

IN THE HIGH COURT OF DELHI

Crl.M.C. No.348/2009 & Crl.M.A. No.1317/2009

Date of decision: 3rd August, 2009

O.P. Bhatia ... Petitioner
through: Mr.Ashok Bhalla, Advocate

VERSUS

The State of NCT & Ors. Respondents
through: Mr. Anindya Malhotra,
Adv. & Mr. Harish Gulati,
Adv. for the CBI.
Mr. Rajat Sharma, Adv.
for the respondent/Bank.
Mr. N.A. Khan, Adv. for
Respondent No.3.

WITH

Crl.M.C. No.501/2009 & Crl.M.A.1887/2009

O.P. Bhatia ... Petitioner
through: Mr.Ashok Bhalla, Advocate

VERSUS

C.B.I. & Ors.
....Respondents
through: Mr. Anindya Malhotra,
Adv. & Mr. Harish Gulati,
Adv. for the CBI.
Mr. Rajat Sharma, Adv.
for the respondent/Bank.
Mr. N.A. Khan, Adv. for
Respondent No.3.

AND

Crl.M.C. No.559/2009 & Crl.M.A.2105/2009

O.P. Bhatia ... Petitioner
through: Mr.Ashok Bhalla, Advocate

VERSUS

C.B.I. & Ors.
....Respondents
through: Mr. Anindya Malhotra,
Adv. & Mr. Harish Gulati,
Adv. for the CBI.
Mr. Rajat Sharma, Adv.
for the respondent/Bank.
Mr. N.A. Khan, Adv. for
Respondent No.3.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J

1. By these petitions under Section 482 of the Code of Criminal procedure, the petitioner prays for quashing of three charge sheets filed by the Central Bureau of Investigation pursuant to cases registered alleging commission of various offences under the Indian Penal Code and the Prevention of Corruption Act, 1988.

2. The petitioner herein at the relevant time in 1990, was working as a manager in the New Bank of India and was posted in its East of Kailash branch. This bank was

amalgamated with the Punjab National Bank in terms of the Government of India notification dated 4th September, 1993.

3. On 6th April, 1990, the petitioner is alleged to have sanctioned the following three loans

- (i) loan for the amount of Rs.1,00,000/- to respondent no.3 in Crl.M.C. No.348/2009;
- (ii) loan for the amount of Rs.1,75,000/- to Shri G.K. Kandil, respondent no.3 in Crl.M.C. No.501/2009; and
- (iii) between 2nd April, 1990 & 23rd April, 1990 sanctioned loan amount totaling Rs.8,47,675/- in favour of Shri Ramesh Kumar Arora, respondent no.3 in Crl.M.C. No.559/2009.

4. It is the case of the prosecution that so far as loan at serial nos.1 & 2 are concerned, it is further alleged that Shri O.P. Bhatia, petitioner herein placed carbon copy of notices under Section 38 of the Insurance Act, 1938 and the forwarding letters addressed to unit no.11-D of the Life Insurance Corporation on record creating false evidence of dispatch of the notices and the said letters even though they were never sent. The allegation is that thereby the record of the bank was falsified.

5. So far as the loan at serial no.3 is concerned, it is further alleged that a loan of Rs.50,000/- was sanctioned on 2nd April, 1990 against security of six LIC policies having the

surrender value of Rs.65,000/-; loan of Rs.1.60 lakhs was sanctioned on 4th April, 1990 by the petitioner against security of ten LIC policies having surrender value of Rs.1.78 lakhs and Rs.3,40,000/- of Rs.85,000/- each were sanctioned on 16th April, 1990 by petitioner against security of four policies having the surrender value of Rs.94,500/-; Rs.94,700/-; Rs.95,000/- and Rs.95,100/- respectively. A loan of Rs.2,00,000- was sanctioned on 8th April, 1990 without mentioning any LIC policy while a loan of Rs.97,600/- was sanctioned on 23rd April, 1990 without mentioning any LIC policy.

However, not a single LIC policy was taken by the petitioner from the respondent no.3 nor were any of the policies assigned in favour of the bank as security. Not a single policy was sent to the LIC for registration of assignment and false documents were placed on record. Earlier, Indira Vikas Patras were mentioned on the ledger sheet which were later altered to read as LIC policy for the purposes of sanction of loan.

6. In this background, the following cases were registered by the Central Bureau of Investigation:-

(a) In respect of transactions at serial no.(i) in para 3, an FIR being RC No.2(S)/92-DLI was registered by the Central

Bureau of Investigation on 1st January, 1992 and a charge-sheet was filed by the investigating agency in the year 1993.

(b) So far as the transactions at serial no.(ii) in para 3 are concerned, the Central Bureau of Investigation registered FIR being RC No.2(S)/92-DLI on 1st January, 1992. Chargesheet was filed in 1993 and upon hearing counsel for the parties and charges stand framed on 7th September, 1999.

(c) So far as the transactions at serial no.(iii) in para 3 are concerned, an FIR being RC No.2(S)/92-DLI was registered by the Central Bureau of Investigation being RC No.2(S)/92-DLI again on 1st January, 1992. Chargesheet was filed in the case in 1993 and charges were framed by the court on 9th February, 2000.

7. In this background, the petitioner filed three petitions assailing the filing of the three chargesheets dated 1st January, 1992 by three separate petitions. So far as the transactions noted at serial no.(i) are concerned, the petitioner filed CrI.M.C. No.348/2009 under Section 482 of the Code of Criminal Procedure making a prayer for quashing of the charge-sheet no.16/1993 in RC No.2(S)/92-DLI dated 1st January, 1992 primarily on the ground that the same stood compounded.

On the same grounds, the petitioner filed CrI.M.C. No.501/2009 in respect of the transactions at serial no.2 above being a petition under Section 482 of the Cr.P.C. inter alia making a prayer for quashing of the charge-sheet no.15/1993 in RC No.2(S)/92-DLI dated 1st January, 1992 primarily on the ground that the same stood compounded on the same grounds.

A third petition being CrI.M.C. No.559/2009 was filed under Section 482 of the Code of Criminal Procedure praying for quashing of the charge-sheet no.12/1993 in RC No.2(S)/92-DLI dated 1st January, 1992 again mainly on the ground that the same stood compounded on the same grounds.

8. As per the chargesheets which have been filed on record, it is stated that the investigation has revealed that the discretionary powers for sanction of advance against security of life insurance policies which were to the extent of Rs.50,000/- which had earlier been conferred on the branch manager of Scale II, stood withdrawn vide letter dated 1st January, 1989 from the regional office and the head office circular no.LD/116/89 dated 27th November, 1989. The submission is that as on the date of the sanction of the above loans by the petitioner, he had no power or authority to do so. The chargesheet further states that no loan

application or loan was obtained in the cases and the documents taken in the cases were not complete. The petitioner is also alleged to have destroyed the register where details of the loan documents including the LIC policies are maintained to avoid detection to his fraudulent acts. Other illegal acts including making of the endorsement of false statements on the bank records as well as manipulation of ledger sheets of the loan etc., are attributed to the petitioner. In this background, in all three cases it was held that the petitioner had entered into criminal conspiracies with the respondent no.3 in each of the case in the year 1990 and committed offences punishable under Section 120-B read with Sections 420, 467, 468, 471 and 477-A of IPC and Section 13(2) read with Section 13(I)(D) of the Prevention of Corruption Act, 1988 and substantive offences thereunder. For the reason that the petitioner stood dismissed from bank service, it was observed that he was no more a public servant and hence sanction for his prosecution was not required from his department.

9. In each of the cases, it is urged on behalf of the petitioner that the private respondent no.3 entered into a settlement with the Punjab National Bank. So far as Shri O.P. Kedia, respondent no.3 in CrI.M.C. No.348/2009 is concerned, it is alleged that he has repaid the entire loan

amount with interest by the 28th March, 1994 by depositing a total amount of Rs.2,03,000/- whereupon the Punjab National Bank issued him a certificate with regard to adjustment of his account. It was urged on behalf of the petitioner that in view of the payment of the loan amount by and respondent no.3, both the petitioner and the respondent no. 3 would stand absolved of the alleged offences committed by them.

10. This contention on behalf of the petitioner was rejected by the learned Special Judge by the order dated 11th August, 1999 while directing framing of charges against the petitioner and the respondent no.3. As a result, on 7th September, 1999, the learned Special Judge framed charges against the petitioner under Section 120-B read with Section 477-A of Indian Penal Code and Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act against the petitioner and the respondent no.3. It was in this background that the case seeking quashing of the proceedings has been filed.

11. So far as the transaction with Shri G.K. Kandil respondent no. 3 in CrI.M.C. No. 501/2009 is concerned, he is alleged to have repaid the entire loan amount of Rs.1.75 lakhs with interest by depositing an amount of Rs.3,28,815/- with the Punjab National Bank between 12th May, 1998 and 12th November, 1998 whereupon the Punjab National Bank

issued a certificate dated 12th November, 1998 to the effect that the term loan account of the respondent no.3 Shri G.K. Kandil against security of life insurance also had been fully paid and adjusted and that bank had no lien on this account. In this case also, the learned Special Judge by an order dated 11th August, 1999 rejected the contentions of the bank to the effect that the mere payment by the respondent no.3 would not absolve the petitioner and the respondent no.3 of the alleged offence committed by them. Consequently, on 11th August, 1999, an order was passed directing framing of charges against the petitioner as well as respondent no.3.

As a result, the learned Special Judge on 7th September, 1999 framed charges under Section 120-B read with Section 477-A and Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act against the petitioner and respondent no.3 in these facts.

Crl.M.Case No.501/2009 has been filed thereafter assailing the criminal proceedings and framing of charges.

12. So far as the transactions with Shri Ramesh Kumar Arora, respondent no.3 in Crl.M.C. No.559/2009 are concerned, the petitioner has urged that he entered into a settlement with the respondent no.3 and paid an amount of Rs.9,00,000/- on different dates pursuant to his compromise with the bank resulting in issuance of a certificate dated 4th

February, 2008 by the Punjab National Bank to the effect that the respondent no.3 had paid the said amount towards settlement of his account in full and final and that nothing was due from the party.

It deserves to be noticed that the Punjab National Bank had noted that it had adjusted this account sacrificing a sum of Rs.6,84,466/-.

13. Mr. Ashok Bhalla, learned counsel for the petitioner has urged that the case against the petitioner at its worst is that he had sanctioned a loan without obtaining collateral security/life insurance policy. The submission is that however, the respondent no.3 in each of the cases had paid the entire compromise amount on the afore-noticed dates which stood duly certified by the bank. It is urged by learned counsel that in view of the settlement with the bank and the verification of the payments, continuation of the criminal prosecution is an exercise in futility.

14. My attention is also drawn by learned counsel for the petitioner to the pronouncements of the Apex Court reported at ***JT 2008 (9) SC 252 Mohd. Abdul Sufan Laskar & Ors. Vs. State of Assam; JT 2008 (10) SC 506 Manoj & Anr.Vs. State of Madhya Pradesh & JT 1996 (6) SC 227 Central Bureau of Investigation SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Limited, Calcutta.***

Reliance is also placed on the pronouncement of this court reported at **132 (2006) DLT 85 Alpana Das Vs. CBI.**

15. Learned counsel for the petitioner urges in the judgment dated 5th July, 1999 passed in Civil Writ No.2895/1997 entitled **R.B. Singh Vs. Punjab National Bank & Ors.** in departmental proceedings, this court has taken a lenient view. So far as this pronouncement is concerned, in this case the charge against the petitioner in the disciplinary proceedings is similar to the charge against the present petitioner in the criminal prosecution. The finding of the culpability of the writ petitioner by the disciplinary authority was sustained and only the punishment of removal from service was modified to compulsory retirement. This pronouncement was rendered in the facts and circumstances of the case and cannot guide adjudication in the present case. The case, therefore does not constitute a judicial precedent in support of the proposition that in the event of a settlement, in a case involving non-compoundable offences, quashing of the criminal prosecution has to automatically follow. It may also be noted that there is no support to the petitioner's prayer of quashing of the prosecutions by either to Punjab National Bank or the Central Bureau of Investigation and the petition is being opposed by both.

16. The petitioner places reliance on the pronouncement of the Apex Court reported at **2008 (15) SCALE 483 Puttaswamy Vs. State of Karnataka & Anr.** wherein in the facts and circumstances, the appellant was convicted by the trial court for an offence punishable under Section 279 & 304 A of the Indian Penal Code for causing death of a seven years old girl on account of rash and negligent driving. The sentence so far as the conviction under Section 279 of the Indian Penal Code was concerned, was set aside by the High Court in view of the compromise arrived at between the parties. The court was concerned with the conviction under Section 304-A for which the appellant was sentenced to undergo six months simple imprisonment along with fine of Rs.2,000/-. Having regard to the facts of the case, the court was of the view that this case was one of those cases where instead of confining the appellant in jail, interest of justice would be better served if he is made to compensate the family of the deceased on account of the loss by them. Accordingly, while maintaining the appellant's conviction under Sections 279 and 304A of the IPC, notwithstanding the agreement arrived at between the parties, the court increased the amount of fine from Rs.2,000/- to Rs.20,000/- to be paid by the appellant to the parents of the deceased and reduced the sentence of imprisonment to the period

already undergone subject to payment of fine. I fail to see as to how this judgment assists the petitioner in the present case in any manner.

17. So far as the pronouncement in ***JT 2008 (9) SC 192 Nikhil Merchant Vs. CBI & Anr.*** is concerned, the challenge was laid to the criminal prosecution by a private party who has stood as guarantee to the loan transaction. In this case, the disputes between the Company and the Bank were set at rest on the basis of the compromise arrived at by them whereunder the dues of the bank were cleared. In this case, clause 11 of the consent terms stated that since the subject matter of the dispute had been settled neither party has any claim against the other and the parties had withdrawn all allegations and counter allegations made against each other. No bank official was before the court against whom charges had been laid under the Prevention of Corruption Act. The court held that the facts of the case warranted interference in the proceedings. The Apex Court recorded satisfaction that the case before it was a fit case where technicalities should not be allowed to stand in the way in quashing criminal proceedings since continuance of the same after settlement would be futile exercise. Perusal of the pronouncement in ***2008 (14) SCALE 44 Manoj Sharma Vs. State & Ors*** reflects the same position.

18. In ***JT 2008 (9) SC 252 Mohd. Abdul Sufan Laskar & Ors. Vs. State of Assam***, it was observed that the offences punishable under Section 324 IPC were compoundable with the leave of the court as per the statutory provision which existed prior to the Criminal Procedure (Amendment) Act, 2005. Inasmuch as the offence before the court under Section 324 of the IPC related to a period before the Criminal Procedure (Amendment) Act, 2005 came into force, the court permitted compounding of the offence.

19. So far as the pronouncement in ***JT 2008 (10) SC 506 Manoj & Anr. Vs. State of Madhya Pradesh*** is concerned, the court observed that the complainant and the accused persons were resident of the same village and voluntarily desired to compound the offence. The parties had compromised the matter with the intervention of the village Panchayat and the complainant had no grievance against the accused persons. Both parties filed affidavits before the Supreme Court after the incident. They had developed family relations and wished to reside peacefully in the village in future without their any kind of disruption in their lives. The court was satisfied that the complainant had voluntarily desired to compound the offence with the appellant for sufficient and genuine reasons stated in the affidavit and it

was therefore held that the compounding was legal and valid.

20. Before this court, so far as the facts of the present case are concerned, the petitioner is not a party to any settlement entered into between the bank and the beneficiary of the financial transaction. The bank has not filed or joined in filing a petition seeking quashing of the criminal prosecutions. Furthermore, the allegations against the petitioner and the respondent no. 3 are not the same. There are allegations of creation of fabricated records to hoodwink the bank in these three cases. For all these reasons, no parity can be drawn between the case in hand and the pronouncement in ***Manoj & Anr. Vs. State of Madhya Pradesh (Supra)***.

21. Mr. Bhalla, learned counsel has placed strong reliance on yet another judicial pronouncement of the Apex Court which is reported at ***JT 1996 (6) SC 227 Central Bureau of Investigation SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Limited, Calcutta***. Perusal of the pronouncement would show that in para 26, the court has observed that for the purposes of quashing the complaint, it is necessary for the court only to consider whether the allegations in the complaint prima facie make out an offence or not; that it was not necessary to scrutinise the allegations

for the purposes of testing whether such allegations are likely to be upheld in the trial; any action by way of quashing the complaint is an action to be taken at the threshold before evidence is laid in support of the complaint. It was on a consideration of the facts of the case the Apex Court arrived at a conclusion that there was enough justification for the court to hold that the case was basically a matter of civil dispute. Again, the challenge was made by the private party arrayed before the court and not persons against whom there were serious allegations making out offences under Prevention of Corruption Act.

22. Again in **132 (2006) DLT 85, Alpana Das Vs. CBI**, the court has observed that at the stage of framing of charges, the court is not required to marshal evidence and it is only on the basis of grave suspicion alone that charges could be framed.

23. Mr. Anindya Malhotra, learned counsel representing the respondent has drawn my attention to cases wherein similar allegations against the accused persons and identical submissions have been considered by the Apex Court. In a judgment dated **2009 (5) SCALE 471 Smt. Rumi Dhar Vs. State of West Bengal and Anr.**, the Apex Court held that it would not direct quashing of a case involving crime against society. The court observed that the Special Judge as well as

the High Court had found that a prima facie case was made out against the appellant for framing of charge. The court has considered at length the observations of the learned Special Judge in its order noted that merely because payment had been made to the bank, the accused would not stand exonerated. The court was of the view that it would be a question of trial whether there was any criminal intention on the part of the person accused in the crime which was to be inferred from the evidence to be adduced by the prosecution.

24. An argument similar to the argument laid by Mr. Bhalla, before this court was placed before and considered by the Apex Court in the pronouncement reported at ***JT 2009 (5) SC 171 State of Madhya Pradesh Vs. Rameshwar & Ors.*** It was urged that members of a loan committee had limited role to play in sanction of loan since the ground work is prepared by other officers who recommend the grant of loans. On behalf of the accused persons, it was also urged that the dispute was mainly of a civil nature and therefore commencement of the criminal prosecution is unwarranted. In one of the cases considered by the court, it was also urged that the loan which had been advanced had been repaid with interest and consequently the very foundation of the charges was nonest and the prosecution untenable. The

court did not accept these submissions for the reason that a conspiracy to cheat the bank had been alleged.

25. My attention has been drawn to a pronouncement of this court dated 21st May, 2009 in CrI.M.C. No.3842/2008 **Mr. Sushil Suri Vs. CBI & Anr.** wherein also a similar submission based on repayment of a loan taken from the bank was placed before this court and it was urged that the criminal prosecution was required to be quashed.

The court considered several other pronouncements [Ref: (1983) 1 SCC 215 Vishwa Nath Vs. State of J & K & 2005 VII AD (Delhi) 119 Rashmi Agarwal & Ors. Vs. Central Bureau of Investigation] wherein the courts had observed that refund of the amount after detection of the offence does not absolve a person of the offence with which he was charged.

26. It would be useful to advert to certain recent pronouncements of the Apex Court where the Court had occasion to consider allegations of serious offences including forgery, fabrication of documents using the same as genuine by private respondents in conspiracy with officials of the banks with the object of cheating the bank in the matter of recommending the sanctioning/disbursing huge credit and other financial facilities. A pronouncement dated **15th May, 2009** of the Apex Court in **CrI.Appeal Nos.1080-**

1085/2009 Central Bureau of Investigation Vs. A.

Ravishankar Prasad & Ors., the Apex Court has

considered and held thus:-

“42. 42. When we apply the settled legal position to the facts of this case it is not possible to conclude that the complaint and charge-sheet prima facie do not constitute any offence against the respondents. It is also not possible to conclude that material on record taken on face value make out no case under Section [120B](#) read with Section [420](#) IPC against the respondents. Prima facie, we are of the opinion that this is one case where adequate material is available on record to proceed against the respondents.

43. In our considered view it was extremely unfortunate that the High Court in the impugned judgment has erroneously invoked inherent power of the court under Section [482](#) of the Code of Criminal Procedure. The High Court ought to have considered the entire material available to establish a case against the respondents under Section [120B](#) read with Section [420](#) IPC. It is significant that the respondents and the other bank officials share the charges under Section [120B](#) read with Section [420](#) IPC. Quashing the charges against the respondents would also have very serious repercussions on the pending cases against the other bank officials.

44. In four cases, 92 witnesses have already been examined. The trial of the case was at the advanced stage. At this stage, the High Court has seriously erred in quashing the charges against respondent nos.1 & 2.

45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in

proper prospective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court under Section 484 Cr.P.C., the trial of this case could not be completed and concluded.

46. Before parting with the case we would like to observe that mere re-payment of loan under a settlement cannot exempt the accused from the criminal proceeding in the facts of this case.”

27. A similar argument was rejected by this court in the order dated 1st May, 2009 passed in CrI.M.C. No.588/2009 **Rajiv Khanna Vs. State** and judgment reported at **MANU/DE/0848/2008 Devender Singh Vs. State & Anr.** and rejected the plea for quashing the criminal prosecution based on a settlement.

28. The judgments relied upon by the petitioner therefore would not constitute the judicial precedent in support of the absolute proposition that in the event of a settlement in a case involving non-compoundable offences quashing of the criminal prosecution has to automatically follow.

29. The allegations against the present petitioner are of serious nature. He was in a position of authority in the bank and it is alleged that this position has been utilized by him to facilitate sanction of loan for which he had no authority to do so. Not only this, serious allegations of fabrication and tampering of records have been revealed. Important

documentary evidence is alleged to have been removed and destroyed to prevent detection of the offence. Undoubtedly, all these allegations are to be tested by the trial court which has recorded the evidence. It may also be noted that there is no support to the prayer of quashing by either to Punjab National Bank or the Central Bureau of Investigation and the petition is being opposed by both.

There can be no manner of doubt that the present cases allege serious offences against the society. There is therefore no justification for holding that the criminal prosecution is liable to be quashed. These cases do not call any interference by the court at this stage.

As a result of the above discussion, these petitions are dismissed.

It may be clarified that the trial court shall proceed in the matters uninfluenced from any observation made in the present order inasmuch as there is no expression of opinion on the merits of the allegations against the petitioner.

August 03, 2009
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Gita Mittal, J.