therefore, two independent, simultaneous or parallel proceedings are permissible. She has contended that, ingredients required for proceeding under the Insolvency and Bankruptcy Code, 2016 and the Indian Penal Code, 1860 are different. She has contended that, the Forensic Audit Reports have not been set aside or quashing or invalidated by any court of law. In any event, the complaint has sufficient materials to stand independent of the Forensic Audit Report. In fact, appellant had undertaken an investigation and on the basis of a report dated May 26, 2017, appellant had proceeded against its employees.

9. Learned advocate appearing for the appellant has contended that, CBI is not bound to accept the Forensic Audit Report. CBI has to undertake its own investigations. Moreover, the complaint had been made on behalf of other consortium of lenders. Other consortium lenders had declared the account to be a fraud.

10. Learned advocate appearing for CBI has contended that, his client was added as a party respondent in the two appeals by an order dated July 29, 2025. He has pointed out that, CBI received the complaint dated June 18, 2021 alleging fraud by siphoning and diversion of funds, criminal misappropriation of funds, criminal breach of trust, cheating and causing loss to the public money to the tune of Rs. 1,964 crores. On the basis of such complaint, CBI had lodged a formal First Information Report dated August 18, 2023 under Sections 120B, 409, 420, 477A of the Indian Penal Code, 1860 read with Section 13 (i) (d) of the Prevention of Corruption Act, 1988, against the private respondents, other persons and unknown public servants and other unknown persons.

11. Learned advocate appearing for CBI has relied upon ***2023 Volume 6 Supreme Court Cases 1 (State Bank of India and others versus Rajesh Agarwal and others)*** and contended that, no opportunity of hearing is required to be granted before a First Information Report is lodged or registered.

12. Learned advocate appearing for the CBI has relied upon ***2025 SCC Online SC 934 (Central Bureau of Investigation versus Surendra Patwa and Others)*** to contend that, the complaint and the registered First Information Report should not be quashed.

13. Learned Senior Advocate appearing for the private respondents has submitted that, the borrower company availed of various credit facilities from a consortium of banks for setting up of a Thermal Power Project in Chattisgarh. He has submitted that, the aggregate loan availed till the accounts became Non-Performing Asset (NPA) was Rs. 732 crores. Funds had been utilised for acquisition of land and for construction of the project.

14. Learned Senior Advocate appearing for the private respondents has contended that, since, Central government cancelled the allocation of coal block to the borrower company, the project of the borrower company stood affected. He has contended that, the failure of the project was on account of extraneous reasons and is also admitted to be so in the complaint dated June 18, 2021.

15. Learned Senior Advocate appearing for the private respondents has contended that, the basis for making the complaint dated June 18, 2021 is the Transaction Audit Report. He has referred to the order dated July 25, 2019 passed by the National Company Law Tribunal, Kolkata on July 25, 2019 and the National Company Law Appellate Tribunal on September 30, 2019. He has pointed out that, the proceedings for declaring the borrower and the private respondents as wilful defaulters initiated by the appellant in respect of the same Transaction Audit Report was withdrawn by the appellant on November 9, 2022. He has contended that, appellant accepted the orders of the NCLT as also of NCALT by withdrawing the proceedings for declaring the private respondents as wilful defaulters.

16. Learned Senior Advocate appearing for the private respondents has contended that, since the appellant withdrew the proceedings for declaration of the private respondents as wilful defaulters, it is just and proper that, appellant withdraws the complaint dated June 18, 2021 also.

17. Learned Senior Advocate appearing for the private respondents has contended that, private respondents challenged the vires of the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions, 2016 before the Delhi High Court by way of a writ petition being WP (C) 4458/2021. Delhi High Court had passed an order dated April 9, 2021 directing the appellant to maintain status quo with regard to classification of the account as fraud and from taking any further steps pursuant thereto. Despite subsistence of such interim order, appellant had lodged the complaint dated June 18, 2021. He has pointed out that, the reason for delay in registering the complaint dated June 18, 2021 as a First Information Report on August 18, 2023 is founded on the subsistence of the order of status quo. Therefore, the complaint dated June 18, 2021 is a nullity.

18. Learned Senior Advocate appearing for the private respondents has relied upon ***Rajesh Agarwal (supra)*** and submitted that, the Delhi High Court disposed of a number of writ petition including that of the private respondents being WP (C) 4458/2021 by a common order dated May 12, 2023. He has contended that, no First Information Report was lodged and registered on the date of announcement of the order dated May 12, 2023.

19. Learned Senior Advocate appearing for the private respondents has contended that, appellant issued a fresh show cause notice dated October 25, 2023 accepting the orders of the Delhi High Court and the ratio of ***Rajesh Agarwal (supra)***. The private respondents had filed a response thereto dated November 10, 2023. Appellant had by a communication dated August 9, 2024 declared the loan account of the private respondents as fraud. Private respondents had challenged the show cause notice dated October 25, 2023 and the communication dated August 9, 2024 in the two writ petitions giving rise to the impugned judgement and order. He has pointed out that, the High Court had granted stay on the effect of the communication dated October 25, 2023 and August 9, 2024.

20. Learned Senior Advocate appearing for the private respondents has contended that, the action of the appellant in issuing a fresh show cause notice to classify the accounts as fraud demonstrates that the earlier classification was null and void and therefore, all actions taken pursuant thereto are null and void.

21. Referring to ***Surendra Kumar Patwa (supra)***, learned senior advocate appearing for the private respondents has contended that, the same is not attracted to the facts and circumstances of the present case. He has relied upon ***2011 Volume 14 Supreme Court Cases 270 (State of Punjab vs. Davindar Pal Singh Bhullar and others)*** for the proposition that, if the initial action is not in consonance with law, all subsequent and consequential proceeding should fall.

22. Learned Senior Advocate appearing for the private respondents has relied upon ***2025 DHC 4395 (Ratul Puri versus Bank of Baroda)*** in support of the proposition that, once the substratum of the imputation is found to be unsustainable then the same grounds cannot form the foundation for declaring the account as fraud.

23. Learned Senior Advocate for the private respondents has strenuously contended that the private respondents are not seeking quashing of the first information report registered by the CBI but the complaint dated June 18, 2021 lodged by the appellant with the CBI.

24. The borrower company, VISA Power Limited, had availed of various credit facilities from a consortium of banks with the appellants being the lead banker thereof, for setting up of a thermal power project in the State of Chhattisgarh. Appellant had declared the account of the borrower as a Non-Performing Asset (NPA) on March 31, 2016.

25. The borrower company had faced proceedings under the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, (NCLT), Kolkata, in CP (IB) No. 574 of 2017. Such petition for corporate insolvency resolution process (CIRP) was admitted on December 22, 2017 and a moratorium in respect of the borrower company was declared.

26. By an order dated October 11, 2018, NCLT had ordered commencement of the liquidation proceedings in respect of borrower and appointed a liquidator.

27. The liquidator had applied before the NCLT on November 23, 2018 alleging preferential and undervalued transactions. By an order dated July 25, 2019 NCLT had dismissed such application. The liquidator had filed an appeal before the National Company Law Appellate Tribunal (NCLAT) which was dismissed on September 30, 2019.

28. Appellant had initiated proceedings under the Master Circulars on Wilful Defaulters which the borrower company had replied.

29. Appellant had filed a complaint with the CBI on June 18, 2021 against the private respondents. Subsequent thereto, on November 9, 2022, the Committee for Identification of Wilful Defaulters, had dropped the wilful defaulter proceedings as against the private respondents and the borrower.

30. One of the private respondents had challenged the Master Directions on Fraud dated July 1, 2016 by way of a writ petition before the High Court at Delhi being WP(C) No. 4458 of 2021 which was disposed of by an order dated May 12, 2023 setting aside the action taken against the private respondents.

31. In the proceedings before the NCLT, liquidator had applied under Section 33 of the Insolvency and Bankruptcy Code, 2016 against the private respondents, the borrower company and other related parties for contribution. NCLT had dismissed such application on the ground that, specific allegations of fraud as against the private respondents were not made. NCLT had therefore, declined to direct the private respondents to make contribution as prayed for by the liquidator. NCLT had upheld the order of the NCLT.

32. While approaching the NCLT under Section 33 of the Insolvency and Bankruptcy Code, 2016, the liquidator of the borrower company had relied upon the audit report for the period from December 23, 2015 to December 22, 2017.

33. The complaint dated June 18, 2021 has not limited itself to transactions for the period from December 23, 2015 to December 22, 2017. The complaint dated June 18, 2021 of the appellant has taken into consideration the transactions since inception of the credit facilities. It has also taken note of the legal proceedings initiated against the borrower and the private respondents before diverse fora, the primary and the collateral securities available as also the factors which had led the account to be classified as an NPA.

34. Page 7 of the 10 pages of the complaint dated June 18, 2021 of the appellant has noted that the Forensic Auditor appointed during the CIRP process found various fraudulent transactions. The complaint has gone on to say that, apart from the findings of the Forensic Auditor, appellant has discovered certain other transactions which are fraudulent in nature and has tabulated such transactions in sufficient details to warrant an investigation with regard thereto.

35. The complaint dated 18, 2021 has stated that the borrower in connivance with its related entities diverted and syphoned of bank money to cheat and defraud the bank. It has also stated that the borrower along with unknown public servants committed various offences including that of criminal breach of trust, fraud, criminal misappropriation and cheating on the bank. It has noted that, another banker issued a Look Out Circular (LOC).

36. The Committee of Identification for Wilful Defaulter of the appellant, has dropped the proceedings under the Master Circular for Wilful Defaulters initiated against the borrower and the two private respondents with liberty to the appellant to re-examine the

Wilful Default aspect in the account on the basis of independent documentary evidence which establishes wilful default as per the Master Circular. The order dated November 9, 2022 of the Committee for Identification of Wilful Defaulter of the appellant has noticed that, the Forensic Audit Report, was found by the NCLT by its order dated July 25, 2019 to be without any independent material and does not prove any preferential undervalue and fraudulent transaction. Such committee has also taken note of the order passed by the NCLAT upholding the order of the NCLT dated July 25, 2019.

37. Significantly, the materials which, the complaint dated June 18, 2021 filed by the appellant with the CBI in additions to the Forensic Audit Report, were not considered by the Committee on Wilful Defaulters. The decision of the Committee for Identification of Wilful Defaulters dated November 9, 2022 therefore should be limited to the materials which were placed before it and which it had considered to drop the proceedings with permission to the appellant to initiate fresh proceedings.

38. Private respondents have not drawn our attention to any decision of any authority which considered the additional materials contained in the complaint dated June 18, 2021 as against the borrower of the private respondents, in addition to the Forensic Audit Report, and held that such new materials also do not disclose commission of cognizable offence or the borrower and the private respondents did not indulge in fraudulent transactions. Therefore, the decision of the Committee for Identification of Wilful Defaulters dated November 9, 2022 cannot be pressed into service to successfully claim that, the complaint dated June 18, 2021 is without any basis.

39. One of the private respondents filed WP(C) No. 4485 of 2021 before the Delhi High Court in which an order dated April 9, 2021 was passed. By such order, the appellant was directed to maintain status quo with regard to the classification of the accounts of the private respondents as fraud accounts and from taking any further steps pursuant thereto. However, the appellant was granted liberty to issue show cause notice to the private respondents and pass a reasoned order after giving a hearing. Such order also made it clear that any investigation, enquiry or other proceedings may continue in accordance with law.

40. Such order of the Delhi High Court dated April 9, 2021 cannot be construed to mean that, the appellant has been restrained from lodging a complaint with the investigating agency under the provisions of the Master Direction of frauds. In fact, such order has made it clear that any investigation, enquiry or other proceeding may continue in accordance with law. As has been noticed in ***Rajesh Agarwal (supra)*** classification of fraud can have both civil and criminal liability. Civil liability for classification of fraud under the Master Circular of frauds has been modulated by the Delhi High Court by the order dated April 9, 2021. Delhi High Court has not interdicted the Criminal liability of fraud alleged to be committed by the private respondents. The writ petition of the private respondents was subsequently disposed of by an order dated May 12, 2023 passed by Delhi High Court. While disposing of the writ petition, Delhi High Court has observed that, any F.I.R which has been lodged and proceedings pursuant thereto shall remain unaffected.

41. In the facts and circumstances of the present case, CBI acting on the basis of the complaint dated June 18, 2021 has registered the First Information Report on August 18, 2023. Registration of the F.I.R therefore, has been made subsequent to the final disposal of the writ petition and therefore, cannot be interdicted on the ground of violating any order of the Delhi High Court, in any view of the matter. Interim order of Delhi High Court did not prevent lodging a complaint with the investigating agency in respect of criminal offences.

42. Learned Senior Advocate appearing for the private respondents has repeatedly submitted that, his client is not assailing the First Information Report but only the complaint dated June 18, 2021. It is trite law that although a complaint does not automatically trigger an investigation, if it discloses commission of cognizable offence, it can lead to registration of a First Information Report. A First Information Report legally mandates the police to investigate. Non challenge to the First Information Report in the facts and circumstances of the present case, resonates adversely on the challenge of the complaint.

43. Appellant has subsequent to ***Rajesh Agarwal (supra)*** and the order of the Delhi High Court issued a show cause notice to the private respondents proposing to declare the loan account as a fraud under the Master Directions of Frauds, 2016. Respondents had submitted a reply dated November 10, 2023 to the show cause notice. Appellant has declared the account as a fraud on August 9, 2024.

44. Private respondents had challenged the show cause notice dated October 25, 2023 and the communication dated August 9, 2024 by way of a writ petition in WPO 825 of 2024 and WPO 840 of 2024. The High Court has stayed the effect of the communication dated October 25, 2023 and August 9, 2024 by orders dated October 1, 2024. Apparently, such stay order is still continuing.

45. From the communication of events, as noted above, it transpires that the appellant has considered the account to be a fraud and declared it to be so under the Master Circular of Fraud,

2016. On such perspective also, the complaint dated June 18, 2021 should not be interdicted.

46. ***Davindar Pal Singh Bhullar and others (supra)*** has considered the High Court's direction to the CBI to investigate into allegations by certain police officers of Chandigarh Police and Punjab Police who had conducted enquiry against the presiding Judge of the Bench and submitted a report against him. In such factual matrix, Supreme Court has held that, if the initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that the illegality strikes at the root of the order.

47. In the fact and circumstances of the present, the complaint dated June 18, 2021 has materials beyond the Forensic Report of the Forensic Auditor which were considered by the NCLT and the NCLAT. Refusal of the NCLT and NCLAT to intervene on the basis of the materials in the report of the Forensic Auditor does not ipso facto impinge upon the contents of the complaint dated June 18, 2021.

48. In view of the discussions above, the impugned judgment and order dated May 15, 2024 passed in WPO 415 of 2024 and November 17, 2023 passed in WPO 1626 of 2023 are set aside.

49. APOT 385 of 2024 and APOT 8 of 2025 are allowed. All connected applications stand disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

50. I agree.

[PRASENJIT BISWAS, J.]