

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

+ **CRL.REV.P. 649/2008**

CAPTAIN SANJEEV NAGPAUL

.... Petitioner

Through

Mr. Sanjeev K. Dubey, Mr.
Akshai Malik and Mr. Jamal
Akhtar, Advocates.

versus

THE STATE (CBI)

..... Respondent

Through

Mr. Vikas Pahwa, Standing
Counsel with Ms. Suchiti
Chandra, Advocate for CBI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

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09.07.2010

On 31st October, 2003, Central Bureau of Investigation (CBI) filed a charge sheet against Mr. Pawan Jaggi, Mr. Sanjeev Nagpaul and Mr. R.K. Malik, Chairman-cum-Director, Managing Director and Accounts Manager respectively of M/s. Seasons Creation (Pvt.) Ltd. The said charge sheet is still pending, though no evidence or statements of witness have been recorded till today.

2. This charge sheet was filed after a complaint was made by Allahabad Bank, who were impleaded as respondent No.2 to this writ petition vide order dated 2nd March, 2009. The said respondent had initially appeared but has not been represented for last several dates. It is, however, not disputed that the respondent No.2 bank has

settled the matter with M/s. Seasons Creation (Pvt.) Ltd. and others and has received all their dues in terms of the said settlement. The petitioner has filed on record a copy of the order dated 23rd July, 2002 passed in O.A. No. 523/1999 recording as under:-

“....In this OA the applicant bank has claimed recovery of Rs. 99,76,452.89 against the defendants. The OA was filed on 1.12.99. After filing of the OA the applicant and defendants 1 to 4 are stated to have compromised the matter between themselves and in terms of their compromise the applicant bank agreed to receive a total of Rs. 72 lakhs from the defendants 1 to 4 in full and final satisfaction of its claims made against all the defendants in this OA. Out of this total compromise amount of Rs. 72 lakhs, the applicant bank is stated to have already received an amount of Rs. 67,80,772/- from the defendants 1 to 4 and vide order dated 21.2.2002 the said amount was ordered to be kept in an FDR till the disposal of the joint application for recording of compromise filed by the parties. The defendants 1 to 4 have handed over a cheque bearing No. 079911 dated 23.7.2002 for balance compromise amount of Rs. 2,17,501/- (balance compromise amount arrived at after giving credit of interest at 7% accrued on Rs. 67,80,772/- in terms of order dated 21.2.2002) to the applicant's counsel and with the said payment the claim of applicant bank against all the defendants stated to have been fully satisfied and now the applicant bank has not to recover anything from any of the defendants....”

3. After the said settlement, Mr. Pawan Jaggi, one of the accused had filed Crl.M.C. No.3759/2008 and Crl.M.A.No.14053/2008 for quashing of proceedings pursuant to the aforesaid charge sheet. These petitions were allowed vide decision dated 9th April, 2009 and

it was observed as under:-

“9. Mr.Batra, learned counsel for the petitioner heavily relied upon a copy of the letter dated 14.01.2003 from the respondent No.2-Bank acknowledging receipt of the compromised amount in full which is also placed on the record by the petitioner along with a copy of the Original Application No.523/1999 filed before the Debt Recovery Tribunal, wherein the terms of settlement have been set out. In sub-para (f) of para 3, it is specifically stated that the Bank confirms and acknowledges that it will have no claim whatsoever against the defendants after the passing of the compromise decree by the Hon’ble Tribunal, which decree as stated above, was passed on 23.07.2002, recording therein that the Bank now has not to recover anything from any of the defendants.

10. Keeping in mind the terms of compromise arrived at between the petitioner and the Bank and the fact that the subject matter of the dispute has since been settled with the bank, in my opinion, it does not stand to reason to continue with the criminal proceedings against the petitioner, which had commenced on the complaint filed on behalf of the bank, which bank now has no claim or grievance left against the petitioner.

11. Accordingly, I am of the view that this is a fit case for quashing the criminal proceedings against the petitioner as the dispute involved herein has the colours of a civil dispute with criminal facets and though some of the offences are non-compoundable in nature, relying upon the judgment of the Hon’ble Supreme Court in **Nikhil Merchant’s case** (supra) and in the case of **B.S. Joshi Vs. State of Haryana and Anr. 2003 (4) SCC 675**, criminal proceedings bearing No.RC-7(S)/2001 titled State Vs. Pawan Jaggi and Others (pending in the Court of Shri A.S. Aggarwal, learned Metropolitan Magistrate, Karkardooma Courts, Delhi arising out of FIR No.RC S15 2001 S0007 dated 12.11.2001 registered by Delhi Special Police Establishment CBI SIC II, New Delhi) and all proceedings emanating therefrom are hereby quashed.

CRL.M.C. 3759/2007 and Crl.M.A.14053/2008 stand disposed of accordingly.”

4. CBI had filed SLP No.14877/2009 against the said judgment, which was dismissed; vide order dated 14th September, 2009.

5. Learned counsel for the respondent No.1 does not dispute the above facts but submits that the Supreme Court has re-examined the same issue and according to the ratio of the two subsequent decisions, namely, ***Smt. Rumi Dhar Vs. State of West Bengal and Anr*** *JT (2009) (5) SC 321* and ***CBI Vs. A. Ravi Shankar Prasad and Anr*** *(2009) 6 SCC 351*, the prosecution against Captain Sanjeev Nagpaul should not be quashed.

6. I do not find any merit in the contentions raised by the counsel for the respondent, CBI. In the case of Rumi Dhar (supra) the Supreme court had examined the charge sheet, which was filed under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. In the said case the allegations were that the accused had entered into a criminal conspiracy.

7. In the case of A. Ravi Shankar Prasad (supra), the Supreme Court has examined in detail the inherent powers of the court under Section 482 of the Code of Criminal Procedure, 1973 and when the

said powers should be exercised to quash criminal proceedings on settlement or compromise between the parties. In the said judgment, it was held that the proceedings can be quashed when continuing with the criminal proceedings would be an abuse of the process of court and ends of justice require that proceedings should be quashed. Ends of justice are higher than the ends of mere law though justice must be administered accordingly to law made by the legislature as observed in the case of ***State of Karnataka Vs. L. Muniswamy and Ors.*** 1977 Criminal Law Journal 1125. Reference was made to the seven principles expounded by the Supreme Court in the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors*** 1992 Criminal Law Journal 527. It was pointed out that these principles are not inflexible guidelines or rigid formulae or an exhaustive list but are illustrations when power under section 482 should be exercised. Reference was made to the to the cases of **Rumi Dhar** (supra), ***Janta Dal Vs. H.S. Chowdhary and Ors.*** 1993 Criminal Law Journal 600 and others observing:-

32. In ***B.S. Joshi and Ors. v. State of Haryana*** the Court reiterated the legal position that the Court's inherent powers have no limit but should be exercised with utmost care and caution. Inherent powers must be utilised with the sole purpose to prevent the abuse of the process of the court or to otherwise secure the ends of justice. In exercise of inherent powers, proper scrutiny of facts and

circumstances of the case concerned are absolutely imperative.

33. In *Nikhil Merchant v. CBI and Anr* this Court while relying on the aforesaid judgment in *B.S. Joshi case (Supra)* observed that on an overall view of the facts the Court was satisfied that technicality should not be allowed to stand in the way of quashing of the criminal proceedings.

34. In *Jagdish Chanana and Ors. v. State of Haryana and Anr.* this Court observed as under:

“The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in court may be withdrawn or compromised or quashed, as the case may be. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transaction that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise.”

35. In *Madan Mohan Abbot v. State of Punjab* in which one of us (Bedi, J.) was the author of the judgment observed as under:

“6. We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.”

8. Analyzing the case law mentioned above, it has been held that inherent powers can be exercised in exceptional cases to prevent abuse of process of court and to secure ends of justice and each case has to be examined on the basis of the facts alleged therein. Personal

disputes arising out of commercial transaction can be quashed on the basis of terms of settlement.

9. In ***Manoj Sharma Vs. State and Ors.*** 2008 (14) Scale 44 again question of quashing u/s 482 of the Code of Criminal Procedure or Article 226 of the Constitution was examined and Altamas Kabir J. has observed:-

“6. We have carefully considered the submission made on behalf of the respective parties and the facts involved in this case, and we are not inclined to accept Mr. Singh’s contention that the decision in B.S. Joshi’s case required reconsideration, at least not in the facts of this case. What was decided in B.S. Joshi’s case was the power and authority of the High Court to exercise jurisdiction under Section 482 CrPC or under Article 226 of the Constitution to quash offences which are not compoundable. The law stated in the said case simply indicates the powers of the High Court to quash any criminal proceedings on First Information Report or complaint whether it be compoundable or not. The ultimate exercise of discretion under Section 482 CrPC or under Article 226 of the Constitution is with the Court which has to exercise such jurisdiction in the facts of each case. It has been explained that the said power is in no way limited by the provisions of Section 320 CrPC. We are unable to disagree with such statement of law. In any event, in this case, we are only required to consider whether the High Court had exercised its jurisdiction under Section 482 Cr.P.C. legally and correctly.

7. In view of the nature of offences set out in the complaint, the High Court did not consider it an appropriate case for exercising its jurisdiction

under Article 226 of the Constitution for quashing the same.

8. In our view, the High Court's refusal to exercise its jurisdiction under Article 226 of the Constitution for quashing the criminal proceedings cannot be supported. The First Information Report, which had been lodged by the complainant, indicates a dispute between the complainant and the accused which is of a private nature. It is no doubt true that the First Information Report was the basis of the investigation by the Police authorities, but the dispute between the parties remained one of a personal nature. Once the complainant decided not to pursue the matter further, the High Court could have taken a more pragmatic view of the matter. We do not suggest that while exercising its powers under Article 226 of the Constitution the High Court could not have refused to quash the First Information Report, but what we do say is that the matter could have been considered by the High Court with greater pragmatism in the facts of the case. As we have indicated hereinbefore, the exercise of power under Section 482 Cr.P.C. or Article 226 of the Constitution is discretionary to be exercised in the facts of each case.

10. Markandey Katju J. in his concurrent judgment has referred to compoundable and non-compoundable offences and the powers of the High Court under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution in non-compoundable offences to quash prosecution in view of settlement and compromise and it was observed as under:-

“17. Since Section 320 Cr.P.C. has clearly stated which offences are compoundable and which are not, the High Court or even this Court would not ordinarily be justified in doing something indirectly which could not be done directly. Even otherwise, it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 Cr.P.C. to direct doing something which the Cr.P.C. has expressly prohibited. Section 320(9) Cr.P.C. expressly states that no offence shall be compounded except as provided by that Section. Hence, in my opinion, it would ordinarily not be a legitimate exercise of judicial power to direct compounding of a non-compoundable offence.

18. However, it has to be pointed out that Section 320 Cr.P.C. cannot be read in isolation. It has to be read along with other provisions in the Cr.P.C. One such other provision is Section 482 Cr.P.C. which reads:

“Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any other under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

19. The words “Nothing in this Code” used in Section 482 is a non obstante clause, and gives its overriding effect over other provisions in the Cr.P.C. The words “or otherwise to secure the ends of justice” in Section 482 implies that to secure the interest of justice sometimes (though only in very rare cases) the High Court can pass an order in violation of a provision in the Cr.P.C.

20. It is true that in certain decisions of this Court it has been observed that the power under Section 482 Cr.P.C. cannot be exercised to do something which is expressly barred under the Code vide *Mosst. Simrikhia v. Dolley Mukherjee* AIR 1990 SC

1605 (vide paras 2 & 4), R.P. Kapur v. State of Punjab AIR 1960 SC 866 (vide para 6), Sooraj Devi v. Pyare Lal & another AIR 1981 SC 736 (vide para 5) etc.

21. However, in my opinion these judgments cannot be read as a Euclid's formula since it is well settled that judgments of a Court cannot be read mechanically and like a Euclid's theorem vide Dr. Rajbir Singh Dalal v. Chaudhari Devi Lal University 2008 (8) JT 621, Bharat Petroleum Corporation Ltd. & another v. N.R. Vairamani and another AIR 2004 SC 4778. In rare and exceptional cases a departure can be made from the principle laid down in the decisions referred to in para 20, as observed in B.S. Joshi's case (supra), which has also been followed in other decisions e.g. Nikhil Merchant's case (supra). Even in the judgment of this Court in Divisional Manager Aravalli Golf Club (supra) where emphasis has been laid on judicial restraint it has been mentioned that sometimes judicial activism can be resorted to by the Court where the situation forcefully requires it in the interest of the country or society (vide para 39 of the said judgment). Judicial activism was rightly resorted to by the U.S. Supreme Court in Brown v. Board of Education 347 U.S. 483, Miranda v. Arizona 384 U.S. 436, Roe v. Wade 410 U.S. 113, etc. and by Lord Denning in England in several of his decisions."

11. It was further observed as under:-

"23. 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 the 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."

Thus, there should be uniformity and consistency in exercise of judicial discretion. Justice is not mere chance. As noticed above, the prosecution against Mr. Pawan Jaggi has already been quashed by this Court and the SLP filed by the CBI has been dismissed. Parity and equal treatment require that the petitioner should be treated at par and in the same manner as Mr. Pawan Jaggi and not differently. Discretion which was exercised in the case of Mr. Pawan Jaggi should be exercised in his case also. In this connection, it may be stated that as per the charge sheet Mr. Pawan Jaggi had more prominent and active role or involvement in the offence, though the petitioner's name is also mentioned. The principal allegations made in the charge sheet are as under:-

“Investigation disclosed that Sh. Pawan Jaggi (A-1) submitted applications to the aforesaid Bank for release of packing credit on 13.10.98 for Rs. 20 Lakhs on 16.10.98 for Rs. 15 Lakhs and on 28.10.98 for Rs. 15 Lakhs and Sh. Sanjeev Nagpaul (A-2) submitted an application dated 3.11.98 for Rs. 10 Lakhs against Purchase Order No.MU-631106 dt. 29.8.98 M/s J C Penney Purchasing Corporation USA for US \$ 200750/-, which was duly confirmed and accepted by Sh. Pawan jaggi (A-1) under his signature. A packing credit amount of Rs. 20 Lakhs was thus released on 14.10.98, when Sh. R K Malik (A-3) sent a fax Letter dated 14.10.98 intimating the Bank that the Letter of Credit supporting the Purchase Order would be obtained and submitted to the Bank within 2-3 weeks. The requisite amount were released through the Current Account of the Company on 14.10.1998, 16.10.1998, 28.10.1998 and 3.11.98 respectively vide PC No.37/11/98.

Investigation disclosed that on the forged Purchase Order of M/s J C Penny Purchasing Corporation, Sh. Sanjay Bhat had written the word “accepted” over the rubber stamp of the Company but that no such Purchase order was infact issued on behalf of M/s. J C Penney Purchasing Corporation. This Purchase Order, a valuable document, which should have been available in the record of the Bank was instead recovered from the residence of Sh.Pawan Jaggi (A-1) during the search on 12.2.2002.

Investigation further disclosed that apart from the forged purchase order of M/s J C Penney Purchasing Corporation USA, Sh. Pawan Jaggi (A-1) also used another Purchase Order No. IRA/00034 dt.5.7.98 purported to be of M/s Induropa LTDA, Chile for US \$ 48,360/- and he (A-1) submitted a request letter dt. 21.9.98 to the Bank for release of Packing Credit amounting to Rs.9 lakhs. Packing Credit of Rs.7.5 lakhs was allowed and the amount was disbursed vide PC No.33/11/98 through the

Current Account of the Company on 21.9.98. The original Purchase Order bearing the same number was in fact for US\$ 6,040/- and was placed by M/s Shivraj Enterprises under the signature of its Director Sh. Randeep Rajpal on M/s Himanshu Apparels CB-228, Ring Road, Naraina, New Delhi 110028.

Further, Sh.Pawan Jaggi (A-1) utilized 2 more forged Purchase Orders No.1590 dt.12.10.98 for US \$ 43400/- and No.1600 dated dt.18.10.98 for US \$ 29750 purported to have been issued by M/S Pridedknit (PTY) Ltd., Johannesburg which were duly authenticated and confirmed by him (A-1) under his signatures. He (A-1) submitted request letter dt.10.11.98 and letter dt.14.11.98 on behalf of the Company to the Bank for release of Packing Credit of Rs.12 lakhs and Rs.9 Lakhs respectively against these 2 Purchase Orders. The Bank allowed amounts of Rs.12 Lakhs on 10.11.98 and Rs.8.5 Lakhs on 18.11.98 and it was disbursed through the aforesaid Current Account No.10 with the bank vide PC No.47/11/98 & 50/11/98 respectively. Both Purchase Orders of M/S Predkn t (PTY) Ltd., Johannesburg (SA) were in fact forged and fabricated and were bearing forged signatures in the name of "Ruchika" as Buyer, which were apparently different on these two Purchase Orders.

Investigation further disclosed that no export was made by the Company against the above said 4 forged Purchase Orders, though Packing Credit against the forged and fabricated Purchase order of M/s Induropa was shown as adjusted party with export proceeds against the Bill of M/s J C Penney Purchasing Corporation in respect of an earlier genuine Purchase Order No. MU80161 dated 12.5.98."

12. In view of the aforesaid, the present writ petition is allowed

and the prosecution proceedings in the charge sheet dated 31st October, 2003 in FIR No. RC. No. 7(S)/2001-SIU. V dated 12th November, 2001 against the petitioner Mr. Captain Sanjeev Nagpaul is quashed. It is also recorded that the petitioner has deposited Rs. 50,000/- with the Delhi Legal Services Authority.

SANJIV KHANNA, J.

**JULY 09, 2010
NA**