* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 30th October, 2025***
Pronounced on: 17th December, 2025

\+ **CRL.M.C. 1976/2018, CRL.M.A. 7020/2018, CRL.M.A. 4517/2019 & CRL.M.A. 16187/2020**

SIDDHARTH SHANKAR
S/o Ashok Kumar
R/o5 Pine Drive
DLF Chhattarpur
Mehrauli, Delhi .....Petitioner

Through: Mr. Adit S. Pujari, and Mr. Manvendra Singh Shekhawat, Advocates

versus

SEBI
Through the Standing Counsel .....Respondent

Through: Mr. Sunil Dalal, Sr. Advocate with Mr. Ashish Aggarwal, Ms. Shivani Joshi, Mr. Ankit Rana, Ms. Shipra Bali, Mr. Bharat Khurana and Mr. Sarthak Malhotra, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ("CrPC"), seeking the quashing of the Impugned Order dated 11.01.2018 dismissing the Application under S.208 Cr.P.C., by the Ld. ASJ in Criminal Complaint No. 49 of 2016 (originally Complaint Case No. 07 of 2015) under Section 24 SEBI Act.

2. The core grievance of the Petitioner relates to the dismissal of his Application filed under Section 208 CrPC read with Section 26D of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"), wherein he sought the supply of certain documents including the Investigation Report, which formed the basis of the Complaint, but were not supplied to him along with the summons.

3. ***Briefly stated,*** the Respondent/SEBI, instituted a Complaint (C.C. No. 49/2016) on 09.12.2015, against *M/s Kassa Finvest Pvt. Ltd.* and its Directors, including the Siddharth Shankar/Petitioner (arraigned as Accused No. 5), alleging offences under Section 24 SEBI Act read with Section 23M of the Securities Contracts (Regulation) Act, 1956.

4. The Petitioner was summoned *vide* Order dated 04.01.2016.

5. On 19.05.2017, the Petitioner *moved an Application under Section 208 CrPC seeking the supply of documents relied and those forming the basis of the Complaint*. Specifically, the Petitioner sought the "***Investigation Report***" mentioned in Annexure C-5 of the Complaint, the material constituting the "***grounds"*** for SEBI's satisfaction to initiate proceedings, *Investor complaints and the statements recorded* by the Investigating Officer.

6. The Counsel for SEBI stated on 25.08.2017, before the Ld. Trial Court that *"whatever documents have been placed on record, shall be provided to the Accused Persons whereas the documents which are very bulky would be open for inspection."*

7. However, the Ld. Trial Court dismissed the Petitioner's Application under S.208 Cr.P.C. *vide* the Impugned Order dated 11.01.2018, by observing that since all documents filed along with the Complaint had

already been supplied to the accused, there was sufficient compliance with Section 207/208 CrPC and no further direction for the supply of documents, was warranted at that stage.

8. It is submitted that the Ld. Trial Court erroneously dismissed the Application by holding that Compliance with **Section 207/208 Cr.P.C** was satisfied merely by supplying the documents *filed along with the Complaint*. The Court failed to appreciate that the obligation for disclosure in criminal proceedings extends beyond merely the list of documents formally relied upon by the prosecution, to include all material **necessary or desirable** for the accused to prepare his defence.

9. ***The Petitioner has challenged the impugned Order*** on the grounds that the impugned Order violates the **Petitioner's right to a fair trial**, which is an intrinsic component of **Article 21** of the Constitution of India. A fair trial mandates that the accused must be put to notice of all material relied upon or relevant to the allegations being faced.

10. The Petitioner was denied access to the **Investigation Report** and the **underlying materials** that form the basis for the Complaint, which is the "*outcome of violations found in the said investigation*," of the criminal prosecution. This denial of the Investigation Report prevents the Petitioner from effectively *arguing for discharge at the pre-charge stage*, thereby fundamentally impairing his ability to defend himself, and thus, violating principles of natural justice. In this regard reliance is placed on the case of *A.K. Kraipak & Ors. vs. Union of India*, AIR 1970 SC 150 and *Dhakeswari Cotton Mills Ltd. vs. Commissioner of Income Tax, West Bengal*, 1955 AIR SC 65.

11. The Trial Court's Order in directly in contradiction to the principle laid down in *T. Takano v. SEBI*, (2022) 8 SCC 162. In SEBI matters, the **Investigation Report** is deemed an **"intrinsic component"** of the Regulator's decision to prosecute or adjudicate. Its non-disclosure cannot be justified by merely claiming non-reliance, as the test for disclosure is **relevance and materiality**, not the subjective choice of the prosecuting agency. The withholding of the Investigation Report and related file Notings, prejudices the Petitioner's ability to counter the basis of SEBI's "*satisfaction"* to launch the criminal case.

12. While a procedural irregularity may not automatically vitiate proceedings, the non-supply of relevant documents amounts to a breach of the principles of natural justice, as **prejudice** is demonstrated. In this regard reliance is placed on *ECIL vs. B. Karunakar*, (1993) 4 SCC 727 and *K.L. Tripathi vs. State Bank of India*, (1984) 1 SCC 43.

13. The Petitioner's tenure as a Director of Accused No. 1 was recorded as being from **12.07.1994 to 10.05.2005**. He, having resigned as a Director in 2005, requires the Investigation Report and recorded statements so as to ascertain his alleged role during the investigation period; determine the specific allegations he is liable for vis-à-vis his tenure; seek discharge and effectively cross-examine witnesses. The Petitioner claims material prejudice by denial of supply the documents sought by him.

14. Furthermore, the Impugned Order is *a non-speaking order*, failing to record a finding on the specific relevance of the documents sought or the claim of prejudice. The court did not consider the distinction between an Investigation Report, which is the basis of the prosecution and a merely

irrelevant or internal administrative document, as discussed in *Krishna Chandra Tandon vs. Union of India*, (1974) 4 SCC 374.

15. The Impugned Order was passed by the Ld. Trial Court in ignorance of its own record dated 25.08.2017, wherein the Respondent's counsel explicitly stated that *"bulky documents would be open for inspection."* By summarily dismissing the Application, the Court negated the Respondent's own concession and failed to permit inspection, thereby causing a miscarriage of justice.

16. ***The Respondent/SEBI has opposed the Petition*** on the ground that it had fully complied with its statutory obligations under the Code of Criminal Procedure, 1973 (CrPC).

17. It is submitted that the obligation under Section 208 read with Section 207 CrPC is limited to furnishing the accused with copies of the **Police Report** or Complaint, statements of witnesses recorded, confessions and **any other document forwarded to the Magistrate** with the Report/Complaint. Since all documents that SEBI formally **relied upon** in the Complaint were furnished, there was sufficient compliance of S.208 Cr.P.C.

18. The Respondent asserted that the Petitioner had no right to demand copies of documents that were **not relied upon** in the Complaint or that were not formally annexed to the Complaint, as held in judgment of *Chandrama Tewari vs. Union of India* 1987 Supp SCC 518, where the Court stated the obligation is confined only to material and relevant documents which may have been relied upon.

19. Respondent further asserted that the documents sought by the Petitioner, were either privileged or irrelevant at the pre-charge stage. The

Investigation Report and **file Notings** which formed the basis for the decision to file the Complaint were classified as *internal, administrative documents or inter-departmental communications,* which is only relevant for the formation of an opinion to initiate proceedings.

20. Respondent has relied on the case of *Krishna Chandra Tandon vs. Union of India*, (1974) 4 SCC 374 wherein the Apex Court held that Reports of Departmental Officers **not relied upon** by the Inquiry Officer or Disciplinary Authority, need not be supplied to the delinquent employee. It is contended that its internal process of reaching to a "satisfaction" as mentioned in the Complaint, was not open to challenge or disclosure before the framing of charge.

21. The Respondent contended that the Petitioner's Application was a mere attempt to conduct a "**roving and fishing inquiry"** into the internal working of the Regulatory body, which is impermissible in law, for which reliance is placed on *Natwar Singh vs. Director of Enforcement*, (2010) 13 SCC 255.

22. The relevance of any document for the defence of the accused only arises once the charges are framed and the accused is called upon to enter his defence. The Application was premature as this stage and documents necessary for the defence, typically arises only *after* the court proceeds to record the defence evidence and not at the pre-charge stage.

23. The burden was on the Petitioner, to clearly demonstrate how the not supplied documents were not only **relevant** but how their non-supply specifically caused **prejudice** to his case, as noted in the case of *State of U.P. vs. Ramesh Chandra Mangalik*, (2002) 3 SCC 443 and *State of T.N.*

vs. Thiru K.V. Perumal, (1996) 5 SCC 474. The Respondent submits that the Petitioner failed to meet this high threshold.

24. The concession made by SEBI's counsel on **25.08.2017**, was that the ***"the documents which are very bulky would be open for inspection."*** and did not amount to a statement for the supply of copies of unrelied documents.

25. *Thus, it is prayed that the Petition be dismissed.*

26. ***Written submissions*** have been filed on behalf of the Petitioner as well as the Respondent and the same have been perused.

Submissions Heard and Record Perused.

27. The Petitioner, by way of an Application under Section 208 CrPC read with Section 26(D) of SEBI Act, had sought certain documents including the *Investigation Report*, which formed basis for the Complaint. In compliance of Section 208 CrPC, all the documents filed along with the Complaint, were supplied to the Accused. However, the narrow controversy survives around the *Investigation Report*.

28. The core question which thus, seeks determination is the extent of the right of the Accused to be entitled to the disclosure of documents in a prosecution initiated by SEBI. To comprehend the contours of the controversy, it is pertinent to refer to PFUTP Regulations governing the Prosecution of the person under SEBI Act. Rule 9 to12 of the Regulation read as under:-

> *"9. The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority:*
> *Provided that the Investigating Authority may submit an interim report pending completion of investigations*

if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority."

29. Rule 10 of the Regulation reads as under:-

"10. The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation 11 and regulation 12 : Provided that the Board may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue directions under regulation 11: Provided further that the Board may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post decisional hearing to the persons concerned as expeditiously as possible."

30. Rule 11 of the Regulation reads as under:-

"11. (1) The Board may, without prejudice to the provisions contained in subsections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely:- (a) suspend the trading of the security found to be or prima facie found to be involved in fraudulent and unfair trade practice in a recognized stock exchange; (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities; (c) suspend any office-bearer of any

stock exchange or self-regulatory organization from holding such position; (d) impound and retain the proceeds or securities in respect of any transaction which is in violation or prima facie in violation of these regulations; (e) direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction; (f) require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner; (g) prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations; (h) direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the status quo ante.

(2) The Board shall issue a press release in respect of any final order passed under sub-regulation (1) in at least two newspapers of which one shall have nationwide circulation and shall also put the order on the website of the Board."

31. Rule 12 of the Regulation reads as under:-

*"**12.** (1) The Board may, without prejudice to the provisions contained in subsections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary : (a) issue a warning or censure (b) suspend the registration of the intermediary; or (c) cancel of the registration of the intermediary Provided that no final order of suspension or cancellation of an intermediary for violation of these regulations shall be passed unless the procedure specified in the regulations applicable to such intermediary under the Securities and Exchange Board of India (Procedure for 21 PART C Holding*

Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is complied with."

32. Regulation 9 provides that the Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a Report to the appointing authority. In Regulation 10, after *consideration of the Report* referred to in Regulation 9, if satisfied that there is a *violation* of these Regulations and after *giving a reasonable opportunity of hearing* to the persons concerned, the Board is empowered to either issue a direction or take action, as specified in Regulations 11 and 12.

33. The language of Regulation 9 and 10, is indicative that The words of Regulation 10 are that Board "*after consideration of the report referred to in Regulation 9*, if satisfied that there is a violation of the Regulations and after giving reasonable opportunity of hearing to the person concerned", takes action under Regulations 11 and 12. Therefore, the consideration of the Report of the Investigating Authority submitted under Regulation 9, is an *intrinsic component of the Board's satisfaction* for determining whether there is any violation of the Regulations.

34. In the case of *T. Takano* (supra), the identification of a purpose of disclosure of the relevant material is connected to three key purposes, which are:

(i) ***Reliability*** i.e. the information available with both the parties can aid the Courts in determining the truth of the contentions. The role of the Court is not in restricted to interpreting the provisions of law, but also to determine the veracity and truth of the allegations made thereunder. This function can be performed accurately only if both the parties have access to the

information and are given an opportunity to address arguments relating to the information.

(ii) ***Fair Trial***: Since the verdict of the Court has far-reaching repercussions on the life and liberty of an individual, it is only fair that there is legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings

(iii) ***Transparency and accountability***: The investigating agencies and the judicial institutions are held accountable through transparency and not opaqueness of proceedings. The principles of fairness and transparency of adjudicating proceedings are the cornerstones of the principle of open justice. This is the reason why adjudicating authorities are required to record its reasons for every Judgment or Order to be passed.

35. It denies the party concerned and the public at large, the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry. It was thus observed in *T. Takano* (supra) as under:-

> *"**29.** The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be sufficient if only the material relied on is disclosed. Such a rule of disclosure only holds nexus to the outcome and not the process.* ***Therefore, as a default rule, all relevant material must be disclosed."***

36. It was further observed in *T. Takano* (supra) that it would be contrary to the principles of natural justice, if the relevant part of the Investigation Report which pertains to the Appellant is not disclosed. He must have be given a reasonable opportunity of hearing, which postulates that such material, which has been taken into account under Regulation 10, must be disclosed to the Noticee.

37. ***The main contention*** raised by the Respondent is that the Investigation Report is essentially an ***intra-Department document*** and has no relevance to the enquiry to be conducted by the Regulatory Board under Regulation 10. In this context, it is firstly relevant to refer to the Judgment of *Natwar Singh* (supra) wherein the issue before the two-Judge Bench was whether a Noticee, who is served with a Show Cause Notice under Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 (*hereinafter referred to as 'the FEMA Rules, 2000"*), is entitled to demand all the documents in the possession of the Adjudicating Authority including those documents upon which no reliance has been placed, while issuing a Show Cause Notice as to why an enquiry should not be initiated against him.

38. In this Case, the Apex Court distinguished the *stage of adjudication* as distinct from *the initial stage* under Rule 4(1). At the stage of adjudication, all documents useful or relevant to the subject-matter have to be disclosed to the Noticee. However, it was noted that the Rules do not empower the Adjudicating Authority to straight away make any enquiry into the allegations of contravention against any person against whom the Complaint has been filed. *Rule 4 contemplat*es giving a *Show Cause Notice* as to why an enquiry should not be held. It is evident from the bare reading of this

Rule, that the Show Cause Notice is to be issued not for the purpose of making any adjudication into alleged contravention, but for the purpose of deciding whether the enquiry should be held or not. Even every such Notice is required to indicate the nature of controversy alleged to have been committed by such person.

39. It was further observed that the *right to fair hearing* is a guaranteed right. A person may be allowed to inspect the file and take the notes. Whatever mode is used, the f*undamental principle remains that nothing should be used against the person, which has not been brought to his notice.* If the relevant material is not disclosed to a party, there is *prima facie* unfairness, irrespective of whether the material in question arose before, during or after the hearing.

40. The law is well-settled that if prejudicial allegations are being made against the person, he must be given particulars of that, before hearing so that he can prepare the defence.

41. However, *Natwar Singh* (supra), also identified various exceptions to this general Rule by observing that disclosure of evidential material *which may inflict serious harm on a person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest as it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime,* might make it impossible to obtain certain clauses of essential information at all, in the future.

42. The concept of fairness may require the Adjudicating Authority to furnish the copies of the documents upon which reliance has been placed by him to issue Show Cause Notice requiring a notice to explain why an inquiry under Section 16 of the Act, should not be initiated. To this extent, the

principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. The Noticee is always entitled to satisfy the Adjudicating Authority that those very documents upon which reliance has been placed, do not make out even a prima facie case requiring any further inquiry. *Therefore, all such documents relied on by the Authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him.*

43. Therefore, it was held in the case of *Natwar Singh* (supra), that the documents and the evidence relied upon by the Adjudicatory Authority, must be made available to the Accused, to ensure reasonable opportunity of being heard and also to ensure the fairness of the procedure. The duty of adequate disclosure is only an *additional procedural safeguard* in order to ensure the attainment of the fairness. A distinction was drawn between the stage of enquiry under Rule 4(1) and the final adjudication and it was observed that at the stage of Show Cause Notice, it is sufficient that only documents that are relied upon are disclosed.

44. The logic behind such disclosure is the likelihood of being influenced by the documents referred in the enquiry whether relied or not. It was observed in the case of *Khudiram Das vs. State of West Bengal* (supra) in the context of preventive detection, that it can hardly be disputed that if there was before the District Magistrate material against the detenu, which is of a highly damaging character and has nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming part of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at the subjective satisfaction and the Court would

refuse to accept the bald statement of the District Magistrate that he did not take any material into account and excluded it from consideration. The human mind does not function in compartments.

45. When it receives impressions from different sources, it is the totality of the impressions, which goes into the making of the decision. It is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision. Nor is it any easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision-making process.

46. Therefore, where there is material before the District Magistrate, which is of the character as would have reasonable probability to influence the decision of a reasonable man, the Court would be reluctant to accept the *ipse dixit* of the District Magistrate that he was no so influenced and a fortiori, if such material is not disclosed to the detenu, the Order of detention would be vitiated.

47. The principle that the material that may influence the decision of a quasi-judicial authority to award a penalty, must be disclosed to the delinquent, was affirmed by the Apex Court in the Case of *Union of India* v *Mohd. Ramzan Khan*, (1991) 1 SCC 588.

48. This principle was again reaffirmed by the Constitution Bench of the Apex Court in the Case of *ECIL* (supra). It was held that the reason why the right to receive the Report of the enquiry officer is considered as an essential part of the reasonable opportunity at the first stage and also a principle of natural justice, is that the findings recorded by the Enquiry Officer forms an important material before the Disciplinary Authority, which along with the evidence, is taken into consideration by it to come to the conclusion. The

principles of natural justice require that the employee' should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee, to consider the findings recorded by a third party like an enquiry officer, without giving an opportunity to reply.

49. Although the Disciplinary Authority is required to arrive at its own findings on the basis of the evidence, but it is equally true that the Disciplinary Authority takes into consideration the findings recorded by the Enquiry Officer along with the evidence on record. *In the circumstances, the findings of the Enquiry Officer do constitute an important material, which is likely to influence the conclusions of the Disciplinary Authority and therefore, the same must be made available to the employee.*

50. In the case of *T. Takano* (supra) while referring to the aforesaid Judgments, it was concluded that a quasi-judicial authority, has to disclose the material that is to be relied upon, at the stage of adjudication. Mere assertions of the Authority that it has not relied on certain material, would not exempt it of its liability to disclose such material, if it is relevant and has nexus to the action taken by the Authority. The *actual test is whether the material is relevant for the purpose of adjudication*. It also has to be considered that whether non-disclosure of such documents as resulted in *prejudice to the person*.

51. It was further held in *T. Takano* (supra) in respect of the Regulation 9 of PFUTP Regulations, that it required the Investigating Authority to submit the Report, after completion of investigations, to the Adjudicating Authority for it to decide whether there is a *prima facie* ground to initiate enforcement

proceedings. The Investigation Report between the Officers investigating the matter and Authority is in the nature of *inter-departmental communication.*

52. However, since it is the basis of satisfaction of the enforcement authority for determination of alleged violation, it is necessarily required to be provided to the person. Since it meets the test of not only being relevant but also of having nexus with the Order and it is the basis for the decision of the Authority, it would be contrary to assert that the Investigation Report is merely an internal document, the disclosure of which is not warranted. Even in the language of Regulation 10, the Board forms an opinion regarding the violation of Regulations after considering the Investigation Report prepared under Regulation 9.

53. The only exception recognised is that those portions of the Enquiry Report, which involve information on third parties or confidential information on the securities market, may not be disclosed and may be **redacted** while the remaining Investigation Report, be made available to the person. It was thus, held that the Investigation Report submitted under Regulation 9 to the Board in terms of the Regulation 10, is not merely an internal document but is the basis on which opinion is formed by the Board. Therefore, the same is required to be provided to the person.

54. In the light of the aforesaid decision of *T. Takano* (supra), it is evident that the Investigation Report prepared under Regulation 9, is the basis on which the Board decides whether there is violation and proceeds under Order 10, to take further action in terms of Regulations 11 and 12. It is a document which is relevant and essential for the Petitioner, to prepare their defence and to have a fair hearing.

Conclusion:

55. It is, therefore, directed that the Investigating Report be provided to the Petitioner, in accordance with law, by the Respondents.

56. Accordingly, the Petition is allowed and disposed of accordingly, along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 17, 2025/RS