

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 822/2006 & CrI M A 1326/2006

Date of order: 26th February, 2008

BANI ARORA Petitioner

Through Mr. P.K. Sharma, Advocate

versus

C.B.I & ANR Respondents

Through Mr. Harish Gulati with
Mr. A. Malhotra, Advocates

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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| 1. Whether Reporters of local papers may be allowed to see the order? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J (open court)

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the Petitioner seeking the quashing of the FIR No. RC 42(A)/97 DLI dated 2nd June, 1997 under Sections 120B read with Sections 420, 467 and 471 IPC and Section 13 (2) and 13(1)(d) of Prevention of Corruption Act, 1988 (PCA 1988) registered at P.S. ACB, CBI, New Delhi and all proceedings arising therefrom pending in the court of learned Special Judge, Tis Hazari Courts, Delhi.

2. The allegation in the complaint on the basis of which the FIR was registered was that the co-accused Shri S.S. Wadhwa while working as Chief Manager of Oriental Bank of Commerce at its Saket Branch, New Delhi during the period 1993-96 conspired with one Shri N.K. Arora with an intent to provide wrongful gain to Shri N.K. Arora detrimental to the Bank's interest. The Petitioner Smt. Bani Arora, the

wife of Shri N.K. Arora, is a Director of Muradabad Builder, M/s. Growgold Exim & Leasing Limited and also the proprietor of M/s. Corporate Growth Management Services. It is alleged that she had acted in conspiracy with the said accused. Therefore, she has been charged with the offences mentioned including Section 13 (2) and 13(1)(d) PCA, 1988. Consequent to the charge sheet having been filed, the trial court passed an order framing charges. The case is pending trial.

3. Learned counsel for the Petitioner first submits that since the losses suffered by the Bank have been compensated in their entirety to the Bank, the criminal proceedings should be quashed. He relies upon the orders passed by this Court in *Ajay Kumar v. State* 2006 (2) JCC 1073, *Ram Prakash v. State* 2007 (1) JCC 649, *Neelu Gupta v. State* 2007 (3) JCC 1938 and the order dated 18th September, 2003 passed by this Court in Crl. M (M) 945 of 2002 (*Naresh Chandra & Anr. v. CBI*) in support of his proposition.

4. Secondly, he submits that notwithstanding the fact against the order framing charges no revision petition has been filed, this Court should nevertheless exercise its powers under Section 482 CrPC to quash the criminal proceedings since according to him there is nothing in the charge sheet that can connect the Petitioner with the offences. The petitioner was not an active Director of the company in question and was merely lending her name to the transactions. Accordingly, he submits that on this ground also the criminal proceedings should be quashed.

5. On behalf of the CBI, Mr. Harish Gulati, learned counsel refers to the order

dated 17th September, 2007 passed by this Court in CrI M C No. 589 of 2005 (*Pawan Jaggi v. State*) and an order dated January 15, 2008 in CrI M (M) No. 5480 of 2005 (*Jugal Kishore Sharma v. State*) to oppose the plea for quashing. He refers to the order passed by the Supreme Court in *Inspector of Police, CBI v. B. Raja Gopal* 2003 SCC (CrI) 1238 wherein it has been observed that mere repayment of money cannot constitute a ground for quashing the criminal proceedings in a case of this nature.

6. The cases in which the orders of this Court referred to by the learned counsel for the Petitioner were passed turned on their own facts. In *Ajay Kumar v. State* the respondent complainant was a private party and therefore, this Court proceeded to quash the proceedings on the basis of settlement arrived at between the Petitioners and the complainant. Further in none of the orders is any objection by the State to the quashing of the proceedings noticed. This is the case in *Ram Prakash v. State* and *Neelu Gupta v. State*. On the other hand the decision of the Supreme Court in *B. Raja Gopal* has been followed by this Court in *Jugal Kishore Sharma* where a similar plea for quashing of the criminal proceedings in view of settlement arrived at between the accused and the complainant was negatived. In the said decision, after discussing the decisions of the Supreme Court in *B. Raja Gopal* and *Central Bureau of Investigation, SPE, SIU (X) New Delhi v. Duncans Agro Industries, Calcutta JT 1996 (6) SC 227*, this Court came to the following conclusion:

“16. This court cannot be unmindful of the fact that in criminal cases there are only two parties, viz., the accused and the State. When one of the parties i.e. State is not agreeable to the quashing of the proceedings, and the evidence that has been gathered supports the continuation of the trial for the offences of forgery and use of forged documents under Sections 468 and 471 IPC respectively, it would not be appropriate for this Court to

exercise its jurisdiction under Section 482 CrPC to quash the criminal proceedings only on the ground that the accused and the complainant have settled their disputes. While each case has been to be examined for its peculiar facts, the larger interests of justice and the rule of law will also have to be borne in mind. The offence of forgery is not merely against the party who is misled as a result of the use of such forged document but against the State as such.”

7. In the present case the charges are not only under Sections 468 and 471 IPC but under the PCA as well. Therefore as far as the first ground is concerned, there is no merit in the contention that the petitioner having repaid the monies, the criminal proceedings should be quashed.

8. As regards the role of the Petitioner in the case and whether the prosecution has been able to bring sufficient material on record to prove her guilt, the present petition under Section 482CrPC being of a limited scope cannot permit the determination of such question. This can be appropriately considered after the evidence has been recorded at the trial.

9. For the aforementioned reasons, this Court does not find any ground to interfere with the criminal proceedings in exercise of its powers under Section 482 CrPC.

10. The petition and the pending application are dismissed with no orders as to costs.

S. MURALIDHAR, J.

FEBRUARY 26, 2008

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