Avinash Chopra & Amit Chopra .... vs In Appeal No.21 Of 2006 Was In Charge And ... on 22 March, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

$~38-39 (common)
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 941/2021 & Crl.M.A.No.4714/2021
+ CRL.M.C. 943/2021 & Crl.M.A.No.4766/2021
   AVINASH CHOPRA & AMIT CHOPRA ....
   Through : Mr.Sandeep Sethi, Senior A
   with Mr. Rajesh Batra, Ms
   Cheema, and Mr.Swapnil Gu
   Advocates for Avinash Cho

   Mr.Sidharth Ag
   Advocate with Mr
   Mr.Vishwajeet Si
   Amit Chopra.

versus

STATE OF NCT OF DELHI & ANR.
Through : Ms.Radhika Kolluru, A
State.
Mr.Vikas Singh an
Senior Advocate w
Mr.Dhruv Chawla,
Mr.Abhishek Pati,
Shamra, Advocates

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 22.03.2021

1. These petitions are filed with the following prayers:

"a) Quash FIR No.31 of 2020 ("impugned FIR") dated 28.02.2020 registered at PS Economic Offences Wing, Mandir Marg under Sections 420 read with 406 and 120 B of the Indian Penal Code, 1860 along with all consequential proceedings arising therefrom

b) xxxxx....."

2. The facts are M/s.Hind Samachar Limited, (hereinafter referred as HSL) is a publisher of a popular Hindi daily "Punjab Kesari" published from Jalandhar, Delhi, Jaipur & Ambala. There is an

ongoing dispute amongst the two groups of shareholders being group A and group B and the matter is subjudiced and implementation of lot proposals being basis of division is still pending.

3. As per order dated 19.10.2005 in CRL.A.10/2004, it has been directed by the Punjab and Haryana High Court the petitioners would be entitled to Lot-1 properties and shall be comprised of group B and the respondents shall be entitled to Lot-2 properties and would comprise of group A.

4. In CRL.A.21/2008 vide the order dated 01.11.2008 the Punjab and Haryana High Court observed as under:

> "It is admitted case of the parties that when the proceedings were initiated, Group A i.e. appellants in appeal no.22/2006 was in-charge and control of Delhi and Jaipur Offices whereas Group B, appellants in Appeal no.21 of 2006 was in charge and control of Jalandhar and Ambala Offices."

Further it was observed:

> "xxxx.... It would be convenient that if 31.3.2006 is fixed as the cut off date being the end of the financial year as on the said date, the parties shall be deemed to have severed their ties and acquired independent status. This is subject to compliance of all other clauses of proposals dated 7.3.2000. However, after this date, the parties shall have their separate obligations and any assets acquired by any of the parties after 31.3.2006 shall be construed to be their separate properties/assets and any liabilities incurred thereafter will also be the separate liabilities of the two groups. Appeal No.22 of 2006 is accordingly allowed in the above manner and order of the Company Law Board to the extent it has fixed the cut off date as 31st March, 2000 is hereby set aside. Company Law Board shall forthwith implement this order in the light of the observations made here-in- above."

5. The matter was taken up in SLP(C)29678/2008 wherein on 19.01.2009 the Supreme Court held:

> "Status quo to continue.
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> Till further orders, we make it clear that the parties will maintain the accounts of their respective allocated Units during the pendency of this Special Leave Petition in this Court. We are informed that in all there are four Units. Delhi and Jaipur Units have been allocated to the respondents herein, whereas Jalandhar and Ambala Units have been allocated to the petitioners. Both are exploiting their respective assets. Therefore, both will maintain their accounts without prejudice to their rights in the Special Leave Petition. These accounts will be taken into account at the time of final hearing of the Special Leave Petition.
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> We also make it clear that if an inspection is sought of the accounts to be maintained during the pendency of the Special Leave Petition, the same shall be furnished to the

applicant.

In the meantime, the auditors of the Companies are also directed to audit the Companies' accounts for the period commencing from 1st April, 1999 to 31st March, 2006 , which we are told have not been audited. Further, a sum of Rs.24,00,00,000/- (Rupees twenty four crores), if not invested in F.D.R, shall be invested in F.D.R. in a Nationalised Bank."

6. Thus the business of Delhi and Jaipur units of the company is being controlled by group A whose directors consists of Sh.Ashwani Chopra and others and whereas Jalandhar and Ambala units of the company are being controlled by group B whose directors consists of Sh.Vijay Chopra and others.

7. Due to pending litigation amongst the two groups of shareholders of M/s.Hind Samachar Ltd, a formal liquidation of the company has not taken place and both the groups continue to work using the name of M/s.Hind Samachar Ltd. for their respective territories i.e. group A Delhi and Jaipur and group B Jalandhar and Ambala.

8. The two groups are maintaining their accounts independently since 2006 and continue to use same PAN wherever required as the Income Tax Department treats both the unit as one unit as if there is no division taken place and both the units print newspapers in their respective territories allotted to them. The dispute between the parties are while doing the business, group B of Jalandhar and Ambala had mortgaged some properties of M/s.Hind Samachar Ltd. and had obtained various loans without consent/permission of the shareholders of group A, hence committed the offences alleged.

9. It is submitted by the learned senior counsel of the petitioner even the unit controlled by group A has also taken various loans and the FIR in Delhi could not have been registered only on the ground the assets of group B have been mortgaged without the consent and permission of group A when admittedly there businesses are separate for all intents and purposes and they need to maintain separate accounts, which allegedly they have been maintaining.

10. The learned senior counsel for the petitioner referred to various balance sheets of different years wherein liabilities viz. secured loans have even been taken by group A though purpose is disputed by learned counsel for the respondents, hence it is submitted a) no offence is being committed since the loans have been taken only to expand the business interests of Lot 1 of group B as are taken by Lot 2 of group A; and b) none of the loans/mortgage were executed at Delhi, hence this FIR ought not to have been registered at Delhi.

11. The learned senior counsel for the complainant, however submits such properties have been mortgaged and monies been siphoned off which gives a cause to the respondents to lodge an FIR in Delhi as the shareholders at Delhi are entitled to profits earned by Lot 1 of group B.

12. Admittedly, loans, taken by the petitioner/s herein pertain to the period of 2005, 2011, 2017 and 2019. Admittedly, no complaint till the filing of the FIR was ever made qua the obtaining of loans by

the petitioners herein from different banks. Though, it is argued by the learned senior counsels for the complainant that they came to know of the mortgage(s) of the properties only in the year 2017 itself as Balance Sheets were filed in 2017 but admittedly, the income tax returns, being public documents, were being filed by Group B since the year 2005. Such income tax returns reflect loans as alleged.

13. Admittedly, loans have been taken by the respondents, without seeking permission of the petitioners herein, though the respondent alleged such loans were without mortgage of any of the properties in Lot 2. No doubt the loans were taken by the petitioners on mortgage of properties but such properties only fell in Lot 1 viz in their share. The respondents have not been able to show the loan taken are in default or the banks have taken any action against the petitioners herein.

14. Reference was also made to two suits i.e. CS(OS) No.60/2020 and CS (COMM) No.74/2020 wherein order dated 19.02.2020 was passed to the effect the widow of Ashwini Chopra shall be the director in HSL, Lot 2 and the petitioners herein rather gave their no objection since the matter did not relate to their Lot 1 properties. Paragraphs No.27 and 31 duly note the Lot 2 is separate than Lot 1 for all intents and purpose.

15. An agreement dated 28.12.2018 between HSL Lot 2 and Punjab Kesari Publications Limited was referred to wherein also the division of properties between two groups of HSL were mentioned. Rather the W.P. No.3095/2002 filed on 08.02.2002, reveal division was even prior to the orders dated 19.10.2005 and 04.11.2008 passed by the Company Law Board.

16. In annexure P-6 - a Board Resolution dated 15.09.2009 of the Board of Directors of Group A viz respondents herein also reveal the factum of Groups A & B being separate and decision with regard to opening the bank accounts in the name of HSL Lot 2, was taken.

17. Thus, both the groups were taking care of the assets in two lots even prior to the first order in the year 2005 by the Company Law Board and hence alleging they have mis-utilised the assets or committed fraud upon group A of Lot 1 is alleged to be frivolous by the learned senior counsel for the petitioner/s herein.

18. It is rather stated for all intents and purposes the properties have been distributed into two lots and such division have been acted upon and only a formal execution is to be done and rather an execution application is pending since long. It is stated Rs.24.00 Crores which were to be paid to Group A per order of October 2005 has since been paid.

19. It is also agued a Company Application No.1095/2019 moved in Company Petition Nos.19/2018 and 76/1999 by the respondents alleges mismanagement by the group B as is alleged in the FIR and no orders were passed in the said Company Application despite there being a reply filed by the petitioners and this fact has been concealed in the FIR and as such the FIR is nothing but an abuse of process of law. The learned counsel for the respondent argued there is no question of concealing and even otherwise, civil and criminal remedies are separate and filing of Company Application No.1095/2019 does not bar the respondents from lodging criminal complaint. It is argued, at this

stage, only the contents of the FIR needs to be looked into which makes out a case of mismanagement of assets of HSL and siphoning off of the funds against the petitioners herein and the defence of the accused need not be considered at this stage. I disagree with the submissions since the documents relied upon by the petitioners are public record, pleadings and the judgments interse between the parties.

20. To effectively decide these petitions, it would be appropriate if notice is issued to the respondents.

21. Issue notice. Learned APP for the State and learned counsel for the respondent No.2 accept notice and seeks to file status report. As sought, status report/reply be filed before the next date of hearing with an advance copy thereof to the learned counsel for petitioner through email.

22. Admittedly, the petitioners have to appear before the Investigating Officer on 23.03.2021 pursuant to notice issued by him under Section 41(A) Cr P C. It is alleged by respondents there is no apprehension of arrest at this stage, hence no interim orders be passed. However, the petitioner/s are wary of the powers of the Investigating Officer under Section 41(A) (3) Cr.P.C. wherein if Investigating Officer is of the opinion he ought to arrest the petitioners, he has every authority to do that. Thus, in the circumstances, if the Investigating Officer forms an opinion to arrest the petitioners, he should not take any coercive steps against them without issuance of a three days' advance written notice to the petitioners.

23. Here the learned senior counsels for respondents argued such an interim order cannot be passed by this Court under Section 482 Cr P C I may only say considering the facts as presented, till the time replies are filed by the respondents, such an interim order is warranted. Even otherwise in Arnab Manoranjan Gosami vs. State of Maharashtra & Others (2021) 2 SCC 427 the Supreme Court noted:-

> 41.While considering the rival submissions, it is essential for the purpose of the present appeals to elucidate on the nature of the jurisdiction that is vested in the High Court under Article 226 of the Constitution and Section 482 of the CrPC. This issue must be analysed from the perspective of the position that the proceeding before the High Court, after the prayer for the grant of a writ of Habeas Corpus was given up, is for quashing the FIR being CR No. 0059 of 2018 lodged on 5 May 2018.
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> 42 The High Court has dwelt at length on the decision of this Court in Habib Jeelani (supra). The High Court observed that the powers to quash □are to be exercised sparingly and that too, in rare and appropriate cases and in extreme circumstances to prevent abuse of process of law. Applying this principle, the High Court opined:
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> 47. The principle stated therein will equally apply to the exercise of this Court's power under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure while considering the applications for bail since the petitioner is already in Judicial custody. The legislature has provided specific remedy under Section 439

Cr.P.C. for applying for regular bail.

Having regard to the alternate and efficacious remedy available to the petitioner under section 439 of the Code of Criminal Procedure, this Court has to exercise judicial restraint while entertaining application in the nature of seeking regular bail in a petition filed under Article 226 of the Constitution of India read with section 482 of Code of Criminal Procedure.

On the basis of the above foundation, the High Court has declined to even prima facie enquire into whether the allegations contained in the FIR, read as they stand, attract the provisions of Section 306 read with Section 34 of the IPC. In its view, since the petition was being posted for hearing on 10th December 2020, it was not inclined to enquire into this aspect of the case and the appellant would be at liberty to apply for regular bail under Section 439.

43. Now, it is in this background that it becomes necessary for this Court to evaluate what, as a matter of principle, is the true import of the decision of this Court in Habib Jeelani (supra). This was a case where, on the basis of a report under Section 154 off the CrPC, an FIR was registered for offences punishable under Sections 147, 148, 149 and 307 of the IPC. Challenging the initiation of the criminal action, the inherent jurisdiction of the High Court to quash an FIR was invoked. The High Court (as paragraph 2 of the judgment of this Court in Habib Jeelani (supra) indicates) expressed its □disinclination to interfere on the ground that it was not appropriate to stay the investigation of the case . It was in this background that the following issue was formulated in the first paragraph of the judgment of this Court, speaking through Justice Dipak Misra (as he then was), for consideration:

> 1.The seminal issue that arises for consideration in this appeal, by special leave, is whether the High Court while refusing to exercise inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) to interfere in an application for quashment of the investigation, can restrain the investigating agency not to arrest the accused persons during the course of investigation.
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> 45. Thereafter, this Court noted that □the High Court has not referred to allegations made in the FIR or what has come out in the investigation. While on the one hand, the High Court declined in exercising its jurisdiction under Section 482 to quash the proceedings, it nonetheless directed the police not to arrest the appellants during the pendency of the investigation. It was in this context that this Court observed that the High Court had, while dismissing the applications under Section 482, passed orders that if the accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as it was deemed fit and appropriate.
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> 46. After adverting to the earlier decision in Hema Mishra vs State of UP14, this Court observed:
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> 23. We have referred to the authority in Hema Mishra [Hema Mishra v. State of U.P., (2014) 4 SCC 453 : (2014) 2 SCC (Cri) 363] as that specifically deals with the case that

> came from the State of Uttar Pradesh where Section 438 CrPC has been deleted. It has concurred with the view expressed in Lal Kamlendra Pratap Singh [Lal Kamlendra Pratap Singh v. State of U.P., (2009) 4 SCC 437 : (2009) 2 SCC (Cri) 330] . The said decision, needless to say, has to be read in the context of the State of Uttar Pradesh. We do not intend to elaborate the said principle as that is not necessary in this case.

What needs to be stated here is that the States where Section 438 CrPC has not been deleted and kept on the statute book, the High Court should be well advised that while entertaining petitions under Article 226 of the Constitution or Section 482 CrPC, it exercises judicial restraint. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the Court to keep such unprincipled and unethical litigants at bay

47. The above decision thus arose in a situation where the High Court had declined to entertain a petition for quashing an FIR under Section 482 of the (2014) 4 SCC 453 CrPC. However, it nonetheless directed the investigating agency not to arrest the accused during the pendency of the investigation. This was held to be impermissible by this Court. On the other hand, this Court clarified that the High Court if it thinks fit, having regard to the parameters for quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation □and may pass appropriate interim orders as thought apposite in law. Clearly therefore, the High Court in the present case has misdirected itself in declining to enquire prima facie on a petition for quashing whether the parameters in the exercise of that jurisdiction have been duly established and if so whether a case for the grant of interim bail has been made out. The settled principles which have been consistently reiterated since the judgment of this Court in State of Haryana vs Bhajan Lal (Bhajan Lal) include a situation where the allegations made in the FIR 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. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in Kamal Shivaji Pokarnekar vs State of Maharashtra."

24. The judgment cited above answers the query raised by respondents.

25. List on 19.05.2021.

YOGESH KHANNA, J.

MARCH 22, 2021 DU/M