

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

Date of Reserve: 7th July, 2010

Date of Order: 26th July, 2010

Crl. M.C. 310 of 2010

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26.07.2010

D P CHATURVEDI & ORS

..... Petitioners

Through: Mr. Pankaj Mehndiratta, Advocate

Versus

STATE & ANR

..... Respondents

Through: Mr. Jayant K. Sud, Advocate for R-2

Mr. Vivek Maheshwari, Inspector/EOW

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. Present petition has been filed by the petitioners for quashing of FIR No. 277/05, registered against the petitioners under section 406/420/120-B of IPC read with section 468/471/34 IPC. Investigation in the case is complete and the charge-sheet against the petitioners has been filed by Economic Offences Wing (EOW), Crime Branch, to whom the investigation was handed over under sections 406, 420, 120-B IPC. The sole ground taken by the petitioners in this petition is that the petitioners had returned back loan amount of Rs. 80.00 lac and was no dues were there against the petitioners in respect of complainant. In view of return of amount, the FIR should be

quashed as the FIR primarily involved money owing to the complainant and since money has been paid back during pendency of the case, proceedings should be quashed. Reliance was placed on (i) *CBI Vs. Duncons Agro Industries Ltd.*, 1996(5) 591; (ii) *B.S. Joshi Vs. State of Haryana*, 2003 (4) SCC 675; (iii) *State of Haryana Vs. Bhajan Lal*, 1999 Suppl. (1) SCC 335 and other similar cases. It is also stated that the complainant had also filed civil cases against the petitioners and their company which were pending since 2001. The dispute was civil in nature and therefore in view of return of amount to the complainant, this FIR should be quashed.

2. The petitioners herein floated a company in the name of Pushkar Chemicals Ltd. and approached the complainant i.e. Technology Development Board (TDB), Department of Science & Technology, Government of India for sanction of a loan of Rs. 150 lac. TDB is a statutory body established under TDB Act by Government of India under the Ministry of Science & Technology for the purpose of bringing development in the country and to encourage R&D institutions and achieving integrated progress with the help of industries. The object of the TDB is to provide financial assistance to such industrial concerns and agencies that would develop and apply indigenous technology or adopt imported technology to widen domestic technology. The loans are approved by TDB at the low or minimal rate of interest to achieve this objective. The accused persons presented a project before TDB making tall claims about their expertise and technological know-how and business acumen in respect of

development and commercialization of two butylated phenol based anti oxidants. The basic technology package was stated to have been developed by Indian Institute of Petroleum, Dehradun. Based on the projection and project report submitted by the appellants, a loan of Rs. 150.00 lac was sanctioned by TDB. Out of this, a sum of Rs. 80.00 lac was disbursed to accused persons on 16th June, 1999. The accused persons were supposed to complete the project within a time bound period of 15 months from the date of first disbursement of loan amount and they were also to send progress report from time to time. After about 10 months of the disbursement of loan of Rs.80.00 lac, TDB found that the progress report being sent to it were deliberately kept cryptic and the response of the accused persons to queries was highly unsatisfactory. In the last report the accused persons unreasonably projected an increase in the total project cost from Rs. 350 lac to Rs. 670 lac. After making queries, the complainant suspected foul play and sought response of the accused persons and called a meeting of the Project Management Committee (PMC). Accused persons first avoided and delayed the holding of PMC. Ultimately, PMC was held on 24th and 25th of August, 2000 at Mumbai. On 24th August, 2000, PMC visited Maharashtra along with Directors of the company. There the PMC was shown a site belonging to M/s. Tria Fine Chem. Ltd. where no civil work had taken place so far. It was also found that the land was not owned by M/s. Pushkar Chemicals Ltd. (PCL). Further queries and investigation revealed that accused persons committed

forgery by showing a sham transfer of Rs. 20.00 lac to M/s. Tria Fine Chem. Ltd. in the name of transfer of land from No Lien Account maintained by M/s. Pushkar Chemicals Ltd, out of loan amount, whereas no documents were ever executed in respect of transfer of loan. False representations were made by the accused persons about acquiring the land. It was also found that the accused persons had dishonest intentions from the very beginning and the loan amount deposited in No Lien Account, was illegally transferred and withdrawn from the No Lien Account and siphoned off and passed over to over sister concerns/other companies of the accused persons. After finding that a calculated fraud has been played by the accused persons, an FIR was got registered against the accused persons. The investigation done by Economic Offence Wing revealed that accused company PCL was converted from a private limited company to a public limited company in the year 1999 with its registered office at 15, Satyam Industrial Estate, Cardinal Gracious Road, Chakala, Andheri East, Mumbai. Investigation revealed that the registered office of the company had been vacated in 2004 and there was no trace either of the Directors or of the company. The investigation of the accounts revealed that a large number of payments had been made from the loan account in the name of Kalindri, Rockmount, Rajsukh etc. Besides payments to several individuals, including the petitioner No. 1, a payment of Rs. 24,93,920/- was made on 15th July, 1999 to Canara A/F. It was found that this money was given to Canara Bank for investment towards purchase of

2,08,000 units of Canpremium Scheme and this payment was made soon after obtaining disbursement of loan. It became obvious that the sole purpose of the petitioners was to play fraud upon TDB by giving a false project report and obtain loan on cheap rate and make investments in shares and other profitable ventures. The investigation also revealed that loan money was not at all utilized in furtherance of project. The charge-sheet gives the details of systematic fraud played by petitioners. It was found that the loan amount in a systematic manner, was diverted from No Lien Account of Dena Bank to sister concern of the petitioner and from there the money was diverted further. The sister concerns, to which money got diverted, were M/s. Rajsukh Finvest Pvt. Ltd., M/s. Rockmount Constructions Pvt. Ltd., M/s. Kalindrisukh Finvest Pvt. Ltd., M/s. Tria Impex Ltd. and M/s. Aditya Internet Services Ltd. The accused persons/petitioners had also withdrawn money by self cheques, the details of which had been given in the charge-sheet.

3. From the entire investigation, it is apparent that the accused persons had, from day one played fraud and had manufactured a project report with the intention to deceive and cheat TDB so that TDB parts with the loan amount which the petitioners could utilize for all other purposes except the project.

4. The mere fact that a sum of Rs. 80.00 has been returned, does not absolve the accused persons from the offences committed. If this amount of Rs. 80.00 lac had been taken by the accused person from the bank as loan,

they would have had to pay interest on this @ 12 to 15 per cent per annum. Return of basic principal amount to TDB cannot wash off the dishonest intention of the petitioners. The FIR cannot be quashed on the ground that principal loan amount has been returned. In fact, if FIR is quashed on such grounds, it would give wrong message to cheaters, fraudsters and swindlers to first obtain money from bank and other financial institutions, use it for years together, then return the principal amount whose value had diminished over the years and get scot free. The judgments cited by the petitioners are of no help to the petitioners as in those cases the facts were altogether different.

5. The petition is hereby dismissed.

July 26, 2010
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SHIV NARAYAN DHINGRA, J.