2026:PHHC:074639

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4113 of 2022 (O&M)
Reserved on: 11.02.2026
Pronounced on: 11.05.2026

Naveen Aggarwal

.....Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. R.S.Rai, Sr. Advocate with
Ms. Rubina Virmani, Advocate;
Mr. Amandeep Singh, Advocate;
Mr. Doel Bose, Advocate
Mr. Ananya Ghosh, Advocate and
Mr. Arshpreet Singh, Advocate for the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel and
Mr. Y.S.Thakur, Advocate for UOI.

SURYA PARTAP SINGH, J. (Oral):

The present writ petition has been filed for a writ in the nature of certiorari & mandamus, and the following prayers have been sought:

(a) the summoning order dated 16.08.2021 passed by the learned Special Judge, Gurgaon, designated under Companies Act, in Criminal complaint No.17/2021 be set aside/quashed;

(b) A writ of mandamus for direction to the respondents to provide the copy of sanction order (order No.Legal 35/6/2020) dated 10.06.2021 passed by the respondent No.1;

(c) the writ of certiorari for quashing of above mentioned sanction

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order;

2. Briefly stating, the facts emerging from record are that a complaint, i.e. complaint No.17/202, has been filed by the Serious Fraud Investigation Office Vs. SRS Ltd. and Ors., hereinafter being referred to as 'SFIO' only. The above mentioned complaint has been filed in the Court of learned Special Judge (designated under the Companies Act 2013), Gurugram, hereinafter being referred to as 'trial Court', only. The above-mentioned complaint has been filed against the petitioner, and his co-accused, under Sections 439(2) read with Section 436(1)(a) and (d) read with proviso to Section 212(6) read with Section 212(14) of the Companies Act 2013, read with Section 621(1) of the Companies Act, 1956.

3. According to complaint the SFIO being a statutory body, constituted and established under Section 211 of Companies Act 2013, launched an investigation into the affairs of 88 Companies of SRS Group, which revealed that the affairs of above-mentioned companies were managed and controlled by seven persons namely 'Anil Jindal', 'Jitender Kumar Garg', 'Praveen Kumar Kapoor', 'Bishan Bansal', 'Nanak Chand Tayal', 'Rajesh Singla', and 'Sushil Singla'. The investigation further revealed that the degree of control of the above-mentioned seven persons was such that Directors in the companies belonging to SRS Group were appointed or removed on their whims and fancies, and that five companies belonging to SRS Group namely 'SRS Limited', 'SRS Modern Sales Limited', 'SRS Healthcare & Research Centre Limited', 'SRS Finance Limited' and 'SRS Real Estate Limited'

obtained loans to the tune of Rs.528 crores from public sector banks/financial institutions and the outstanding amount of the bank loans with respect to nine companies of SRS Groups, reached to the level 1596.94 crores. In the investigation, it was also revealed that the directors of the companies of SRS Groups had presented false financial statements, containing wrong details of debtors, inflated purchase and sales figures, and thus, obtained credit facilities on the basis of wrong facts projected before the banks/financial institutions.

4. The record further reveals that on the above-mentioned complaint filed by SFIO cognizance was taken by the learned trial Court, being Special Court, designated under the Companies Act, and in total 81 persons, including the petitioner, were summoned as accused. According to petitioner, vide order dated 16.08.2021, the petitioner was summoned to face trial for the commission of offence punishable under Sections 448 of Companies Act. The cognizance against the petitioner was taken by the learned Special Judge on the ground that he had signed the balance-sheets of the aforesaid company, and therefore, he is responsible for deceptive accounting/non-disclosure of facts and also on account of misleading financial statements and falsification of facts related to transactions with various entities.

5. In the instant petition, it has been pleaded by the petitioner that he is a qualified Chartered Accountant and a senior member of an audit firm namely ‘SS Kothari Mehta and Company’. As per complainant in 2010 the above mentioned firm was approached by ‘SRS Group’ for statutory audit for some of its group companies, i.e. SRS Limited & SRS Real Estate Limited.

According to petitioner the request letters for the audit of above mentioned companies were issued on 01.06.2010 and 27.05.2011, respectively, and that on the basis of above mentioned request audits of the companies were conducted and audit reports prepared. The details of above mentioned audit have been given by the petitioner as under:-

Company	Financial year	Date of Audit report
SRS Limited	2010-2011	28.04.2011
	2011-2012	30.05.2012
SRS Real Estate Limited	2010-2011	24.08.2011

6. The petitioner further alleged that on 01.08.2018 the Central Government through the Ministry of Corporate Affairs, the respondent No.1 herein, in the exercise of its power under Section 212(14) of Companies Act 2013, hereinafter being referred to as '2013 Act' only, directed the SFIO to investigate into the affairs of 'SRS Limited' and its group companies, which was completed by the SFIO in the year 2021. According to petitioner, based upon the above mentioned investigation report the sanction order dated 10.06.2021, i.e. order No. Legal-35/6/2020, hereinafter being referred to as 'impugned sanction order' only, was issued for filing a complaint against the petitioner and the above mentioned order served as foundation for filing of complaint against the petitioner. As per petitioner on the basis of above mentioned sanction order, the complaint was filed, and that on the above mentioned complaint, cognizance has been taken by the learned Special Judge Gurgaon, designated under the Companies Act, i.e. the trial Court, and that by virtue of order dated 16.08.2021, by taking cognizance under Section 227 read

with Section 233 and Section 628 of Companies Act 1956, summoning order has been issued, hereinafter being referred to as 'impugned summoning order' only.

7. The petitioner has further pleaded that on 16.11.2021, he was served with summons dated 09.11.2021 however, the copy of complaint was served without annexures, i.e. the investigation report and sanction order. Thus, the need for a direction to the respondents to supply the copy of the above mentioned order.

8. The sanction order passed by the respondent No.1, too, has been challenged by the petitioner. It has been challenged primarily on the following grounds:-

i. that prosecution could not have been sanction by Respondent No. 1 for offences under the 1956 Act post repeal of the 1956 Act in view of Section 465(2)(i) of the 2013 Act;

ii. that the investigation process was flawed as SFIO, under Section 212 of the 2013 Act, does not have the power to investigate offences under the 1956 Act;

iii. that in any event, SFIO's mandate to investigate ended on 1st November 2018 and hence, investigation conducted beyond 1st November 2018 lacked sanction by Respondent No. 1 and thus, the same is illegal;

iv. that prosecution has been sanctioned for offences under the 1956 Act, despite the Investigation Order being restricted to offences under the 2013 Act;

v. that the Investigation Report (consisting of 2 volumes and 1351 pages), consisting of 182 documents and 248 statements, was submitted to Respondent No. 1 on 5th June 2021 and it is

humanly impossible to have effectively applied its mind to these documents by the time the Sanction Order was passed on 10 June 2021;

vi. that sanction for prosecution was granted for offences qua the petitioner, which are barred by limitation.

9. The another ground of challenge qua the impugned sanction order, pleaded by the petitioner, is that Section 465(1) of the Companies Act 2013 repealed the Companies Act 1956, and that Section 465(2)(i) of 2013 Act saves only those prosecutions which had already been initiated under 1956 Act and were pending on the date when Companies Act 2013 came in force. According to petitioner since on the date when 2013 Act came into being, the prosecution against the petitioner was not pending under the old Act, after the enactment of new Act any sanction could not have been issued. As per petitioner, despite abovesaid defect the impugned sanction order has been issued under the old Act, and therefore, it is defective. It has been further pleaded by the petitioner that since the sanction order which is the foundation of summoning order in itself is defective the impugned summoning order, too, is not sustainable in view of maxim *Sublato Fundamento cadit opusall* (upon a foundation being removed, the superstructure falls) and *debile fundamentum fallit opus* (when the foundation fails, everything fails).

10. A joint reply to the above mentioned petition has been filed by the respondents.

11. The ground for quashing of impugned sanction order, as well as impugned summoning order, have been denied in toto by the above said

respondents. However, it has not been denied that vide order dated 01.08.2018, passed by the Ministry of Corporate Affairs, an investigation was initiated into the affairs of SRS Limited and its group companies, in the exercise of power under Section 212(1)(a) of the 2013 Act. As per above said respondents the investigation revealed that there were total 88 companies belonging to SRS Group and the investigation report was submitted on 05.06.2021. According to respondents, in view of above mentioned investigation report, vide order dated 10.06.2021, passed by the Ministry of Corporate Affairs in the exercise of its power under Section 212(14) of the 2013 Act, the sanction order for filing of complaint for the prosecution of petitioner and other accused, was issued and on the basis of above mentioned sanction order the complaint was filed and cognizance against the petitioner and other co-accused was taken by the learned Special Court vide order dated 16.08.2021.

12. According to respondents the investigation into the affairs of SRS Limited and its group companies had revealed that:-

i) SRS Group consisted of two categories of companies with the nomenclature 'SRS companies' and 'non-SRS companies;

ii) the companies belonging to SRS group i.e., SRS Limited, SRS Modern Sales Limited, SRS Healthcare & Research Centre Limited, SRS Finance Limited, SRS Real Estate Limited, Swami Hitech Projects Limited, Satmaya Trading Company Ltd & SRS Real Infra (Projects) obtained funds to the tune of Rs. 1143 crore (before 12.09.2013) & of Rs. 528 crores (from 12.09.2013) from public sector banks/financial institutions. The outstanding bank loans with respect to the SRS Group of companies, as per the latest financial statements filed with

MCA, are Rs. 1596.94 Crore;

iii) it is further revealed that the directors of SRS Ltd. and its four other Group Companies had presented falsified financial statements containing falsified statements of debtors, inflated Purchase & Sales figures, deliberately concealed the material facts in obtaining aforesaid credit facilities from public sector banks/financial institutions. In this regard, non-SRS companies were used for the purpose of inflating the sale, purchase, and profit of the SRS Companies, adjusting cash sales of jewellery and building material of declared SRS Companies, showing these non-SRS companies as debtors in the books of accounts of SRS Companies;

iv) it is further revealed that the controllers of the CUIs, connived and siphoned off funds of Rs. 671.48 Crore and diverted funds amounting to Rs. 645.86 Crore from SRS Group of Companies by way of separate/distinct transactions. Further, the unlawful gain to the family members or Companies of the controller of SRS Group was by way of siphoning-off the public funds from SRS Group of Companies and it was to the tune of Rs. 21.11 Crore after the period 11.09.2013;

v) investigation also revealed that the auditors of the SRS Companies had deliberatively suppressed the actual figures & entries in the accounts of the company, and gave wrong, false and misleading statements in the financial statements, knowing it to be false in a material particular and had omitted to state the material facts, knowing to be material to hide the true nature of the financial statements.

13. The respondents have further alleged that in view of evidence collected during the course of investigation by the SFIO it was found that the

petitioner and his co-accused have committed offence by resorting to following misdeeds:-

i) False statement in balance sheets/books of SRS group of companies [Offences invoked against signatories/directors to the balance sheets - s.448 of the Companies Act, 2013 and/or s. 628 of the Companies Act, 1956].

ii) Fraudulent representation before banks for obtaining credit facilities [Offences invoked against loan taking companies and the controllers of the said companies' who submitted falsified balance sheets signatories/directors to the balance sheets- s.36(c) of the Companies Act, 2013].

iii) Siphoning and diversion of funds received as loan from banks/financial institutions [Offences invoked against respective companies and the individuals involved - s.447 of the Companies Act, 2013].

iv) Material mis-statements in the financial statements of the SRS group companies. [Offences invoked against respective Statutory Auditors - s. 143 r/w 147, 448 of the Companies Act, 2013 and/or s. 227 r/w 233, 628 of the Companies Act, 1956].

v) Form & contents of balance sheet, profit & loss account not giving true & fair view of the affairs of the companies, deficient director's report and not keeping proper books of accounts [Offences invoked against respective Directors-controllers-officers in default of the Companies-209, 211, 217 of companies act, 1956 and Section 128, 129, 134 of Companies

act, 2013].

vi) Non-declaration of 'related parties' in Financial Statements. [Offences invoked against respective Companies & its controllers u/s 188 (5) of the Companies Act, 2013 &/or s. 297 r/w 629A of the Companies Act, 1956].

vii) Non-filing of annual returns and financial statements. [Offences invoked against respective Companies & its directors/controllers/officers in default - 92(5) & 137 (3) of Companies act, 2013].

14. In its reply the role played by the petitioner in the commission of above mentioned offence has been elaborated which is the very foundation of impugned sanction order as well as impugned summoning order.

15. With regard to the allegations of the petitioner that the impugned sanction order is defective, the respondents have alleged that the impugned sanction order has been passed by applying proper mind by the concerned authorities and on proper appreciation of evidence collected by the investigating agency during the course of investigation. According to above said respondents otherwise also the validity of sanction order cannot be challenged at the initial stage when both the parties have not led their respective evidence. With regard to another ground taken by the petitioner, i.e. sanction order under the old act despite the enactment of new act, it has been pleaded by the respondents that in view of Section 465 of the 2013 Act and in view of Section-6 of General Clauses Act, the above mentioned prosecution is not barred.

16. Heard.

17. It has been contended by learned Senior counsel for the petitioner that instant case is a case, wherein the very foundation on basis of which the complaint was filed, resulting into passing of summoning order, is defective, and therefore, in view of maxim *Sublato Fundamento cadit opusall* (upon a foundation being removed, the superstructure falls) and *debile fundamentum fallit opus* (when the foundation fails, everything fails), the complaint itself is not maintainable.

18. According to learned Senior counsel for the petitioner, since the very foundation of the prosecution is defective, any subsequent order passed by the learned Special Court, too, is rendered unsustainable, and thus, in the instant case the impugned summoning order dated 16.08.2021 qua petitioner deserves to be quashed.

19. The learned Senior counsel for the petitioner has further contended that the impugned sanction order is not sustainable because the respondent No.1 has failed to discharge its responsibility, i.e. applying its mind to the investigation report submitted by SFIO. As per learned Senior counsel for the petitioner, the above mentioned omission of respondent No.1 is violative of Section 212(14) of the 2013 Act, which provides that it is responsibility of the Central Government to examine and apply its mind to the investigation report submitted by SFIO, under Section 212(12) of the 2013 Act. According to learned Senior counsel for the petitioner as per Section 212(14) of 2013 Act the Central Government on receipt of investigation report has to examine the report (after taking such legal advise, as it may think fit),

anddirect the Serious Fraud Investigation Office to initiate prosecution against the companies and its officer or it employees, who are or have been in employment of the company or any other persons directly or indirectly connected with the affairs of the company.

20. The learned Senior counsel for the petitioner has pointed out that Section 212(14) provides for the facility of taking legal advise, which essentially means that the sanction for prosecution under Section 212(14) is not meant to be an empty formality, but it is a solemn and sacrosanct act which provides protection to people against frivolous and vexatious prosecution, a safeguard for the innocent, especially in view of stringent bail conditions under Section 212(6).

21. As per learned Senior counsel for the petitioner, the law settled in this regard provides that sanctioning order must demonstrate that there has been proper application of mind on the part of Central Government, being the sanctioning authority. In support of his above mentioned arguments, the learned Senior counsel for the petitioner has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'State of Punjab Vs. Mohd. Iqbal Bhatti', (2009) 17 SCC 92.

22. It has also been contended by learned Senior counsel for the petitioner that grounds on which the sanctioning order is apparently defective are:-

firstly, it has been passed for an offence defined under Section 1956 Act after the repeal of the Act itself;

secondly, it has been passed on the basis of investigation report, which was submitted beyond the sanction period, i.e 01.11.2018, and

thirdly, because on the date when impugned sanction order was issued the bar of limitation for the prosecution of petitioner had come into picture.

23. In support of his arguments, the learned Senior counsel for the petitioner has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Naresh Kumar Gurjar Vs. Security and Exchange Board of India', 2020 SCC Online Raj 2500, 'Kanya Resorts Pvt. Ltd. & Ors. Vs. Assistant Registrar of Companies' and 'Mahmadhusen Abdulrahim Kalota Shaikh Vs. Union of India', (2009) 2 SCC 1.

24. The above mentioned arguments have been controverted by learned Senior Panel Counsel for the respondents. It has been contended by learned Senior Panel Counsel that the present petition has been filed without any legal basis, and that a ground, which does not legally exist has been tried to be created. According to learned Senior Panel counsel for the respondents in the present case this fact cannot be ignored that for the purpose of investigation, once the order was passed by the Ministry of Corporate Affairs a herculean task was assigned to the SFIO, as the SFIO was supposed to investigate the matter of 88 companies of SRS Group. As per learned Senior Panel Counsel for the respondents the completion of investigation of 88 companies was not possible for any organization within a short span of period,

and thus, the delay was occurred in the above mentioned investigation. The learned Senior Panel Counsel for the respondents has further contended that otherwise also, the instant case is a case, where after considering the entire material/evidence collected by the SFIO the sanction order has been passed and on the basis of sanction order, only, the complaint has been filed.

25. With regard to above, it has been contended by learned Senior Panel Counsel for the respondents that filing of complaint without sanction order, and filing of complaint on the basis of defective sanction order are altogether two different situations, and that the difference between the two must be taken into consideration. According to learned Senior Panel Counsel for the respondents in the catena of judgment the Hon'ble Supreme Court of India and other courts have interpreted the 'absence of sanction for prosecution' and 'defective sanction for prosecution' as two different circumstances. The learned Senior Panel Counsel for the respondents has further contended that as per settled principles of law only a prosecution without sanction can be challenged at the initial stage, but the filing of complaint on the basis of a sanction order which is claimed to be defective cannot lead to quashing of summoning order/complaint at the very inception of trial. While referring to the principles of law propounded by the Hon'ble Supreme Court of India in the case of 'Dinesh Kumar Vs. Chairman, Airport Authority of India and another', 2012(1) RCR (Criminal) 100 and by this Court in the case of 'Surender Singh Vs. Union of India', (CWP-21971-2019) decided on 26.08.2019, it has been contended by learned Senior Panel Counsel

for the respondents that instant case being a case, wherein a sanction order has been passed, the validity of sanction order cannot be adjudicated upon at this stage, when the parties are yet to lead their respective evidence before the learned trial Court. In view of above, the learned Senior Panel Counsel for the respondents has contended that at this stage quashing of complaint on the ground that sanction order is defective is not sustainable.

26. With regard to plea taken by the petitioner that the complaint is barred by limitation, it has been contended by the learned Senior Counsel for the respondents that instant case is a case wherein in a very long series of fraudulent acts committed by the companies belonging to SRS Group, the investigation has been conducted, and that during the course of investigation numerous documents were examined which ultimately led to the conclusion that the offence under Sections 439(2) read with Section 436(1)(a) and (d) read with proviso to Section 212(6) read with Section 212(14) of the Companies Act 2013, read with Section 621(1) of the Companies Act, 1956 have been committed by the petitioner and his co-accused. According to learned Senior Panel Counsel for the respondents in view of above mentioned fact-situation instant case is a case, wherein the act of the petitioner, which amounts to an offence, is part of continuing offence, and therefore, the bar of limitation is not attracted in the present case.

27. It has also been contended by the learned Senior Penal Counsel for the respondents that otherwise also as per Section 473 of Cr.P.C., if the Court is satisfied on the facts and circumstances of the case that the delay has

been properly explained or that it is necessary to do so in the interest of justice, the Court may take cognizance of an offence even after expiry of period of limitation. According to learned Senior Panel Counsel for the respondents in view of grounds taken in the impugned sanction order vis-a-vis complaint, it has been justified that even if there occurred a delay in taking cognizance, in view of proper explanation, detailed above, such delay was bound to be condoned. According to learned Senior Panel Counsel for the respondents no error has been committed by the learned trial Court in taking cognizance in the present case.

28. With regard to plea that the cognizance has been taken under the old act despite the fact that on that day it stood repealed, it has been pointed out by learned Senior Panel Counsel for the respondents that in view of Section 465(3) of the 2013 Act coupled with Section 6 of General Clauses Act the above mentioned cognizance is perfectly in accordance with the provisions of law and there is no scope for indulgence and interference, at this stage, on the above mentioned ground also.

29. The record has been perused carefully.

30. In view of the plea taken by the parties in their respective pleadings and the arguments addressed on behalf of both the parties, in my considered opinion following are the points which need determination in the present case:-

i) whether the petitioner has got a right to seek the copy of sanction order dated 10.06.2021;

ii) whether the learned trial Court committed an error by taking

cognizance beyond the period of limitation;

iii) whether the impugned summoning order is liable to be quashed on the ground that impugned sanction order is defective;

iv) whether the impugned sanction order is defective in view of Section 465 of 2013 Act which repeals 1956 Act.

Point No.1:

31. As far as this point is concerned it is the plea of the petitioner that the copy of sanction order has not been supplied to him along with the copy of complaint/summoning order. Since sanction order is a material document, rather one of the most relevant and important document for the petitioner to design his defence, it is hereby held that failure of supply of sanction order to the petitioner may lead to miscarriage of justice, as it will certainly prejudice the right of defence of the petitioner. Thus, it is hereby ordered that the petitioner is entitled to receive the copy of sanction order dated 10.06.2021.

32. The point of determination No.1 is hereby answered accordingly in favour of petitioner.

Point No.2:

33. With regard to this point there are two components which needs to be taken into consideration:

i) that act allegedly committed by the petitioner is the part of a long series of findings, wherein by manipulating various documents, offences were committed by the persons belonging to SRS Group of companies in various capacities. Thus, being a part of long chain of events, spanning into number of years, at

this stage, when the prosecution/complainant/respondent No.1 is, yet, to lead evidence and prove the proximity and link of the petitioner with the commission of crime, it is not possible to determine as to whether the alleged act of the petitioner was part of the same series of acts or it was an isolated act. The former situation will not invite the bar of limitation, whereas later one will;

ii) whether the act attributed to the petitioner formed an integral part of the offence committed by SRS Group, or it was an act which can be segregated from the other criminal acts of the companies belonging to SRS Group.'

34. Otherwise also it shall not be out of place to mention here that Section 473 Cr.P.C. provides that 'notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

35. For the sake of arguments even if it is assumed that the act which is attributed to the petitioner is considered to be an offence for which the cognizance has been taken beyond the period of prescribed limitation, even then in view of Section 473 Cr.P.C. the complainant is having an opportunity to explain that there existed a valid reason for delay in filing the complaint, and therefore, on this ground also unless the parties are given opportunity to lead

evidence this conclusion cannot be drawn at this stage that bar of limitation can be attracted in the present case only.

36. Thus, the point of determination No.2 is hereby answered accordingly, i.e. against the petitioner, while holding that at this stage when the trial is at preliminary stage and the parties are yet to take their respective positions on the basis of evidence, it is not possible to draw an inference as to whether bar of limitation is attracted in the present case or not.

Point No.3:

37. As far as this point is concerned three are two aspects involved in the present case. The petitioner is claiming that the sanction order has been passed without proper application of mind, and thus the same is defective. In this regard the Hon'ble Supreme Court of India in the case of 'Mohd. Iqbal Bhatti (supra)', has observed that *'it is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration*

an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order…"

38. With regard to similar situation the principles of law has been propounded by the Hon'ble Supreme Court of India in the case of 'Dinesh Kumar (supra)' also. The Hon'ble Supreme Court of India, in the above mentioned case, has refused to quash the prosecution at initial stage, while holding that illegality and validity of impugned sanction order for prosecution cannot be determined at initial stage. In the above mentioned case the opportunity was accorded to the petitioner to raise issues regarding illegality and validity of sanction order during the course of trial.

39. With regard to above, in the case of 'Parkash Singh Badal and another Vs. State of Punjab and others' 2007(1) RCR (Criminal) 1, the Hon'ble Supreme Court has observed that "there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. According to Hon'ble Supreme Court of India the former question can be agitated at the threshold, but the latter is a question which has to be raised during the course of the trial.

40. This Court also in the case of 'Surender Singh (Supra)'has observed that there would be difference between 'absence of sanction' and 'validity of sanction', and that the issue regarding absence of sanction can be raised at the very inception by the aggrieved person, but in a case, wherein the sanction order exists issue regarding its illegality and validity has to be raised only during the course of trial."

41. Taking into consideration the fact that in the present case the sanction order has been passed prior to filing of complaint, and that the above mentioned sanction order has been passed by a competent authority in the exercise of power vested with it, the question as to whether the sanction order is outcome of proper application of mind or not, can be determined during the course of trial only.

42. Thus, it is hereby observed that the present case is squarely covered by the principles of law propounded by the Hon'ble Supreme Court of India in the case of 'Dinesh Kumar (supra)' and 'Parkash Singh Badal (supra)' and also the observations made by this Court in the case of 'Surender Singh (supra)'. Therefore, by following the dictum in the above mentioned cases, it is hereby observed that at this stage when the trial is yet to take place, it is not possible to determine as to whether the sanction order has been passed on proper appreciation of evidence or not.

43. As a sequel to above mentioned observation, the point of determination No.3 is hereby answered accordingly, i.e. against the petitioner, by giving liberty to the petitioner to raise the validity of impugned sanction order before the learned trial Court at an appropriate stage during the course of trial.

Point No.4:

44. As far as this point is concerned at the very outset it shall be relevant to note that impugned sanction order dated 10.06.2021 reads as under:-

"I am directed to refer to the subject cited above and to convey the sanction of the competent authority for prosecution on the basis of your report as under:

Finding/ Charge No.	Nature of charges	Relevant Section	Remark
1.	Siphoning and Diversion of funds	U/s 447 of the Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.
2A	Form & content of financial statements not giving True & Fair View of the affairs of the 8 companies who availed loan facilities, public deposits and received advance against booking of real estate projects.	U/s 209, 211, 217, 628 of the Companies Act, 1956 and u/s 128, 129, 134, 448 r/w 447 of Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.
2B	Form & content of financial statements not giving True & Fair View of the affairs of the companies.	U/s 209, 211, 217, 628 of the Companies Act, 1956 and u/s 128, 129, 134, 448 r/w 447 of Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.
3	Fraudulent representation before banks for obtaining	U/s 36(c) r/w Section 447 of the Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is

	credit facilities		sanction.
4	Non-declaration of related parties.	U/s 188 of the Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.
5	Non-filing of financial statements and annual return	U/s 92 and 137 of Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.
6	Financial statements not giving True & Fair View of the affairs of the company pertaining to role of statutory auditors.	U/s 227 r/w 233, Companies Act, 628 of the 1956 and Section 143, 147, 448 of the Companies Act, 2013	Prosecution as proposed by SFIO against the persons/entities specified in the report for the relevant period is sanction.

Further, as recommended, SFIO is directed to share the report with all the authorities namely EOW, Faridabad, ED, CBI, Registrar of Companies, CBDT, CEIB, Institute of Chartered Accountants of India/NFRA, RBI, IRP for taking necessary actions giving specific references. SFIO is directed to share the report with o/o DGCOA.

Also, SFIO is authorized to initiate proceedings under Section 241, 242, 246 r/w 339 of Companies Act, 2013 before NCLT and seek interim orders for freezing of movable and immovable properties, including bank accounts/lockers and jointly held properties including lockers and final relief for disgorgement of frozen assets against all the individuals and entities who have been booked under Section 447 of Companies Act, 2013. SFIO is further directed to immediately move the application and furnish ATR within 15 days."

45. With regard to above mentioned sanction order, one of the ground of attack, by the petitioner, is that, that the above mentioned sanction order has been passed with regard to an act which was defined as an offence under the old Act, and that the sanction for prosecution was given after the repeal of old act. According to learned Senior counsel for the petitioner, in view of above mentioned defect, the complaint based on the above mentioned defective sanction order is liable to be quashed.

46. In support of above mentioned arguments, the learned Senior counsel for the petitioner has referred to the principles propounded by the Hon'ble Supreme Court of India in the case of 'Naresh Kumar Gurjar (supra)', wherein it has been held that 'the petitioner further wants the Court to ignore the effect of provisions of Section 465 of the Companies Act, 2013 providing for "repeal and savings", although brought in effect from 30.01.2019. Section

465 saves only those proceedings before authorities or prosecution before Court, which are already filed under the repealed Act and are pending before 30.01.2019. What the petitioner seeks is that dehors the now applicable provisions of Section 465 of the Companies Act, 2013, this Court shall issue directions to the Respondent SEBI thereby permitting initiation of proceedings for adjudication and prosecution for contraventions of the provisions of Part III and IV of the repealed Companies Act, 1956 relating to securities. The same is not permissible in law.'

47. In the case of 'Kanya Resorts Pvt. Ltd. and Ors. (supra)', it has been observed by the Hon'ble Supreme Court of India that 'the Companies Act 1956 was repealed and replaced by Companies Act 2013. Only the cases instituted and pending at the time of commencement of 2013 Act were saved by the 2013 Act. However, all these cases have been instituted only in the year 2017 and therefore, they are not legally maintainable.'

48. In the case of 'Mahmadhusen Abdulrahim Kalota Shaikh (supra)', the Hon'ble Supreme Court of India has held that 'if any Central Act is repealed, without making any provision for savings, the provisions contained in Section 6 of the General Clauses Act, 1897 will apply. But where the repealing Act itself contains specific provisions in regard to savings, the express or special provision in the repealing Act will apply. Section 6 of the General Clauses Act makes it clear that it will not apply when a different intention appears in the repealing statute. Where the provision relating to savings is excluded, the repeal will have the effect of complete obliteration of

the statute. Parliament in its plenary power, can make an outright repeal which will not only destroy the effectiveness of the repealed Act in future, but also operate to destroy all existing inchoate rights and pending proceedings. This is because the effect of repealing a statute is to obliterate it completely from the record, except to the extent of savings. If Parliament specifically excludes any saving clause in a repealing Act, or severely abridges the provision for savings, which it has the power to do, the effect would be that after the repeal of the statute, no proceeding can continue, nor can any punishment be inflicted for violation of the statute during its currency.'

49. To deal with the situation in hand the provision laid own in the Companies Act 2013 with regard to repeal of old Act is necessary to be looked into. Section 465 of the Companies Act 2013 contains the repeal clause. The relevant extract of the same is as under:-

> 'Repeal of certain enactments and savings. -(1) The Companies Act, 1956 (1 of 1956) and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:
>
> Provided that xxxxx
>
> provided that xxxxx
>
> 2(a) xxxxx
>
> 2(b) xxxxx
>
> 2(c) xxxxx
>
> 2(d) xxxxx
>
> 2(e) xxxxx
>
> 2(f) xxxxx
>
> 2(g) xxxxx
>
> 2(h) xxxxx

2(i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;

2(j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with as if such investigation or inquiry has been ordered under the corresponding provisions of this Act;

50. With regard to applicability of old act, i.e. the Companies Act 1956, Section 465(3) of the Companies Act 2013, too, is relevant. It provides that "the mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) were also a Central Act."

51. The impact/effect of above mentioned provision enshrined in 2013 Act leads to the inference that despite exclusion clause comprised under Sections 465(1) & 465(2) of 2013 Act, the provision of Section-6 of General Clauses Act are applicable.

52. In view of above mentioned provision, it is necessary to look into Section-6 of 'General Clauses Act'. As per Section 6 of 'General Clauses Act'-

"where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto

made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

53. Thus, the impact of Section 6(e) would be that unless a different intention appears the repeal shall not affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

54. Thus in view of above mentioned legal provision, which is applicable to the present case, it is hereby observed that the investigation which was pending at the time of implementation of Section 465 of 2013 Act shall be unaffected.

55. Be that as it may, for the sake of arguments, even if, it is assumed

that Section-6 of the General Clauses Act is not applicable even then the investigation which was initiated prior to enforcement of Section 465 of 2013 Act shall be unaffected in view of Section 465(2) (j) of the Companies Act.

56. Here it shall not be out of place to mention that Section 1 (3) of the 2013 Act provides that this Section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint any different dates may be appointed for different provisions for this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

57. Thus, it is apparent that Section 465 of the 2013 Act had to come in force with effect from the date of notification and the abovesaid notification came into being on 30.01.2019, vide S.O.560(E) dated 30.01.2019. Once Section 465 came into being on 30.01.2019 the chronology of events which unfolded in the present case are very much relevant. It shows that the inspection report of the Registrar of Companies, submitted to the respondent No.1, was submitted on 17.04.2018 and pursuant to above mentioned report on 01.08.2018 the respondent No.1 in the exercise of power under Section 212(1) (a) of 2013 Act directed the SFIO to investigate into the affairs of SRS Limited and its group companies.

58. Thus, it is apparent that the investigation order was passed on 01.08.2018, i.e. before the enforcement of repeal clause enshrined under Section 465 of the 2013 Act. Since on 01.08.2018 the repeal clause itself was

not in existence, this plea of the petitioner has got no force that the investigation order has been passed under the old Act after its repeal. Once the investigation order was passed prior to enforcement of repeal clause, enshrined under Section 465 of 2013 Act, on 30.01.2019 when the repeal clause came in force the impact of the same would be that on the date of repeal of Companies Act 1956, the investigation against the petitioner was pending. Such investigation as already discussed above was protected under Section 465 (2) (j) of 2013 Act.

59. It is also relevant to note here that the principle propounded in the case of 'Mahmadhusen Abdulrahim Kalota Shaikh (supra)' "are not applicable to the facts and circumstances of the present case, because Section 465 (3) of the 2013 Act provides that the mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal of the repealed enactments.

60. If cumulative effect of the entire above mentioned discussion is taken into consideration, it transpires that on the date of implementation of the repeal clause, the investigation against the petitioner was already pending, and therefore, the principle laid down by Hon'ble Supreme Court in the case of 'Naresh Kumar Gurjar (supra)' and 'Kanya Resorts Pvt. Ltd. and Ors. (supra)' being with regard to all together different factual matrix are not applicable to the present case.

61. In the present case the prosecution which was launched on

11.06.2021 on the basis of sanction order dated 10.06.2021 was with regard to an investigation which was initiated on 01.08.2018, i.e. prior to enforcement of repeal clause of 2013 Act, and therefore, it is hereby observed that on the above mentioned grounds neither the sanction order nor the summoning order can be held to be defective.

62. Thus, the point of determination No.4 is hereby answered accordingly, i.e. against the petitioner.

63. In view of the finding recorded on the above mentioned four points of determination, it is hereby observed that with regard to prayer for quashing of summoning order vis-a-vis complaint and the sanction order dated 10.06.2021, the writ petition deserves dismissal. However, with regard to prayer for a direction to the respondents to provide copy of sanction order dated 10.06.2021, the petition deserves to be allowed.

64. In view of above, the present petition is hereby **partly allowed** and a writ in the form of mandamus is hereby issued in favour of petitioner and against the respondents, directing the respondents to provide the copy of sanction order dated 10.06.2021 to the petitioner. For rest of the prayer the writ petition stands dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

(SURYA PARTAP SINGH)
JUDGE

11.05.2026

Manoj Bhutani

Whether speaking/reasoned Yes/No
Whether reportable Yes/No