

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

+ **W.P.(CRL.) 727/2008**

% Date of reserve: 26.03.2009
Date of decision: 06.04.2009

PUNISH JINDAL ... Petitioner
Through: Mr. Sanjay Abbot, adv.

Versus

STATE & ORS. ... Respondents
Through: Mr. Vikas Pahwa, Additional
Standing Counsel for the State with SI
Shalender Singh, EOW Cell.
Ms. Rashmi Chopra, adv. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. This is a petition filed by the petitioner for quashing the FIR No.17/2008 registered at P.S. Economic Offences Wing under Sections 120B/408/420/467/468/471/477A IPC on a complaint filed by respondents No. 2 and 3 partners of M/s Elixir Web Solutions who after taking their internal audit found that the petitioner was siphoning off money from the company's account by committing forgery and by opening bogus accounts in different names from where money was withdrawn from time to time. It has been submitted before this Court that the parties have entered into a compromise and on the basis of a

compromise the entire amount which has been siphoned away has been returned by the petitioner. A sum of Rs.10,00,000/- were paid by the petitioner when a Memorandum of Understanding was entered into between the parties on 01.02.2008 and the balance amount was paid on 22.05.2008 which was to the tune of Rs.46,47,535/-. As such it is submitted that once the parties have entered into a compromise and the respondents No. 2 and 3 who are the complainants have no objection to the dismissal of the complaint, no fruitful purpose will be served in continuing the proceedings. In fact, the parties have also made a statement before this Court on 26.03.2009 whereby the complainant, namely, Mr. Vipul Prakash and Mr. Mohit Sareen have made a statement that they have sorted out the differences between the petitioner and does not want to pursue their complaint which is the basis of recording of the said FIR. The complainants have been identified by the investigating officers of this case.

2. Learned APP has opposed the compromise. It is submitted in the status report that:

- a) That petitioner, Punish Jindal joined the firm as a Finance Manager. As per the allegation leveled by the complainant and another employee Shobit Aggarwal was hand in glove with petitioner. Bank statement revealed that money was illegally transferred in his account and he also received cash from the petitioner. He also collected money in the name of other persons namely Amjad Tahir, Arnima Gupta and Nitesh Kumar, who were not employees of the firm
- b) That during investigation, account opening form of Shobit Aggarwal was collected from ICICI Bank, Nehru Place, New

Delhi along with statement of account. From the form submitted by ICICI Bank, it was found that account was opened on the basis of bogus signature of the complainant. Further it was revealed that most of the amount was withdrawn as cash by the account holder by way of ATM and yourself cheques and also some amount was transferred to other accounts. Other than salary, a sum of Rs.6.50 lacs was found credited in this account, which was misappropriated and thereby caused wrongful loss to the complainant's firm.

- c) That during the investigation it came to knowledge that the petitioner had opened the bogus salary accounts in various branches of ICICI Bank in the name of his father, brother, wife and other relatives who were not employees of the complainant's firm.
- d) That during investigation complainant filed his subsequent complaint amending his earlier complaint with regard to the amount misappropriated by the accused persons are as under:-

Sn.	Name	A/c No.	Amount
1.	Punish Jindal	629401120046	2,04.298
2.	Shibhit Aggarwal	629401515821	69,230
3.	Amjad Tahir	4601506297	21,66,702
4.	Arnima Gupta	4601506275	17,29,740
5.	Nitesh Kumar	629401513489	14,77,359
			56,47,535

- e) That it is submitted that the complainant withdrew their

complaint against Shobhit Aggarwal. The internal investigation by the firm, reveals that he was employee of the said firm and the money in his account was the salary, which he used to be paid as an employee of the firm.

- f) That the documents collected from the bank have been sent to Govt. Examination Question Documents (GEQD) Kolkata and a report in this regard is still awaited.
- g) That the opinion of GEQD, Kolkatta confirms that the signatures on the account opening forms are found to be forged, then offence u/s 468 would be made out, which is non-bailable and non-compoundable with imprisonment for 7 years.

3. As such it is submitted that since in this case the petitioner is guilty of committing forgery of huge amount, the prayer made by the petitioner should not be accepted as it is a serious matter and involves commission of forgery and fraud not only on the respondents but even on public sector banks.

4. However, the learned counsel appearing for the petitioner relied upon a judgment of the Supreme Court in Nikhil Merchant Vs. Central Bureau of Investigation and Anr. JT 2008 (9) SC 192 where in similar kind of case, it was observed:

4. Consequent upon the compromise of the suit and having regard to the contents of Clause 11 of the consent terms, the appellant herein filed an application for discharge from the criminal complaint, in respect of which charge sheet had been filed by the CBI. The said application was rejected by the Special Judge (CBI), Greater Bombay, by his order dated 11th December, 2002, which came to be challenged by the appellant before the Bombay High Court in Cr.R.A. No. 49/2005, along with several other writ petitions filed by the other accused.

5. Before the High Court, it was urged that since the subject matter of the dispute had been settled between the appellant and the Bank, it would be unreasonable to

continue with the criminal proceedings which had been commenced on a complaint filed on behalf of the Bank having particular regard to Clause 11 of the consent terms by which the parties had withdrawn all claims against each other. It was submitted that the learned Special Judge had erred in rejecting the appellant's prayer for discharge from the criminal case. In support of the aforesaid contentions made on behalf of the appellant before the High Court, reference was made to the decision of this Court in the case of Central Bureau of Investigation v. Duncans Agro Industries Ltd. wherein on the basis of facts similar to the facts of this case, this Court had held that even if an offence of cheating is prima facie made out, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Bank, for all intents and purposes, amount to compounding of the offence of cheating. This Court accordingly, upheld the order of the High Court quashing the criminal complaint after the civil action had been compromised between the parties.

6. Apart from the said decision, reliance was also placed on another decision of this Court in the case of B.S. Joshi and Ors. v. State of Haryana and Anr. wherein while dealing with the proceedings under Sections 498A and 406 Indian Penal Code involving matrimonial disputes and offences, this Court held that even though the provisions of Section 320 of the Code of Criminal Procedure would not apply to such offences, which are not compoundable it did not limit or affect the powers under Section 482 and the powers conferred on the High Courts and the Supreme Court under Articles 226 and 136 of the Constitution of India. Referring to the decision of this Court in State of Haryana v. Bhajan Lal 1992 Suppl. (1) SCC 335 this Court observed that the categories indicated in the said case which warranted exercise of power under Section 482 CrPC were only illustrative and not exhaustive. This Court ultimately held that the High Court in exercise of its inherent powers can quash criminal proceedings or a FIR or complaint and Section 320 CrPC does not limit or affect the power of the High Court under Section 482 of the Code.

7. After considering the said decision in the light of the submissions made on behalf of the respective parties, the High Court took the view that in the Duncans Agro case (supra) this Court was considering the situation involving Section 420 IPC which was compoundable under Section 320(2) CrPC, while in the instant case, the charge sheet was also under Sections 467, 468, 471-A IPC along with the provisions of the Prevention of Corruption Act, which were non- compoundable. The High Court, therefore, held that neither of the said two cases would have application to the facts of this case and rejected the appellant's prayer for discharge from the criminal cases.

5. However, despite the aforesaid submissions made by the learned ASG appearing for the State, the Apex Court held as under:

20. Having carefully considered the facts of the case and the submissions of learned Counsel in regard thereto, we are of the view that, although, technically there is force

in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in these proceedings.

21. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company, M/s Neemuch Emballage Limited, Mumbai, in order to avail of credit facilities to an extent to which the company was not entitled. In other words, the main intention of the company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the company was not otherwise entitled.

22. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi's case (supra) becomes relevant.

23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

24. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

25. We, therefore, set aside the order passed by the High Court dismissing the petitioner's revision application No. 49 of 2003 in Special Case No. 80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed.

6. The aforesaid judgment squarely applies to the facts of this case. Moreover, I do not find any reason to permit the proceedings to go on which in the absence of the complainants being not interested in proving their case would only result in futile wastage of time of the Courts at the cost of matters which may be more urgent and pressing.

7. Thus, the compromise petition is allowed and the FIR No.17/2008 registered at P.S. Economic Offences Wing under Sections 120B/408/420/467/468/471/477A IPC and all the proceedings emanating therefrom are quashed.

8. Dasti.

MOOL CHAND GARG, J.

APRIL 06, 2009
anb