

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

+ **CRL.M.C.No.3840/2009.**

% Reserved on: 13th January, 2010
Date of Decision: 19th January, 2010

GOVIND LAL TAMTA & ANR Petitioners
! Through: Mr.L.S.Chauhan,Mr.C.R.Mishra
. Mr.Sarthak Chaudhary, Advs.

versus

\$ NCT OF DELHI Respondent
^ Through: Mr.Jaideep Malik, APP

* **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 the Code of Criminal Proceedings for quashing FIR No.539/08 registered at PS Vasant Kunj under Sections 420/464/468/471 and 120-B of IPC and the proceedings arising therefrom.

2. The case of the prosecution in brief is that Delhi Public School, Vasant Kunj received a reference from the Manager, Delhi State Cooperative Bank Limited and Canara Bank, New Delhi seeking remittance of the salary of its 14 employees on the ground that they had defaulted in payment of loans taken by them. Certain documents were also sent to the school along with the reference. These documents comprised Identity Card, Pay Slip and undertaking from the employer. On perusal of the documents, the school felt that these employees had forged and fabricated the Pay Slip and undertaking from their employer by forging the signature of the complainant, Vasant Kunj, and the stamp of the school. An FIR under Sections 420/464/468/471 and 120-B of IPC was, therefore, registered and investigation was carried out. The investigation revealed that the petitioner Govind Lal Tamta had obtained a loan of Rs.17,000/- from Delhi State Cooperative Bank, 15/16, Janpath Lane, New Delhi on 19th May, 2006 by submitting forged undertaking of Delhi Public School, Vasant Kunj and fabricated pay slip for the month of February, 2005 showing his net pay as Rs.11,538/- as against actual net pay of Rs.6,300/-. Similarly, petitioner No.2 Narender Singh stood surety for petitioner No.1 Govind Lal Tamta by furnishing a forged undertaking purporting to be issued by Delhi

Public School, Vasant Kunj and a fabricated pay slip for the month of January, 2005 showing his net pay as Rs.8,824/- as against actual pay of Rs.4,588/-. The original computer generated Pay-Slips, duly verified by the Accounts Officer of the school for the relevant month were obtained from the school for the purpose of investigation.

3. The petitioners have sought quashing of the FIR primarily on the ground that they have cleared the loan taken from Delhi State Cooperative Bank which has also issued the requisite NOC in this regard. Though it has also been claimed in the petition that the school had hatched a conspiracy to terminate their services on the pretext of forgery, no such plea was urged during arguments.

4. In a recent decision *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, however, allowed the appeal filed by the CBI and set aside the order passed by the High Court.

5. 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. The appeal filed by the appellant was rejected by the Hon'ble Supreme Court.

6. In *Sushil Suri vs. CBI & Anr.*, Crl.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.

7. In Crl.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.

8. In the present case, the petitioners and some other employees of Delhi Public School not only forged or got forged the Salary Slip and Undertaking purporting to be issued by the school, they also cheated a bank by obtaining loan on the basis of forged documents. The money kept in a bank belongs to the depositors and not to the management or employees of the bank. If loan is obtained from a bank by cheating it and using forged documents for the purpose, it is the depositors of the bank who suffer on account the fraud committed with the bank, because, in case the money does not come back to the bank, it will not be in a position to return the money kept by the depositors with it, thereby resulting in loss to the depositors. Therefore, though technically the bank is a legal entity, the sufferers in case of fraud with a bank are the members of the general public who

keep their hard earned money with the bank, in the hope that they would earn interest on it and would get it back as and when required by them. In fact, recently, there have been cases where Cooperative Banks have defaulted in fulfillment of their obligations on account of the money of the depositors kept in the bank having been misappropriated or diverted by way of loans to those who were not bona fide borrowers and did not intend to pay the loan taken by them from these small banks. A large bank may be in a position to absorb the losses sustained by it on account of such frauds but it may not always be possible for a small bank, such as a Cooperative Bank, to absorb such loss and fulfil all its obligations even in the event of default on account of such borrowers not repaying the loan taken by by them.

9. The Hon'ble Supreme Court in the case of Ravishanker Parasd(supra) and *Smt. Rumi Dhar* (supra) did not permit dropping of proceedings despite the payment made to the bank. Though bank officers were also alleged to be involved in those cases whereas no involvement of a bank officer has so far surfaced during investigation, Delhi State Cooperative Bank being a small bank and the depositors with the bank being people belonging to lower or middle section of the society, it

would not be appropriate to permit quashing of FIR in a case of this nature. This more so, when the investigation is still in progress and one does not know whether any bank official was also involved in the conspiracy pursuant to which loans were obtained from the bank, or not. In fact considering that a large number of employees of the same school were able to obtain loan, from the same bank, adopting the same modus operandi, would create a reasonable suspicion indicating involvement of one or more bank officials in the conspiracy. In any case, neither Delhi Public School nor Delhi State Cooperative Bank has come to the Court seeking quashing of FIR, nor has either of them withdrawn the charges against the petitioners.

10. For the reasons given aforesaid, I am of the considered view that it would not be appropriate to quash the FIR in question.

11. The petition is, therefore, rejected.

**V.K. JAIN
(JUDGE)**

**JANUARY 19, 2010
RS/**