



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15<sup>TH</sup> DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO. 5333 OF 2023

C/W

CRIMINAL PETITION NO. 5354 OF 2023

IN CRIMINAL PETITION NO. 5333 OF 2023:

BETWEEN:

VIJAYRAJ SURANA (A-4)  
.....

...PETITIONER

(BY SRI. K RAGHAVACHARYULU, ADVOCATE FOR  
SRI. MOHAMED RIZWAN AHAMED, ADVOCATE)

AND:

1. CENTRAL BUREAU OF INVESTIGATION  
36, BELLARY ROAD, 2ND FLOOR  
CBI COMPLEX, GANGANAGAR  
BENGALURU - 560032  
REP BY SUPERINTENDENT OF POLICE  
BS AND FB BANGALORE
2. IDBI BANK  
115, ANNA SALAI, PB NO.805,  
SAIDAPET, CHENNAI - 600 015  
REP. BY GENERAL MANAGER

...RESPONDENTS

(BY SRI. P PRASANNA KUMAR, ADVOCATE A/W  
SRI. P RAHUL KRISHNA REDDY, ADVOCATE FOR R1(PH);  
SRI. T P MUTHANNA, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING THAT THIS  
HONOURABLE COURT MAY BE PLEASED TO QUASH THE FIR IN  
RC0782020E0005 DATED 08.09.2020, REGISTERED FOR THE OFFENCES



**NC: 2024:KHC:14912**  
**CRL.P No. 5333 of 2023**  
**C/W CRL.P No. 5354 of 2023**

P/U/S 13(2) R/W 13(1)(d) OF PREVENTION OF CORRUPTION ACT 1988  
AND SEC. 120(B) R/W 420, 468, 471 OF IPC, PENDING BEFORE THE 1ST  
RESPONDENT CBI BS AND FB, BANGALORE AND ETC.

**IN CRIMINAL PETITION NO. 5354 OF 2023:**

**BETWEEN:**

VIJAYRAJ SURANA (A-5)

...PETITIONER

(BY SRI. K RAGHAVACHARYULU, ADVOCATE FOR  
SRI. MOHAMED RIZWAN AHAMED., ADVOCATE)

**AND:**

1. SUPERINTENDENT OF POLICE  
BS AND FB BANGALORE  
CENTRAL BUREAU OF INVESTIGATION  
36, BELLARY ROAD, 2ND FLOOR  
CBI COMPLEX, GANGANAGAR  
BENGALURU-560 032.
2. IDBI BANK LTD  
115, ANNA SALAI  
PB NO.805, SAIDAPET  
CHENNAI-600015  
REP. BY GENERAL MANAGER.

...RESPONDENTS

(BY SRI. P PRASANNA KUMAR, ADVOCATE A/W  
SRI. P RAHUL KRISHNA REDDY, ADVOCATE FOR R1;  
SRI. T P MUTHANNA, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING THAT THIS  
HONOURABLE COURT MAY BE PLEASED TO QUASH THE SAME IN FIR  
NO.11/2019 DATED 01.11.2019 FOR THE OFFENCES U/S 120B R/W 420,  
467, 468, 471 OF IPC AND SEC. 13(2) R/W 13(1)(d) OF PREVENTION OF  
CORRUPTION ACT 1988, PENDING BEFORE THE 1ST RESPONDENT I.E.,  
CBI, BSFB, BANGALORE HEREIN AND ETC.



THESE PETITIONS, COMING ON FOR DICTATING ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Crl.P No.5333/2023:

The registration of the first information report in No.RC0782020E005 dated 8.9.2020 by the respondent No.1 – Central Bureau of Investigation for the offences punishable under Sections 120B read with Sections 420, 468 and 471 IPC and under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act is impugned in this petition by the accused No.4.

2. The respondent No.2 lodged the first information report with the respondent No.1 stating that the accused No.1 - Surana Power Limited, and the Promoter Director including the petitioner, who was one of the Promoter Directors, were involved in all the important decisions of the company, especially as the company was setting up the project. The total power project value was Rs.2,400/- crore. The respondent No.2 indicated Rs.1,800/- crore in September, 2010 based collaterals. The promoter infused Rs.350/- crore. PE Investor Sycamore Ventures, USA who agreed to bring Rs.300/- crore failed to infuse resulting in delay and halt.

3. The lenders (Banks) independent engineers were monitoring and reporting the project status to the lenders and according to their 10<sup>th</sup> monitoring report 58% of the project work was completed. Due to the delay, there was cost overrun and the respondent No.2 after securing further guarantee agreed to lend further sum of Rs.72.30 crore, however, did not disburse as the other consortium Bank failed to release their part of the amount. The project was stalled in November, 2013 due to the failure on the part of the private equities.

4. The company's account became a non-performing asset from March, 2013 to November, 2015 with various Banks. The respondent No.2 conducted a special audit, and the company submitted its reply on 30.7.2013.



5. The forensic audit for the financial year 2009-10 to 2017-18 was conducted, and it was reported that there was misuse of funds, source of capital, manipulation in project award, accounting manipulation and diversion of funds.

Crl.P No.5354/2023:

6. The registration of the FIR No.11/2019 dated 1.11.2019 by the respondent No.1 for the offences punishable under Sections 420, 467, 468, 471 of IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act is impugned in this petition by the accused No.5.

7. The summary of the FIR lodged by the respondent No.2 is as follows:

8. The Directors of Surana Industries Limited approached the IDBI Bank in the year 1998 for various credit facilities. Till 2005, the Punjab National Bank was lead Bank with sanction limit of Rs.105crore and from July, 2005 the IDBI became the lead Bank. In 2005-06 the Company approached the IDBI to set up a unit at Raichur for a loan facility of Rs.475 crore, which was disbursed in various phases and the loan was secured. In the year, 2013, the company proposed to expand the project at Rs.702 crore and the same was sanctioned by consortium of Bank and only the Dena Bank, Bank of Maharashtra and Punjab National Bank released their share of loan and other banks including the respondent No.2 did not release their shares of loan, due to which, the project had come to a standstill. The company went into liquidation in the year 2018 based on the forensic audit report appointed by the Revolution Professional and the transaction of the company from the year 2015 were marked as fraudulent. The accused persons have facilitated misappropriation, manipulation of books of accounts, the fictitious account and conversion of property of the company by way of capital advances to potentially related parties, sale and purchases with potential related parties and bilateral transactions with parties.



9. Sri Raghavendracharyalu, learned counsel representing the petitioner would make the following submissions:

- a) Firstly, for the purpose of quashing the impugned FIR, the criteria is the situs of the authority which registered the FIR and not the place of offence. The situs of the authority, which registered the impugned FIR, is the city of Bengaluru, which comes within the territorial jurisdiction of this Court. In support, he places reliance on the following decisions:
1. S Ilanahai –vs- The State of Maharashtra - 2015 (1) MWN (Cr) 618.
  2. Vihaan Direct Selling India Private Limited –vs- The Assistant Director, Directorate of Enforcement, High Court of Karnataka at Bengaluru in WP No.2576/2023.
  3. Ashis Bhalla –vs- The State and another in CrI.M.C No.298/2023, CrI.M.A.No.12731/2023 & CrI.M.A No.21779-21780/2023 dated 15.09.2023.
  4. CBI –vs- Susheel Suri - (2011) 5 SCC 708 at para 32.
  5. Lalitha Kumari –vs- Government of Uttar Pradesh – (2014) 2 SCC 1, paras 89 to 92.
- b) The CBI manual and CBI Crime manual or administrative orders cannot take away or oust the jurisdiction of this Court.
- c) The Companies Act, 2013 is the complete special code in itself enumerating the procedures of investigation under Section 212 thereof, and therefore, the proceedings emanating under the Act, 2013 will take precedence over Criminal Procedure Code and the Indian Penal Code. As such, when the allegations made in the impugned FIR are all covered under the provisions of the Act, 2013, and the allegations can only be investigated by the Special Fraud Investigating Officer as contemplated under Section 212 of the Act, 2013, the registration of the FIR by the respondent No.1 is one without authority of law. In support, reliance is placed on the decision of the Hon'ble High Court of Delhi in CrI.M.C No.298/2023, CrI.M.A.No.12731/2023 & CrI.M.A No.21779-21780/2023 dated 15.09.2023.

10. Per contra, the learned counsel for respondent No.1 submits that the offence was committed within the territorial limits of the State of Tamilnadu. Therefore, the present petition filed before this Court is not maintainable, and only such High Court, within whose jurisdiction the subordinate Court is located



can alone entertain the petition under Section 482 of Cr.PC. In support, he places reliance on the following decisions:

- a) Dashrath Rupsingh Rathod –vs- State of Maharashtra & Anr. – (2014) 9 SCC 129.
- b) Vihaan Direct Selling India Private Limited –vs- The Assistant Director, Directorate of Enforcement, High Court of Karnataka at Bengaluru in WP No.2576/2023 (DD 28.2.2023).
- c) Sayed Mohd. Masood –vs- UOI & Anr. – 2013 SCC Online Del 4510.
- d) UOI –vs- Sriharan – (2016) 7 SCC 1.
- e) V K Puri –vs- CBI - (2007)6 SCC 91.
- f) Kusum Ingots & Alloys Ltd. –vs- UOI – (2004) 6 SCC 254.
- g) Sterling Agro Industries –vs- UOI – 2011 SC OnLine Del 3162.
- h) Meenakshi Satish –vs- Southern Petrochemical Industries & amp; ors (Full Bench) – (2007) SCC OnLine Ker 258.
- i) UBC –vs- M.R. Goverthanam (DB) – 2005 SCC OnLine Ker 164.

11. He further submits that the nature and scope of investigation conducted by the SFIO under Section 212 of the Act, 2013 is vastly different from the investigation conducted by the respondent No.1 under the Cr.PC as the procedure prescribed there under are entirely different. There is no provision in the Act, 2013 for filing a private complaint under the provisions of the Act, 2013, and there is no bar under the Act, 2013 for lodging of the FIR under the provisions of IPC before a different Forum. The SFIO is not competent to investigate the offences punishable under the Prevention of Corruption Act. Therefore, the registration of the FIR by the respondent No.1 cannot be said to be vitiated for want of authority.

12. Considered the submissions of the learned counsel for the parties.

13. The points that arise for consideration are as follows:



- i) The offences alleged to have been committed within the State of Tamil Nadu, whether this Court has territorial jurisdiction to examine the validity of the impugned FIR?
- ii) Whether the respondent - CBI is directed of its power to investigate the aforesaid offences in view of specific provision contained in Section 12 of the Companies Act, 2013?

14. Reg. Point No.(i):

The petitioner is admittedly residing within the limits of the State of Tamil Nadu, and also the offences alleged to have been committed by the petitioner is within the limits of the State of Tamil Nadu. The FIR is registered by the respondent - CBI having its office at Bengaluru, which falls under the territorial jurisdiction of this Court.

15. The issue as to whether the situs of the authority is the only criteria for the purpose of quashing the FIR in exercise of power under Section 482 of Cr.PC, and not the place of commission of crime either in full or in part was examined by the High Court of Madras in the case of Ilanahai (supra).

16. The High Court of Madras has ruled that prior to introduction of Clause (2) of Article 226, the jurisdiction was based only on the situs of the person or authority concerned against whom writ or order is to be issued. The jurisdiction was extended beyond territorial limit by introduction of Clause (2) of Article 226 based on the cause of action. However, the parliament did not think it appropriate, similarly to amend Section 482 of Cr.PC so as to add provision like Clause (2) of Article 226 extending the inherent power of the High Court under Section 482 beyond the territorial limits of the said High Court based on the fact that the part of the offence is committed outside the territorial limits of the said High Court. Therefore, the power under Section 482 for the purpose of quashing the FIR is concerned, the only criteria is the situs of the authority who has registered the case and not the place of commission of the crime either in full or part. It was further ruled that cause of action is foreign to criminal law.



17. Upon reviewing the ratio enunciated by the High Court of Madras with reference to provision contained in Section 482, I am of the considered view that this Court has jurisdiction to examine the validity of the FIR registered by the respondent - CBI which is located within the jurisdiction of this Court. Therefore, the contention of the learned counsel for the respondent that the present petition is not maintainable for want of territorial jurisdiction is not acceptable.

18. Reg.point No.(ii):

The impugned first information report in No.RC0782020E005 dated 08.09.2020, and the FIR No.11/2019 dated 01.11.2019 were lodged on the Forensic Audit Report for the financial year 2009-10 to 2017-18, wherein it is stated that the accused persons have facilitated misappropriation, manipulation of books of accounts, the fictitious account and conversion of property of the company by way of capital advances to potentially related parties, sale and purchases with potential related parties, and bilateral transaction with parties. The petitioner is implicated stating that he is one of the promoter/directors, who along with others, was involved in manipulation, and facilitated misappropriation of the money.

19. Section 447 of the Act, 2013 deals with punishment for fraud, and states that any person who is found to be guilty of fraud is punishable with imprisonment enumerated therein. The allegations made against the petitioner even accepting on the face of it tantamount to petitioner committing fraud as defined in Explanation (i) to Section 447 of Companies Act, 2013.

20. Section 212 of the Act, 2013 deals with investigation into affairs of a company by a serious fraud Investigating Officer.

21. The issue as to the competency of the serious fraud Investigating officer to investigate the offence under Section 437 of the Act, 2013 was





examined by the coordinate Bench of this Court in Crl.P No.3550/2017. The coordinate Bench ruled that Sub-Section 6 of Section 212 of the Act, 2013 deals with the offences covered under Section 447 of the Act and makes it clear that no Court shall take cognizance unless the complaint is made by the Director, SFIO or the officer of the Central Government authorized by a general or special order in writing in this behalf by that Government. Thus, an offence under Section 447 is given special treatment in terms of Sub-Section 6 of Section 212 of the Act, 2013. It is only that procedure which is prescribed under Sub-Section 6 of Section 212 which would apply, and the shareholder, minority or otherwise cannot initiate proceedings before the Magistrate by himself or herself for the alleged offence under Section 447.

22. The Delhi High Court in the case of Ashish Bhalla ruled that the legislature intended for the SFIO to exclusively investigate into the affairs of the company, in relation to offences under the Companies Act, 2013 and placing reliance on Section 212 (17) (a) ruled that once an office is investigated by SFIO, documents or information obtained by other agencies would stand transferred to the SFIO. Based on a conjoint reading of Section 212(2) and (17)(a), it was held that the investigation conducted by the SFIO to take precedence over the investigation conducted by other agencies. Further, relied on the decision in the case of SFIO -vs- Rahul Modi where the Supreme Court had observed that the term assigned by the Central Government to Section 212(3) implies a complete transfer of investigation from any other agencies to the SFIO.

23. The Delhi High Court also recognized that SFIO being an expert body specially established to investigate the offences under Act, 2013 was better placed to investigate the allegation. The SFIO can permissibly investigate offences under the IPC and other laws. The Delhi High Court in the case of R K Gupta -vs- Union of India reiterating the principles established in the case of Asish Bhalla -vs- State and anr. (CRL.M.C.298/2023, CRL.M.A.1273/2023 & CRL.M.A.21779-21780/2023 (DD 15.09.2023) held that



during the course of investigation under the Act, 2013, the investigating officer come across the commission of offences punishable under the IPC or any other law relating to the transaction being investigated, then the same cannot give rise to distinct proceedings. This would imply that the SFIO would have exclusive jurisdiction over the investigation for all the offences under all the laws as long as they relate to the transaction being investigated.

24. It was further observed that Section 212(2) only prohibits parallel investigation relating to offences under the Act, 2013, however, does not expressly prohibit parallel investigation relating to offences, which are completely unrelated to those recognized under the Act, 2013.

25. The Hon'ble Supreme Court in SLP (Criminal) No.451/2024 has affirmed the decision of the High Court of Delhi in the case of R K Gupta and others vide order dated 16.1.2024.

26. The learned counsel for the CBI has placed on record the decision of the High Court of Kerala at Ernakulam in the case of Thomas Cherian and others -vs- State of Kerala and others. In the said case, the primary question that arose for consideration was whether the interpretation of the term fraud as defined under Section 447 of the Act, 2013 can be extended to include the act admittedly committed prior to the enactment of the Act, 2013. It was ruled that the offences, which are now being investigated by the police, are in relation to the offences under the IPC, and therefore, would not come under the offences referred to in Sub-Section 6 of Section 212 of the Act, 2013. Although, the offences alleged against the accused therein have some relation to the affairs of the said company, that would not take away the right of a private individual to resort to criminal prosecution for the offences contemplated under the IPC in the absence of a specific provision in this regard. Moreover, the offences were allegedly committed prior to the commencement of the Act, 2013.



27. The offences alleged to have been committed by the petitioner are during the period 2009 to 2015.

28. Section 465 of the Act, 2013 deals with repeal of certain enactment and savings and Clause (5) states that any prosecution instituted under the Action repealed enactment and pending immediately before the commencement of any Court, shall subject to the provisions of this Act continue to be heard and disposed of by that Court.

29. Clause (j) states that any inspection, investigation or enquiry ordered to be done under the Act, 2013 shall be continued to be proceeded with as if such instructions, investigation or enquiry has been ordered under the corresponding provisions of this Act.

30. In the instant case, the investigation commenced after the enactment of Act, 2013, and for investigating offences committed during repealed Act, and under the subsequent enactment, the investigation typically follows the provisions of the new enactment unless there are specific transitional provisions stated in the new enactment.

31. The Central Government in relation to the same allegation against the petitioner and other accused by order dated 9.4.2019 entrusted investigation to the SFIO, and the SFIO after investigation submitted a report, and thereafter, filed a complaint before the Special Court established under Section 435 of the Act, 2013. Therefore, the SFIO alone has jurisdiction to try the offences alleged against the petitioners.

32. Although the CBI has invoked Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, there is no allegation in the first information report that the accused in connivance with the Bank Officials who come under the ambit of public servants as defined under the Prevention of Corruption Act misused funds, source of capital, manipulation in project award,



accounting manipulation, and diversion of funds. In the absence of essential elements to constitute the offences under PC Act, the contention of the learned counsel for the CBI that the SFIO cannot investigate the offences under the PC Act is not acceptable, when there is no allegation to investigate the offence under PC Act.

33. In view of the preceding analysis, the registration of the FIR by the CBI for the allegations which constitute an offence under Section 447 of the Act, 2013 and the subsequent investigation stands vitiated for want of authority. Accordingly, I pass the following:

**ORDER**

- i) The petitions are allowed.
- ii) The impugned proceedings in FIR in RC0782020E0005 dated 8.9.2020 registered by the CBI insofar as it relates to the petitioner in CrI.P.No.5333/2023 is hereby quashed.
- iii) The impugned proceedings in FIR No.11/2019 dated 01.11.2019 registered by the CBI, BSFB, Bangalore insofar as it relates to the petitioner in CrI.P.No.5354/2023 is hereby quashed.
- iv) The respondent No.1 - CBI is at liberty to place the information/documents collected during the course of investigation with the SFIO in the pending proceeding before the Special Court.

**Sd/-**  
**JUDGE**