

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

+ Cr1.M.C.No.1035/2009

% Reserved on: 12th March, 2010
Date of Decision: 15th March, 2010

RAJIV BAKSHI & ANR. Petitioners
! Through: Mr.P.B.A.Srinivasan, Adv.

versus

\$ C.B.I. & ANOTHER Respondents
^ Through: Mr.Harish Gulati &
Mr.Anindya Malhotra, Adv.
for CBI/R-1.
Mr.Sanat Kumar, Adv. for
MMTC/R-2.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

1. Whether the 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

: **V.K. JAIN, J.**

1. This is a petition under Section 482 of Code of Criminal Procedure seeking quashing FIR No.RC 2(A)/97 ACU.X dated 18.11.1997 registered by CBI, as well as the chargesheet filed, and criminal proceedings pending pursuant thereto

against the petitioners.

2. The case of the CBI is that under Gold Loan Scheme introduced by MMTC, petitioner No.1, Rajiv Bakshi, proprietor of Ganesh Exports, obtained sanction for gold limit and packing credit limit, giving inflated value of property No.152, Old Gupta Colony, New Delhi and obtained delivery of 26 kg. of gold from MMTC. He was required to make jewellery from that gold and export the same within 45 days of taking the gold from MMTC. However, he effected export of gold jewellery only in respect of 21 kg. of gold. This is also the case of CBI that delivery of gold was taken pursuant to a criminal conspiracy between petitioner No.1 Rajiv Bakshi and petitioner No.2 Vivek Sood, and part of the gold was delivered by MMTC to Shri Vivek Sood on the strength of authorization from Rajiv Bakshi. 5 kg. gold which was not converted into jewellery was, however, not returned to MMTC. After filing of chargesheet, charges have been framed against the petitioners and both of them are presently facing trial.

3. The case of the petitioners is that MMTC had also initiated arbitration proceedings against them and an award was passed by the arbitral Tribunal in its favour. Pursuant

to that award, an offer was made to MMTC to settle its dues against Ganesh Exports and some other firms which also are alleged to have committed similar offences. This is also the case of the petitioners is that the offer having been accepted by the Disputes Settlement Committee of MMTC, a sum of Rs.4,80,08,842/- was paid to it by them and other firms.

4. The petitioners are seeking quashing of the criminal proceedings pending against them solely on the ground that they have made payment to MMTC in full and final settlement of all its dues. During the course of hearing of this petition, no argument on the merit of the charge was advanced since neither of them has challenged the order whereby charges were framed against them. Hence, the only question which arises for consideration is as to whether the petitioners are entitled to quashing of the criminal proceedings pending against them merely because they have paid the dues of MMTC.

5. In “**Central Bureau of Investigation vs. A Ravishankar Prasad & Ors**” , (2009) 6 SCC 351, CBI challenged an order passed by the High Court of Madras quashing criminal proceedings initiated by it under Section 120B with Section

420 of IPC and Section 13(2) read with Section 13(1) (d) of Prevention of Corruption Act, 1988. The case involved respondents entering onto a conspiracy with Chairman and Managing Director and other officials of Indian Bank with the object to cheat bank in the matter of obtaining credit facilities. The respondents cleared entire dues, by paying an amount of Rs. 1.57 crore to the bank and filed an application under Section 482 of Cr. P.C. pursuant to which proceedings against the respondents were quashed by the High Court. The Hon'ble Supreme Court noted that charge sheet incorporated complicity of some public servants and private servants to defraud the bank. The Hon'ble Court also noted that the respondents and other bank officials shared charge sheet under Section 120B read with Section 420 of IPC and was of the view that quashing charges against them would also have serious repercussions on the pending cases against other bank officials. The appeal filed by CBI was, therefore, allowed and the order passed by the High Court was set aside. During the course of judgment, the Hon'ble Court was of the view that exercise of inherent power would entirely depend on the facts and circumstances of each case, the

object of incorporating such power in the Code being abuse of process of the court or to secure ends of justice.

6. In “**Smt. Rumi Dhar Vs. State of West Bengal & Anr.**”, JT 2009 (5) SC 321, an FIR was registered by CBI u/s 120-B/420/467/468/471 of IPC. The bank officers were also prosecuted under Prevention of Corruption Act. There was a settlement of the appellants with the banks. An application u/s 239 of Cr.P.C. was filed for dropping the criminal proceedings. The prayer was rejected by holding that the offence being against the society and investigation having been made by CBI, settlement could not have been entered into. Rejecting the Appeal, and after considering Duncans Agro and Nikhil Merchant, the Hon’ble Supreme Court held that exercise of power of quashing would depend upon the facts and circumstances of each case.

7. In “**Sushil Suri vs. CBI & Anr.**”, CrI.M.C. 3842/2008, decided on 4.9.2009, this court declined to quash an FIR registered by CBI under Sections 120B/409/420/468/471 of IPC, despite a settlement between the petitioner and respondent No.2

8. In CrI.M.C. 1304/2004, 6389/2006 and 6600-

04/2006, all decided by a common order dated 23rd May, 2008 this court declined to quash the FIRs alleging forgery and use of forged documents despite compromise between private parties noticing the report of FSL which indicated forgery of documents.

9. In “**Manoj Sharma vs. State & Ors.**” , CrI.M.A. 1619/2008 decided on 16.10.2008, relied upon by the learned counsel for the petitioners, an FIR got registered under Sections 420/468/471/34/121 of IPC pertaining to a dispute of private nature, was quashed pursuant to a compromise between the parties. During the course of the judgment written by him, the Hon’ble Mr.Justice Markandey Katju observed as under:-

“There can be no doubt that a case under Section 302 IPC or other serious offences like those under Sections 395, 307 or 304B cannot be compounded and hence proceedings in those provisions cannot be quashed by the High Court in exercise of its power under Section 482 Cr.P.C. or in writ jurisdiction on the basis of compromise. However, in some other cases, (like those akin to a civil nature) the proceedings can be quashed by the High Court if the parties have come to an amicable settlement even though the provisions are not compoundable. Where a line is to be drawn

will have to be decided in some later decisions of this Court, preferably by a larger bench (so as to make it more authoritative). Some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, otherwise there may be conflicting decisions and judicial anarchy. A judicial discretion has to be exercised on some objective guiding principles and criteria, and not on the whims and fancies of individual Judges. Discretion, after all, cannot be the Chancellor's foot.

I am expressing this opinion because Sh. B.B. Singh, learned counsel for the respondent has rightly expressed his concern that the decision in B.S. Joshi's case (supra) should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society, and not merely against a private individual."

10. In "**Central Bureau of Investigation, Vs. Duncans Agro Industries Ltd.**", (1996) 5 SCC 591, relied upon by the learned counsel for the petitioners, the FIR was registered by CBI Under Section 120B of IPC read with Sections 409, 420, 467 and 471 thereof, in respect of credit facilities extended by United Bank of India to a division of the Duncans Agro Industries Ltd. The second FIR was registered under Section 120B, read with Section 420 of IPC. The criminal

proceedings were quashed by the High Court on a petition filed by Duncans Agro Industries Ltd. It was noted by Supreme Court that the advances had already paid before civil courts in suits for recovery of their dues and those suits had been compromised on receipt of payments from the Companies. The Hon'ble Court observed that even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amounts to compounding of the offence of cheating. It was also noted that investigations had not been completed till 1991 though the complaint was filed in 1987. In these circumstances, the Court felt that it would not be expedient to proceed further with the complaint and, dismissed the appeal, thereby maintaining the order of the High Court

11. In "***B.S. Joshi & Ors. v State of Haryana and Anr***" (2003) 4 SCC 675, relied upon by the learned counsel for the petitioners, Supreme Court, after reviewing case law on the subject quashed the criminal proceedings pursuant to settlement of disputes between husband and wife and on a

joint prayer made by them. The Hon'ble Supreme Court held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of quashing it. It was noted that there would be almost no chance of conviction when the complainant was not likely to support the prosecution either because she had resolved disputes with her husband and other family members and as a result thereof, she had again started living with him or had parted company with him or was living happily on her own or had married someone else on earlier marriage having been dissolved by divorce with mutual consent of the parties. The Hon'ble Court was of the view that where in the opinion of the court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. It was observed that in such matrimonial matters, it becomes the duty of the Court to encourage genuine settlements of matrimonial disputes.

12. In “***Nikhil Merchant V. Central Bureau of***

Investigation and Anr” , (2008) 9 SCC 677, CBI filed a charge sheet against 5 accused persons under Section 120-B r/w section 420, 467, 468 and 471 of IPC r/w 5(2) and 5(1) (b) of Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1) (b) of Prevention of Corruption Act, 1988. This was a case about grant of financial assistance by a bank to a company which defaulted in repayment of the loan. The allegations in the charge sheet included that the accused conspired with each other for fraudulently diverting funds of the bank. Offences alleging forgery were also included in the charge sheet. A civil suit was also filed by the bank against the company which resulted into compromise. Consequent upon the compromise which provided that neither party had any claim against the other and the parties were withdrawing all allegations and counter allegations made against each other, the appellant, who was a Director of the Company, filed an application for his discharge from criminal complaint in respect of which charge sheet had been filed by CBI. The application was rejected by the Trial Court as well as by High Court. The prayer for quashing the criminal proceedings was opposed by learned Solicitor

General, who appeared for CBI and pointed out that the case also involved commission of forgery. It was also submitted by him that as pointed out by the Constitutional Bench in “**Supreme Court Bar Association Vs. Union of India & Anr**”, (1998) 4 SCC 409, in exercise of its plenary powers under section 142 of Cr. P.C., the Supreme Court should not ignore any substantive statutory provisions dealing with the subject. While observing that technically there was force in the statement made by Addl. Solicitor General, the Court felt that facts of the case warranted interference as dispute had overtones of a civil dispute with certain criminal facets and was a fit case where continuance of the criminal proceedings after the compromise would be a futile exercise. In that case clause 11 of the Consent Terms read as under:

“Clause 11. Agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter allegations made against each other.”

Thus, withdrawal of all accusations was the hallmark of the compromise in that case.

13. In “**Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi**”, AIR 2003 SC 2545 two machines were imported into India by

Gujarat Cancer Society, which availed duty exemption on the basis of Exemption Certificate issued in the name of Gujarat Cancer & Research Institute, on a bonafide premise that since all the activities of GCRI were funded by GCS, and all the operations of GCS were carried out through GCRI, the same could have been done. The Customs Authorities raided the premises of GCRI and seized the machines on the ground that the Exemption Certificate was issued in the name of GCRI and not in the name of GCS which was liable to pay customs duty. The customs duty was thereafter demanded from GCS though no prosecution was recommended and no penalty on the society was imposed. The appeal against the order of Collector of Customs having been dismissed, the matter was taken to the Supreme Court by filing a civil appeal. During the pendency of the appeal before the Supreme Court, Government of India launched Kar Vivad Samadhan Scheme, 1998, whereunder the persons taking benefit of the Scheme was granted immunity from prosecution for any offence under Customs Act, including the offence of evasion of duty. A sum of Rs.98 lakhs was deposited by GCS under the Scheme and the appeal filed

before the Supreme Court was withdrawn. A certificate of full and final settlement of tax arrears was issued to GCS granting immunity to it from any proceedings for prosecution for any offence under Customs Act or from imposition of penalty under that Act. However, a case was registered on 6th of January, 1999 against the appellant before the Supreme Court which was followed by filing of a chargesheet. A petition for quashing the criminal proceedings having been dismissed by this Court, the matter was taken to the Supreme Court by way of an appeal. Allowing the appeal, the Supreme Court, inter alia, held as under:

“.....as per the Kar Vivad Samadhan Scheme, 1998 whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act, 1962 including the offence of evasion of duty. The alleged criminal liability stands compounded on a settlement with respect to the civil issues and, therefore, the First Information Report was erroneously issued and was totally unwarranted. The Kar Vivad Samadhan Scheme, 1998 issued by the Govt. of India was a voluntary Scheme whereby if the disputed demand is settled by the authority and pending proceedings are withdrawn by an importer, the balance demand against an importer shall be dropped and the importer shall be immuned from penal proceedings under any law in force. The Kar Vivad Samadhan Scheme,

1998 absolves the appellants from criminal liability under the Indian Penal Code. The continuance of the proceedings in the instant case would only tantamount to driving the present appellants to double jeopardy when they had been honourably exonerated by the Collector of Customs by their adjudication and further the GCS of which one of the appellants is the General Secretary in which capacity he is accused in the present case was granted amnesty under the Kar Vivad Samadhan Scheme, 1998. The present case does not warrant subjecting a citizen especially senior citizens of the age of 92 and 70 years to fresh investigation and prosecution on an incident or fact situation giving rise to offence under both the Customs Act and the Indian Penal Code when the matter has already been settled.

It appears that despite the statement of settlement having been filed under S.88 of the Act of 1998, an FIR was lodged and a case was registered on 6-1-1999 on the basis of which, later on a charge-sheet was also submitted. On the one hand final settlement was made after determining the tax liability on the premise that the appellants were neither convicted nor criminal proceedings were pending, relating to any offence under Chap. 9 or 17 of the IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of the Scheme promulgated under the Finance (2) Act of 1998. If a person against whom criminal proceedings were pending, relating to offence under Chap. 9 or 17 of the IPC or who stood convicted under any of the provisions of those chapters, he would not have been eligible to seek benefit under the Scheme and after accepting that position and

the due settlement, there was no occasion to initiate and continue the criminal proceedings, which could bring about the conviction of the same persons, in case prosecution ended successful in favour of the State and against the appellants. If such a condition is provided that on a particular date a criminal proceeding should not be pending against a person nor he should have been convicted of an offence, as a condition precedent for a settlement, and on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too, after settlement of the liability. Moreso, when in view of S.90.(C)(iv) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the case in hand. That is to say on one hand declarant is not permitted to pursue the remedy, regarding tax liability, which is already pending before the Courts of law, as they are either deemed to be withdrawn by operation of law or they have to be withdrawn by a positive act of the party and yet prosecute such persons for their conviction as well. The declarant could not be dragged and chased in criminal proceedings after closing the other opening making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bona fides.....”

14. On merits of the case, the Hon’ble Supreme Court, inter alia, held as under:

“..... For establishing the offence of cheating

the complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep up promise subsequently, such a culprit's intention right at the beginning that the time when the promise was made to be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the appellant-GCS could not comply with it, it rightly paid the necessary dues without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under S.90 IPC does not arise. There is no allegation in the First Information Report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what where the roles played by the appellants in the alleged offence. The appellants could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organization and, therefore, the allegations against the appellants leveled by the prosecution are not maintainable.”

15. The above referred judgment has no application to the facts of the present case, where there was no scheme such as Kar Vivad Samadhan Scheme and there was no immunity granted to the petitioners against the criminal proceedings. There is no question of any double jeopardy in the present case. Moreover, unlike in the above-referred case, the petitioner have not claimed that no offence punishable under provisions of Indian Penal Code is made out against them. As noted earlier, the petitioners have not challenged the charges framed against them and they are facing trial pursuant to those charges. Therefore, prima facie serious offences punishable under Indian Penal Code are prima facie made out against them.

16. The proposition of law which emerges from these cases is that (i) the embargo placed by Section 320 of the Code of Criminal Procedure against compounding of certain offences does not come in the way of the court quashing an FIR or a criminal complaint and the proceedings arising therefrom, in exercise of its inherent powers u/s 482 of the Code of Criminal Procedure. Vesting of such a power in the High Court cannot be denied in view of use of the expression

“nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court,” the only other requirement being that the power should be exercised to give effect to any order made under the Code of Criminal Procedure or to prevent abuse of the process of a court or otherwise to secure the ends of justice; (ii) an FIR or a criminal complaint and the proceedings arising therefrom can be quashed on the basis of a compromise if, taking into consideration the nature of the offence alleged to have been committed, the circumstances in which the offence was committed and the overall facts of the case, the court is of the view that quashing of the criminal proceedings would meet the ends of justice or is otherwise necessary to prevent an abuse of the process of the court.

17. In my view, a petitioner is not entitled to quashing merely because in the facts and circumstances of some other case, this court has quashed an FIR registered u/s 376 of Indian Penal Code. Every case has to be decided on its own facts and no hard and fast rule can be laid down as regards the cases, which deserve quashing by the High Court in exercise of power u/s 482 of the Code of Criminal Procedure

or Article 226/227 of the Constitution. This was recognized by the Hon'ble Supreme Court in the case of Ravi Shankar Parshad (Supra). If, considering the special facts of a case, the court decides to quash the FIR registered or the complaint filed in a particular case, that ipso facto does not justify quashing of the FIR/complaint in every other case involving the commission of an offence punishable under the same provision of law or with equal or even lesser punishment. The nature of the offence will in fact be more important than the punishment prescribed for it. The court has to apply its mind to the facts and circumstances of each case that comes up before it for quashing, note the special features, if any, justifying quashing of the prosecution and then come to an appropriate conclusion.

18. The learned counsel for the petitioners has also referred to two decisions of this Court "**G.Udayan Dravid & Others Vs. State & Others**", 2007 I AD (Delhi) 376 and "**Maninder Singh Vs. CBI**", CrI.M.C.2083/2006, decided on 10th of February, 2009. The decisions in these cases are based on their individual facts and the petitioners cannot seek quashing of the proceedings pending against them merely

because the proceedings in some other cases have been quashed by this Court. As noted earlier, every case has to be considered in the light of facts and circumstances of that case and appropriate view in consonance with the facts of that case needs to be then taken by the court.

19. Considering the fact that MMTC is a Government Company and the funds belonging to it are public funds, and also the fact that unlike in the case of **Nikhil Merchant** (supra) while accepting the offer for payment pursuant to the award passed in its favour, MMTC has neither withdrawn the charges against the petitioners nor agreed to join them in seeking quashing of criminal proceedings pending against them, it would not be appropriate to quash the criminal proceedings pending against the petitioners. If repayment of money becomes the sole ground for quashing of criminal proceedings involving public funds, that would not only encourage unscrupulous persons to cheat the Government, Public Sector Banks, Government Companies and Public Financial Institutions with impunity, but, will also embolden them to repeat such crimes, in the belief that even if they are caught and are prosecuted, they will be able to get away

merely by returning the money taken by them by illegal means. The money lying deposited in banks and the money belonging to Public Financial Institutions /Government Companies does not belong to an individual and belongs to the country as a whole. Cheating such a Company/Bank/Institution, therefore, is cheating with the country and misappropriation of their money is misappropriation of money belonging to the nation. The cheating of Government Companies/Public Financial Institutions/Public Sector Banks, etc., therefore, need be viewed seriously and the prosecutions involving cheating such Institutions/Companies and/or misappropriation of their funds need to be taken to their logical conclusion by subjecting those who are accused of committing such offences to trial in accordance with law. Any sympathy with such persons, despite payment made by them will be wholly misplaced and is likely to be misconstrued by the society. It would also be pertinent to note here that as far as this case is concerned, the petitioners had no option but to make payment to MMTC once the arbitral Tribunal had passed award in its favour. Therefore, it is not a case where they

have of their own and without any proceedings having been instituted against them, have gone to MMTC and paid its dues, out of a feeling remorse or repentance.

20. The economic offences involving loss of public funds, whether of Government Departments or Public Sector Undertakings or Public Financial Institutions, have the potential of affecting the economy of the country and posing serious threat to its financial health. The courts cannot be oblivious to the fact that such offences are preceded by cool, calculated and deliberate design, with an eye on personal gains, and in fact, not all such offences come to the surface, most of them having been committed in connivance with the Public Servants, manning key posts in such Undertaking/Institutions/Banks, etc. cannot be treated at par with cases of cheating a private person or a private firm or company. A case of criminal conspiracy, cheating and misappropriation of public funds, need to be treated differently from the cases of cheating private citizens or misappropriation of private funds which do not concern with the society as a whole. In such cases, in the absence of exceptional and compelling circumstances justifying such a

course of action, the courts, in my view, will not be justified in quashing the case merely on account of repayment of money to the concerned Institution/Company/Bank.

21. For the reasons given in the preceding paragraphs, I am of the considered view that the petitioners are not entitled to quashing of proceedings merely on account of payment made by them to MMTC pursuant to the award in its favour. The petition is devoid of any merit and is, hereby dismissed.

(V.K.JAIN)
JUDGE

MARCH 15, 2010
RS/