

Directorate Of Enforcement vs Niraj Tyagi on 13 February, 2024

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Bench: Bela M. Trivedi, Pankaj Mithal

2024 INSC 106

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 843 OF 2024
(@SPECIAL LEAVE PETITION (CrI.) No. 10913 OF 2023

DIRECTORATE OF ENFORCEMENT ...APPELLANT(S)

VERSUS

NIRAJ TYAGI & ORS.

...RESPONDENT(S)

With

CRIMINAL APPEAL NO. 844 OF 2024
(@SPECIAL LEAVE PETITION (CrI.) No. 14942 OF 2023

MOHIT SINGH

...APPELLANT(S)

VERSUS

REENA BAGGA & ORS.

...RESPONDENT(S)

With

CRIMINAL APPEAL NO. 845 OF 2024
(@SPECIAL LEAVE PETITION (CrI.) No. 14935 OF 2023

DIRECTORATE OF ENFORCEMENT

...APPELLANT(S)

VERSUS

M3M INDIA PRIVATE LIMITED & ORS.

...RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. Leave granted.

2. The appellants being aggrieved by the interim orders dated 13.07.2023, 08.08.2023 and 13.09.2023 passed by the High Court of Judicature at Allahabad in Criminal Misc. Writ Petition Nos. 10893/2023, 11837/2023 and 14053/2023 respectively, have preferred the instant appeals. Vide the impugned orders, the High Court has stayed the proceedings of the FIRs registered against the concerned respondents-accused as also stayed the proceedings of ECIR No.-ECIR/HIU-I/06/2023 registered by the Directorate of Enforcement against the concerned respondents, and further directed not to take any coercive action against the said respondents pending the said writ petitions. All the appeals being interconnected with each other, they were heard together and it would be appropriate to decide them by this common judgment.

3. The respondent India Bulls Housing Finance Limited (IHFL) is a non-

banking financial institution incorporated under the provisions of the Companies Act. IHFL deals with the public money. The major source of funds for the loans to be advanced by IHFL, is either the loans from the other banks or from the public in the form of non-convertible debentures. The respondents Niraj Tyagi is the President (Legal) and Reena Bagga is the authorized officer of the IHFL.

4. M/s Kadam Developers Pvt. Ltd. (hereinafter referred to as M/s Kadam) was one of the Shipra Group entities. M/s Kadam had a sub- lease of a parcel of land admeasuring 73 acres in Sector 128, Noida, which was allotted to it by the predecessor of Yamuna Expressway Industrial Development Authority (hereinafter referred to as the YEIDA). The 100% equity shares of M/s Kadam were held by Shipra Estate Limited (98%); Mohit Singh (1%) and Bindu Singh (1%).

5. Between 2017-2020, IHFL had sanctioned 16 loan facilities to the tune of Rs. 2,801 crores to the Shipra Group/ Borrowers comprising of Shipra Hotels Ltd., Shipra Estate Ltd. and Shipra Leasing Pvt. Ltd. for the purposes of the construction and/or development of Housing/Residential Projects. Against the said sanctioned loan, a sum of approximately 1995.37 crores was disbursed. The financial assistance was secured by the Shipra Group by executing 22 pledge agreements whereby the shares of various companies were pledged in favour of IHFL. A pledge agreement was also entered into by Shipra Groups and M/s Kadam with IHFL pledging 100% equity shares (dematerialized) of M/s Kadam to secure the loan. The mortgaged properties also included 73 acres of land at Noida that had been sub- let to M/s Kadam by YEIDA, and the property called 'Shipra Mall' in Ghaziabad.

6. There being defaults in the repayment of loan amount, IHFL had issued notices recalling all the loans advanced to the Shipra Group amounting to Rs. 1763 crores (approx.). The said notices came to be challenged by the Shipra Group before the Delhi High Court, by filing FAO(OS) COMM 59/2021. The Delhi High Court vide order dated 16.04.2021 recorded that IHFL could proceed further with the recovery proceedings, however the sale of shares should be done at a fair market value and in a transparent manner. It appears that a series of litigations under the SARFAESI Act before the DRT and High Court had ensued between the parties.

7. IHFL on 01.07.2021 ultimately sold the shares of M/s Kadam pledged with it to one Final Step Developers P. Ltd., a subsidiary of M3M India P. Ltd. for Rs. 750 crores. Since Final Step Developers (earlier known as M/s Creative Soul Technology P. Ltd) had no source of funds of its own, the funds to purchase the shares of M/s Kadam were provided to the Final Step Developers by the M3M India, which managed to take loan from the IHFL on the same day i.e. 03.07.2021. Thus, the purchase of shares of M/s Kadam by Final Step from the IHFL was funded by the IHFL itself. The mortgaged properties-Shipra Mall at Ghaziabad and the parcel of law admeasuring 73 acres at Noida also eventually came to be sold by the IHFL towards the recovery of its dues from the Shipra Group.

8. On 09.04.2023, an FIR being No. 427 of 2023 came to be filed by one Amit Walia, a Director of Shipra Hotels, against IHFL and its officers for the offences under Sections 420, 467, 468, 471, 120-B IPC, 323, 504 & 506 at Police Station Indirapuram, alleging inter alia that IHFL had illegally showed the Shipra group to be the defaulters, so that they may misappropriate the properties owned

by the Group through illegal means. The FIR also alleged that IHFL had conspired with M3M India, and by forging and fabricating the documents sold 73 acres of land of M/s Kadam to M3M India, for a sum of 300 crores when the market value of the same was about 4000 crores. IHFL had also undervalued the shares and securities on the basis of false and forged documents and had caused great loss to the Shipra Estate Company and its Directors.

9. On 15.04.2023, another FIR being No. 197 of 2023 came to be filed by YEIDA against IHFL, M3M India, M/s Kadam and M/s Beacon Trusteeship Ltd. for the offences under Sections 420, 467, 468, 471 and 120-B at Police Station Beta-2, Greater Noida alleging inter alia that the first charge of YEIDA was preserved in the permission issued on 09.01.2018 for pledging the shares to IHFL however, the IHFL neither informed nor sought any permission of YEIDA before transferring the shares of M/s Kadam to M3M India. Thus, the terms and conditions contained in the permission letter, indemnity certificate and sub-lease document were violated by the financial institution and the sub-lessee, due to which the YEIDA had suffered a financial loss of about Rs. 200 crores.

10. On 22.07.2023, yet another FIR being No. 611 of 2023 came to be filed by one Mohit Singh, authorized representative of Shipra Group, against Reena Bagga in her capacity as an authorized officer of IHFL and others for the offences under Section 420, 120B IPC and 82 of Registration Act at Police Station Kavi Nagar, Ghaziabad, alleging therein that “Shipra Mall”, which formed a part of the properties mortgaged with IHFL, had been sold in pursuance of recovery proceedings on the basis of false and fabricated documents, for a sum of Rs. 551 Crore to Himri Estate Pvt. Ltd. although the actual value of the land was over 2000 crore. It has been alleged that illegalities were committed by the said accused, by not showing the actual value of Shipra Mall and thereby had caused huge loss to the Shipra Group.

11. Since various FIRs came to be registered against the IHFL and its officers, the same came to be challenged by them by filing the W.P. (Crl) being no. 166 of 2023 before this Court (Gagan Banga and Anr. vs. State of West Bengal and Ors.).

12. Pending the said W.P. No.166/2023, the Directorate of Enforcement (ED) on the basis of the said FIR nos. 197/2023 and 427/2023 registered an ECIR bearing no. ECIR/HIU-I/06/2023 in Delhi on 09.06.2023, to investigate into the offences of money laundering under the Prevention of Money Laundering Act, 2002.

13. According to the appellant-ED, this Court without giving the appellant any opportunity of hearing, passed the following order on 04.07.2023 while disposing off the W.P. (Crl) No. 166/2023 and connected Contempt Petition.

“1 to 3……..

4. Vide order dated 28.04.2023 passed in W.P. (Crl.) No. 166/2023, criminal proceedings in three such FIRs instituted by borrowers in different States, namely FIR No. 646/2022 dated 26.10.2022 registered at P.S. Titagarh, FIR No. 427/2023 dated 09.04.2023 registered at P.S. Indirapuram and FIR No. 25/2021 dated 27.01.2021 registered at P.S. EOW, Delhi were stayed.

5. Further FIR No. 197/2023 dated 15.04.2023 was filed by YEIDA at PS Beta-2, Greater Noida, UP, which also refers to the aforesaid FIR No. 427/2023 dated 09.04.2023 registered at P.S. Indirapuram with some overlapping facts. It is stated that on the basis of these two connected FIRs namely FIR No. 427/2023 and 197/2023, now the ED has registered ECIR bearing No. ECIR/HIU-I/06/2023 in Delhi. The petitioners have now challenged the said FIRs and ECIR.

6. In the circumstances, as it may also involve adjudication on facts, we deem it appropriate to permit the petitioners to approach the respective jurisdictional High Courts to challenge all four FIRs and the ECIR within two weeks from today, with a request to the respective High Courts to consider and decide the petitions expeditiously, not later than six months of their presentation.

7. We also direct DGPs of respective States to look into the matter, examine the contentions of the petitioners in respect of the contents of FIRs, and to take appropriate measures in accordance with law within a period of one month.

8. Till final disposal of the respective petitions, interim order dated 28.04.2023 passed in W.P.(Crl.) No. 166/2023 would continue in the three FIRs mentioned therein.

9. In so far as the further FIR No. 197/2023 dated 15.04.2023 filed by YEIDA and ECIR bearing No. ECIR/HIU-I/06/2023 are concerned, no coercive steps would be taken against the petitioner financial institution and its officers, representatives and managers till final disposal of such petitions by the High Court, and it would be open for the petitioners to seek stay of proceedings which would be considered by the High Court on its own merits. It is clarified that this interim protection would only be applicable to the petitioner financial institution and its officers, representatives and managers, and not to any other person.”

14. The respondent-Niraj Tyagi and IHFL thereafter filed a writ petition in the High Court being Criminal Misc. Writ Petition No. 10893/2023 seeking issuance of appropriate writ, order and direction for declaring Section 420 of IPC as arbitrary and ultra vires to the Constitution of India and seeking quashing of the FIR No.197 of 2023 dated 15.04.2023 as also the consequential proceedings arising therefrom as initiated by the ED in ECIR bearing No. ECIR/HIU-I/06/2023. Similarly, the respondent Reena Bagga and IHFL filed another writ petition being Criminal Miscellaneous Writ Petition No. 11837/2023 seeking quashing of the FIR being No.611/2023 registered against them as also all the consequential actions taken by any authority/agency in pursuance to the said FIR. The respondent M3M India Pvt. Ltd. and Kadam Developers Pvt. Ltd. also filed a writ petition being Criminal Misc. Writ Petition No.14053/2023 seeking the reliefs similar to the reliefs prayed for in the Writ Petition No.10893/2023.

15. The High Court passed the following impugned Order on 13.07.2023 in Criminal Misc. Writ Petition No.10893 of 2023: -

“19. In view of the above, we are of the opinion that the petitioners have made out a case for grant of the interim as relief prayed for. Accordingly, in furtherance of the protection granted by the Apex Court to the petitioners by the order dated 4th July,

2023, while disposing of the Contempt Petition (Civil) No. 774 of 2023, it is provided that further proceedings, including summoning of the officers, consequent to the F.I.R. No. 197 of 2023 dated 15.4.2023 under Sections 420, 467, 468, 471 and 120-B - IPC, Police Station Beta-2, Greater Noida, Gautam Budh Nagar, registered by Respondent No.2 and consequent ECIR No. ECIR/HIU-I/06/2023 registered by Respondent No. 4, shall remain stayed so far as it confines to the petitioners only and no coercive action shall be taken against them.”

16. The High Court passed the other impugned orders on 08.08.2023 in Criminal Miscellaneous Writ Petition No.11837/2023 and on 13.09.2023 in Criminal Miscellaneous Writ Petition No.14053/2023, following the order dated 13.07.2023 passed in Writ Petition No.10893/2023. Consequently, the proceedings of the FIR No.197/2023, FIR No.611/23 as also the ECIR No. ECIR/HIU-I/06/2023 have been stayed qua the concerned respondents herein pending the said three writ petitions before the High Court, and the concerned respondents who are the accused in the said FIRs have been protected from any coercive action being taken against them. The present appeals stem out of the aforesaid impugned orders passed by the High Court.

17. The ASG, Mr. Raju appearing for the appellant ED in all the three appeals vehemently submitted that this Court had passed the order dated 04.07.2023 in Gagan Banga’s case staying the proceedings of ECIR and the FIRs registered against the concerned respondents without hearing the ED, and therefore the ED has filed a Review Petition, which is pending before this Court. He further submitted that the High Court also without assigning any cogent reasons in the impugned orders stayed the said proceedings of ECIR and FIRs under the guise of following the said order dated 04.07.2023 passed by this Court. Placing heavy reliance on the decision of the Three-Judge Bench in Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others¹, he submitted that this Court has strongly deprecated the practice of the courts granting interim orders staying the investigation or directing the investigating agencies not to take coercive actions against the accused. The impugned orders passed by the High Court therefore being in the teeth of the said settled legal position, the same deserve to be quashed and set aside forthwith.

18. However, the learned Senior counsels appearing for the respondents in the respective appeals, taking the Court to the proceedings which had taken place under the SARFAESI Act and before the High Court and this Court, submitted that the respondent-complainant Shipra Group having failed in all the said proceedings had taken recourse to the criminal proceedings to create a fear amongst the financial institution and its officers. They further submitted that the High Court taking into consideration the order passed by this Court in Gagan Banga’s case had rightly protected the financial institution and its officers who had discharged their duties for the recovery of the dues from the borrowers. Reliance is placed on the decision of this Court in K. Virupaksha and 1 (2021) SCC Online SC 315 Another vs. State of Karnataka and Another² and in A.P. Mahesh Cooperative Urban Bank Shareholders Welfare Association vs. Ramesh Kumar Bung and Others³, to submit that even in case of Neeharika Infrastructure (supra), the discretion has been conferred on the High Court to pass the interim orders in exceptional cases for not taking coercive steps against the accused pending the proceedings, particularly when the proceedings under the SARFAESI Act were initiated against the borrowers. According to them, bypassing the statutory remedies available to the

borrowers or having failed in such proceedings, the borrowers should not be permitted to prosecute the financial institution or its officers or the purchasers just to instill a fear in their mind, which otherwise would have the potentiality to affect the marrows of economic health of the nation.

19. At the outset, it may be noted that the impugned interim orders have been passed by the High Court under the umbrella of the order dated 04.07.2023 passed by this Court in Gagan Banga's case, creating an impression that the impugned orders were passed in furtherance of the 2 (2020) 4 SCC 440 3 (2021) 9 SCC 152 said order, though this Court had passed the said order leaving it open to the High Court to decide the writ petitions on their own merits.

20. In our opinion, it's a matter of serious concern that despite the legal position settled by this Court in catena of decisions, the High Court has passed the impugned orders staying the investigations of the FIRs and ECIR in question in utter disregard of the said settled legal position. Without undermining the powers of the High Court under Section 482 of Cr.PC to quash the proceedings if the allegations made in the FIR or complaint prima facie do not constitute any offence against the accused, or if the criminal proceedings are found to be manifestly malafide or malicious, instituted with ulterior motive etc., we are of the opinion that the High Court could not have stayed the investigations and restrained the investigating agencies from investigating into the cognizable offences as alleged in the FIRs and the ECIR, particularly when the investigations were at a very nascent stage. It hardly needs to be reiterated that the inherent powers under Section 482 of Cr.PC do not confer any arbitrary jurisdiction on the High Court to act according to whims or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In a way, by passing such orders of staying the investigations and restraining the investigating agencies from taking any coercive measure against the accused pending the petitions under Section 482 Cr.PC, the High Court has granted blanket orders restraining the arrest without the accused applying for the anticipatory bail under Section 438 of Cr.PC.

21. This Court in State of Telangana vs. Habib Abdullah Jeelani and Others⁴, while dealing with the contours of Section 482 and 438 Cr.PC had emphasized that the direction not to arrest the accused or not to take coercive action against the accused in the proceedings under Section 482 Cr.PC, would amount to an order under Section 438 Cr.PC, albeit without satisfaction of the conditions of the said provision, which is legally unacceptable.

22. Recently, a Three-Judge Bench in Neeharika Infrastructure (supra) while strongly deprecating the practice of the High Courts in staying the investigations or directing not to take coercive action against the accused pending petitions under Section 482 of Cr.PC, has issued the guidelines, which may be reproduced hereinbelow for ready reference:-

“Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482CrPC 4 2017 (2) SCC 779 and/or

under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the “rarest of rare cases” (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court. 33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint. 33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India. 33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

23. The impugned orders passed by the High Court are in utter disregard and in the teeth of the said guidelines issued by the Three-Judge Bench of this Court. It was sought to be submitted by the Learned Counsels for the respondents-accused that the allegations made in the FIRs are of civil nature, and have been given a colour of criminal nature. According to them, as discernible from the record, number of proceedings had ensued between the parties pursuant to the actions taken by the IHFL against the complainant-borrower for the recovery of its dues under the SARFAESI Act, and the borrower M/s Shipra after having failed in the said proceedings had filed the complaints with ulterior motives. We do not propose to examine the merits of the said submissions as the writ petitions filed by the concerned respondents-accused seeking quashing of the FIRs on such grounds are pending for consideration before the High Court. It would be open for the High Court to examine the merits of the petitions and decide the same in accordance with law.

24. Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the law. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice.

25. The impugned orders passed by the High Court being not in consonance with the settled legal position, the same deserve to be set aside and are hereby set aside. The impugned interim orders passed by the High Court qua the concerned respondents-accused in the present appeals stand vacated forthwith.

26. We may clarify that we have not expressed any opinion on the merits of the Writ Petitions which are pending before the High Court, and that it would be open for the concerned respondents-accused to take all legal contentions or take recourse to the legal remedies as may be available to them in accordance with law.

27. The appeals stand allowed accordingly.

..... J.

[BELA M. TRIVEDI] J.

[PRASANNA B. VARALE] NEW DELHI;

FEBRUARY, 13th 2024