(2022) 04 DEL CK 0101

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 883 Of 2020, Criminal Miscellaneous Application No. 3601 Of 2020

Kabita Ghosh & Anr. — APPELLANT

Vs

Central Bureau Of Investigation — RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120B, 420, 465, 471
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2022) 04 DEL CK 0101

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Atul Jha, Prashant Varma, Hiteshi Kakkar, Amrit Singh Khalsa

Final Decision : Disposed Of

Judgement

Asha Menon, J

1. This petition has been filed under Section 482 of the Cr.P.C. for quashing of criminal proceedings and summoning order dated 17th January, 2020 passed by the Ld. Special Judge (PC Act), CBI, RACC/New Delhi in CBI case No.412/2019 titled as CBI Versus Chanchal Ghosh and Others under Section 120B IPC read with Sections 420/465/471 IPC and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 pending before the Special Judge, CBI.

2. The facts as relevant for the disposal of this case are that various persons were found to have defrauded the Corporation Bank, Vasant Vihar branch, New Delhi. A chargesheet was filed against seven accused persons but the petitioners were shown in column No.12. The learned Special Judge, vide the impugned order dated 17th January, 2020, summoned all the seven accused persons including the petitioners to face trial.

3. Mr. Atul Jha, learned counsel for the petitioners submitted that the petitioners were not involved in the day-to-day functioning of the company, M/s Unitrack Logistics Private Limited, of which they were no doubt, the named directors, but in actual fact, they were housewives and, therefore, there being no grounds to summon them in a conspiracy of accused Mr. Chanchal Ghosh, with the accused bank officials to siphon off funds from the bank, they ought not to be subjected to the torment of a trial. It was submitted that when the chargesheet had named them as unsummoned accused, specific reasons ought to have been given by the learned Trial Court before summoning the petitioners, whereas no such reasons were given. Reliance has been placed on the judgments of the Supreme Court in Shiv Kumar Jatia v. State (NCT of Delhi), (2019) 17 SCC 193 and Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 in this regard. It was therefore submitted that the impugned order was liable to be set aside.

4. It was submitted by the learned counsel on merits that the loan was guaranteed by one Mr. Deepinder Singh whose immovable property being a Farm House at Chhattarpur worth Rs. 28 crores had also been attached and as per the chargesheet, the loan amount was recovered, leaving a balance of Rs. 5,84,846/-. In these circumstances, on merits too, the petitioners ought not to be subjected to a trial. Hence, it was prayed that the proceedings and the summoning order qua the petitioners be quashed.

5. The respondent/CBI has filed its reply. It is also submitted by Mr. Prashant Varma, learned SPP for the respondent/CBI that this Court ought not to quash the proceedings inasmuch as no error or perversity in the impugned order has been pointed out. It is also submitted that the learned Trial Court had rightly observed that the petitioners were the only Directors of the Company which had obtained the loan from the Corporation Bank and that they had also furnished their guarantees, as a result of which, it could not be said that they were not liable for the defrauding of the bank. Hence, it was prayed that the petition be dismissed.

6. In Shiv Kumar Jatia (supra), placed on the record as Annexure P-4, following the decision in Sunil Bharti Mittal (supra), placed on record as Annexure P-3, the Supreme Court had held that an order of summoning, though need not be too detailed, must specify in respect of each accused, why they were being summoned. In Sunil Bharti Mittal (supra), the Supreme Court held that before an accused is to be summoned, an active role must be assigned to the accused. That active role must be also accompanied with a criminal intent, which had a direct nexus with the accused. Vague allegations would not meet the standard to implicate a person in the position of a director of a company, in the commission of the offence, particularly when intent or mens rea was involved. As observed by the Supreme Court in Sunil Bharti Mittal (supra), a wide discretion has been given to the Magistrate to grant or refuse to summon an accused.

7. In the present case, the petitioners have been listed in column No.12. Sufficient grounds alone would have justified their summoning. Of course, in the

present matter, reasons have been given by the learned Trial Court, but it seems to have overlooked the requirement of an active role being assigned to the petitioners, by observing that it would be a matter of trial and would be a defence available to them. The learned Trial Court was required to consider whether even on the case set up by the respondent/CBI, any role with criminal intent could be assigned to the petitioners herein.

8. The reply filed by the respondent/CBI before this Court would suffice to show the non-application of mind by the learned Trial Court in this regard. The reply notes that the company, M/s. Unitrack Logistics Pvt. Ltd was incorporated on 26th September, 2000 with Mr. Chanchal Ghosh and some others who subsequently resigned. Some others such as Sh. Shyam Narayan Dubey, Sh. Vipin Kumar Mohla and Smt. Pushpa Ghosh were also inducted as directors, but they too subsequently resigned. Mr. Chanchal Ghosh resigned as Director on 15th November, 2020 and inducted his sisters, the petitioners herein, as Directors on 16th October, 2010. In 2011, Mr. Chanchal Ghosh entered into a criminal conspiracy with Shri Rabindra Kumar Satapathy, Company Secretary and Shri S.C. Rout, the then branch Manager of Corporation Bank Vasant Vihar, New Delhi, whereby forged and fabricated financials of the company were prepared through one Shri Ajay Kumar Jena who posed as a Chartered Accountant whereas he was not one. A forged Audit Report was also prepared at the instance of Mr. Chanchal Ghosh and Shri Rabindra Kumar Satapathy.

9. There is not a whisper even in the reply filed before this Court that either of the petitioners, after their induction as Directors, had played an active role in cheating and defrauding the bank. In Para No.4 of the reply, it is recorded that Mr. Chanchal Ghosh was authorized to sign documents related to the bank account and "singly" operate the current account on behalf of the company, and honour cheques singly on behalf of the company vide a Board Resolution dated 07th July, 2011 which was signed by the petitioners as they were the only two Directors. Thereafter, on 20th July, 2011, the loan application was submitted to the bank under the signatures of Mr. Chanchal Ghosh as the authorized signatory.

10. The authorization by the petitioners cannot be considered as a criminal act unless the respondent/CBI after its extensive and detailed investigations, was able to pin something on them. That they were shown in column 12, itself underlines the fact that the investigations of the respondent/CBI had actually not revealed any overt act of these petitioners. The contention that they stood as guarantors, would at best reflect a civil liability as guarantors, but the same would not show that the petitioners were actively involved in obtaining the loan on fraudulent documentations, as throughout, the CBI has alleged that this was the brain child of Mr. Chanchal Ghosh and the bank officials. The fraud occurred when the bank officials bent rules to sanction loans to Mr. Chanchal Ghosh and the company but the money went not to the company, but into the pockets of the accused persons. But again, the CBI does not allege that any part of the defalcated amount was received by either of the petitioners.

11. The guidelines expounded in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 with regard to the exercise of the powers of the High Court in quashing criminal proceedings are reproduced hereinbelow-

"102. ……., we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) …

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) ….

(5) …..

(6) ….

(7) ……."

11. Following the dicta of the Supreme Court in State of Haryana (supra), and in the light of the very case of the respondent/CBI as reflected in the reply filed to the petition before this Court as well as the chargesheet and in the absence of any criminal intent or an active role being directly attributed to the petitioners, and at best, only a civil liability being disclosed against them, this Court is of the view that the petitioners need not be subjected to the rigors of a criminal trial.

11. Judicial note could be taken of the first decade of the new millennium, when there was a spurt in the formation of private limited companies, be they investment companies or plantation companies, with much ease by ordinary people. Without any understanding of the legal consequences, a number of housewives, gardeners, domestic help etc were inducted and appointed as directors. Invariably, one man or a few men ran the affairs of such companies, to collect money and the others were completely unaware of the conduct of the affairs of the companies. This case seems to be one such, where the petitioners, who describe themselves as housewives and sisters of Mr. Chanchal Ghosh, who seems to have had the most important role in the commission of the offence in this case, were conveniently inducted as Directors, after all others had resigned, and due to their naivety, have been now summoned as co-conspirators. This is a fit case therefore, where the court must exercise its inherent powers in favour of the petitioners.

11. Accordingly, the petition is allowed and the criminal proceedings being CBI case No.412/2019 and the order dated 17th January, 2020 stand quashed qua the two petitioners herein namely Smt. Kabita Ghosh and Smt. Sandhya Ghosh.

12. The petition along with the pending applications stands disposed of.

13. The order be uploaded on the website forthwith.

