

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE/ORIGINAL JURISDICTION**

Special Leave Petition (Criminal) No. of 2023
(Dy.NO.6732/2023)

with

**(Interlocutory Application No. 35654 of 2023- An application for
permission to file SLP)**

GLUCKRICH CAPITAL PVT. LTD **... PETITIONER(S)**

VERSUS

STATE OF WEST BENGAL & ORS. **... RESPONDENT(S)**

With

Special Leave Petition (Criminal) No. 2653-54 of 2023

SHIV KUMAR & ANR. **... PETITIONER(S)**

VERSUS

STATE OF WEST BENGAL & ORS. **... RESPONDENT(S)**

With

Writ Petition (Criminal) No. 71 of 2023

SHIV KUMAR & ANR. **... PETITIONER(S)**

VERSUS

STATE OF NCT OF DELHI & ANR. **... RESPONDENT(S)**

O R D E R

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SLP (Cr1.) D.No.6732 of 2023 with IA No. 35654 of 2023

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GEETA AHUJA
Date: 2023.02.28
15:43:52 IST
Reason: 

Petitioner, an unsecured financial creditor of M/s.

Leading Hotels Limited ('LHL'), which is facing

insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 has approached this Court by filing instant petition challenging the interim order dated 30.11.2022 passed by Delhi High Court in Criminal M.C. No. 6408 of 2022 extending the transit anticipatory bail granted to Respondent Nos. 3 to 5 herein, who are stated to be suspended directors of 'LHL'.

Learned counsel for the petitioner contends that during the pendency of insolvency proceedings before the National Company Law Tribunal (for short 'the NCLT'), an order was passed directing the Resolution Professional not to proceed with the approval of the resolution plan, which subsequently came to be vacated.

The petitioner preferred an appeal against the said order before National Company Law Appellate Tribunal (for short 'NCLAT'), which was dismissed vide order dated 13.09.2022. The order was challenged before this Court in Civil Appeal No. 7324 of 2022 which was subsequently withdrawn by the petitioner and was dismissed.

Based on the aforesaid facts, learned counsel for the petitioner contends that the petitioner is an interested party to challenge the extension of anticipatory transit bail granted to the respondents who are suspended directors of the company against which insolvency

proceedings are pending under IBC.

It is pertinent to note that the order impugned by the petitioner arises out of the proceedings initiated by the respondents herein before High Court of Delhi, challenging the First Information Report lodged against them.

It is an admitted fact that the petitioner is neither the informant nor a party to the proceedings pending before the High Court and is totally unconnected with the First Information Report lodged by the financial creditors who were also the members of the committee of creditors.

In view of the aforesaid facts and circumstances, we are of the considered opinion that the petitioner has no locus in the matter and thus, we are not inclined to grant permission to file special leave petition.

Accordingly, IA No. 35654 of 2023 stands dismissed.

As a consequence, Special Leave Petition (Criminal) D.No. 6732 of 2023 also stands dismissed.

Special Leave Petition (Crl.) No. 2653-54 of 2023

Petitioners are suspended directors of the corporate debtors of M/s. Leading Hotels Limited ('LHL'). A First Information Report bearing case no. 257 of 2021 dated

23.09.2021 under Sections 406,420,465,467, 468,471 read with Section 120-B of Indian Penal Code (for short 'IPC') was registered against them at Police Station Bowbazar, Kolkata.

Petitioners herein sought quashing of the aforesaid First Information Report by invoking Section 482 of Criminal Procedure Code (for short 'Cr.PC') before the Delhi High Court which was registered as Criminal M.C. No. 6408 of 2022.

Learned counsel for the petitioners contends that though transit bail was granted which has been extended from time to time and the question of jurisdiction is under active consideration but on account of failure to pass any interim order, the petitioners are being put to great harassment by the Police Authorities of Respondent No. 1.

It is further submitted that once the question of quashing of First Information Report is pending for adjudication before the High Court and till such time a final adjudication is made in this regard, the respondents cannot be allowed to harass the petitioners in the name of investigation.

Learned counsel for the petitioners further submits that a bare reading of the allegations of the First

Information Report would go to show that dispute is purely of a civil nature relating to breach of contractual obligations which is being given a criminal contour which amounts to abuse of process of law. It is also submitted that lodging of First Information Report with the Police Station situate in territorial jurisdiction of West Bengal, though the entire transaction took place within the territorial jurisdiction of New Delhi, is nothing but an abuse of process of law. Learned counsel for the petitioners submits that this stands fortified from the fact that a similar FIR on identical allegations has also been registered in Delhi. To support the contention, learned counsel for the petitioners has placed reliance on the judgment of this Court in the case of **Navinchandra N.Majithia Vs. State of Maharashtra & Ors.**¹ and **Vijay Kumar Ghai Vs. State of West Bengal**².

Be that as it may since the proceedings are pending before the High Court of Delhi awaiting an adjudication, there is no reason or occasion for us to interfere with the same at this stage. We have no reason to believe that the legal position, as learned counsel for the

1 (2000) 7 SCC 640

2 (2022) 7 SCC 124

petitioners has tried to canvass before us by relying upon the aforesaid judgments of this Court, will not be taken into consideration by the High Court, as and when the same is brought to its notice.

In the background of above facts, no useful purpose would be served by keeping this petition pending before this Court and interest of justice would stand served by requesting the High Court to consider and decide, Criminal M.C. No. 6408 of 2022, *Shiv Kumar & Ors. Vs. State of West Bengal & Anr.* pending before it as expeditiously as possible preferably within a period of 6 weeks from the date of receipt of this order in accordance with law on its own merits. Till the disposal of the proceedings of Criminal M.C. No. 6408 of 2022, we direct that no coercive action of any kind shall be taken against the petitioners or their properties in pursuance to the impugned First Information Report No. 257 of 2021 under Sections 406, 420, 465, 467, 468, 471 read with Section 120-B of IPC, registered at Police Station Bowbazar, Kolkata.

Accordingly, these Special Leave Petitions stand disposed of.

Writ Petition (Criminal) No. 71 of 2023

Petitioners have approached this Court under Article 32 of the Constitution of India seeking to quash the First Information Report bearing No. 7 of 2022 dated 18.01.2022 registered at Police Station Economic Offences Wing, New Delhi, under Sections 406,420 and 120-B of IPC and all consequential proceedings arising therefrom.

We see no reason to entertain this Writ Petition for the reliefs sought under Article 32 of the Constitution of India when the petitioners can effectively approach the jurisdictional High Court for the said reliefs, more particularly, when the petitioners have already invoked the jurisdiction of the High Court, in respect of an identical First Information Report, lodged against them at Calcutta.

We, therefore, decline to entertain this Writ Petition. Liberty is reserved to the petitioners to approach the jurisdictional High Court by means of an appropriate proceedings, seeking appropriate reliefs.

In case, the petitioners choose to avail the liberty granted by us herein above, they may do so within two weeks from today. Since, the earlier quashing petition being Criminal M.C. No.6408/2022 is already pending before the High Court of Delhi and both the First Information Reports relate to the same facts and transactions, in order to avoid any diverse opinion, it would be expedient that the subsequent

petition to be filed by the petitioners be tagged along with the already pending petition and be heard and disposed of by the same Bench.

We further provide that in case the petitioners file the quashing proceeding, within the time allowed, no coercive action of any kind shall be taken against the petitioners or their properties till the disposal of the quashing proceedings by the High Court.

With the aforesaid observations and directions, the Writ Petition stands disposed of.

.....J.
(KRISHNA MURARI)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI;
24th February, 2023

ITEM NO.40+57

COURT NO.13

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

ITEM 40

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 6732/2023

(Arising out of impugned Interim order dated 30-11-2022 in CRLMC No. 6408/2022 passed by the High Court Of Delhi At New Delhi)

GLUCKRICH CAPITAL PVT. LTD

Petitioner(s)

VERSUS

STATE OF WEST BENGAL & ORS.

Respondent(s)

(IA No.35656/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.35654/2023-PERMISSION TO FILE PETITION)

ITEM 57

SLP (Cr1.) No(s). 2653-2654/2023

(IA No.40868/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

W.P.(Cr1.) No. 71/2023 (X)

(IA No.41446/2023-GRANT OF INTERIM RELIEF)

Date : 24-02-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Ms. Vanshaja Shukla, Adv.
Ms. Anzu. K. Varkey, AOR

Mr. Karan Bharioke, Adv.
Mr. Ashish Batra, AOR

For Respondent(s)

UPON hearing the counsel the court made the following

O R D E R

SLP (CRIMINAL) Diary No(s). 6732/2023

The special leave petition stands dismissed in terms of the signed order. Pending application(s), if any, shall stand disposed of.

SLP (Cr1.) Nos.2653-2654/2023 AND W.P.(Cr1.) No. 71/2023

The special leave petitions and writ petition stand disposed of in terms of the signed order. Pending application(s), if any, shall also stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Beena Jolly)
Court Master

(Signed Order is placed on the file)