

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

Judgment delivered on: February 17,2011

+ **CRL.M.C. 754/2009 & CRL.M.A.2801/2009**

SANGEETA ARORA

....PETITIONER

Through: Mr. Vikas Arora, Advocate

Versus

C.B.I & ANR.

....RESPONDENTS

Through: Mr. Anindya Malhotra, Advocate with Ms.
Deepti Gulati, Advocate.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.(ORAL)

1. This is a petition under Section 482 Cr.P.C. seeking quashing of case R.C.No. 1/2001-SIU-VIII, under Sections 420/468/471 IPC and the subsequent proceedings pending in the court of Special Judge, CBI under Sections 420/468/471/120B IPC on the ground that since the registration of the case, the petitioner has already settled the loan account with the bank concerned and paid off the entire amount.

2. It is submitted by Sh. Vikas Arora, Advocate for the petitioner that the petitioner Sangeeta Arora is a divorcee, mother of two children and medically unfit. He states that though the petitioner Sangeeta Arora has been charged for criminal conspiracy for committing offence punishable under Sections 420/468/471 IPC, she has no role to play in the conspiracy. In fact, she is an innocent business lady, who was in need of loan and she was told by the other co-accused persons that they would look after the loan application and get the loan sanctioned. She told them that she had no security to furnish for the loan and whatever documentation was done, it was done by the other co-accused persons in connivance with the Bank Manager. Learned counsel submits that since Sangeeta Arora has arrived at a settlement with the bank and paid off the loan along with interest, no purpose shall be served by prosecuting her, as such, he requests for quashing of FIR and the proceedings qua her. In support of his contention, learned counsel has relied upon the judgment of Supreme Court in the matter of **Nikhil Merchant Vs. CBI and Anr.**, (2008) 9 SCC 67.

3. Learned Sh. Anindya Malhotra, Advocate for CBI, on the contrary, has opposed the prayer. He submits that this is a case in which the petitioner, in furtherance of a criminal conspiracy with the co-accused persons including the Bank Manager, obtained sanction of loan worth ₹ 35 lakhs on the basis of the security of forged title

deeds. Learned counsel for the CBI submits that although the charge under Section 13(2) read with Section 13(1)(d), P.C. Act has been framed against the bank official only, the petitioner is also a party to the aforesaid offence, being the conspirator. He further submits that as per the evidence collected during investigation, the petitioner not only signed the loan application, she accompanied the guarantor, who was an imposter and introduced him as her relative. Learned counsel further submitted that the petitioner is the main beneficiary of entire fraud as such her request for quashing of FIR against her is not justified.

4. I have considered the rival contentions and perused the material on record. On perusal of the record, it transpires that on the basis of the charge sheet filed by the CBI, learned Special Judge has charged the petitioner for offences punishable under Sections 420, 468 & 471 read with Section 120B IPC and her co-accused Sh. G.R.Meena, Bank Manager has been charged for the offence punishable under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act. On bare reading of the charge sheet, it is apparent that the petitioner actively indulged in falsification of documents and impersonation by the guarantor and on the basis of those forged documents, in connivance with Sh. G.R.Meena, Manager, Nehru Place Branch of State Bank of Bikaner & Jaipur,

obtained sanction of loan worth ₹ 35 lakhs and against that loan, ₹ 29,56,164/- was withdrawn.

5. The short point which arises for consideration in this matter is whether the petitioner is entitled to quashing of FIR merely for the reason that she has entered into a settlement with the bank and cleared the loan account?

6. On reading of the judgment in **Nikhil Merchant (supra)**, it is evident that the aforesaid judgment proceeds on the basis of an agreement entered into between the financial institution and the appellant in that case of which Clause 11 of the consent term reads 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.”

7. The relevant observations made in aforesaid case are reproduced thus:

“30. 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?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in *B.S. Joshi case*² 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."

8. On perusal of the aforesaid observations, it is apparent that in **Nikhil Merchant's** case, criminal proceedings were quashed as parties had settled the matter in dispute in the light of Clause 11 of the consent terms.

9. The facts of this case are however different. In the instant case, the loan account was settled in terms of the compromise offer, which is reproduced thus:

"COMPROMISE OFFER
(WITHOUT PREJUDICE TO THE CASE PENDING WITH CBI)

With reference to our letter dated 13.8.04, we certify that you have deposited Rs. 250414/- (which includes principle of Rs. 227500.00 and interest of Rs. 22914.00), the amount agreed under One Time Settlement (OTS), leaving no dues towards Bank in the account in terms of OTS.

Please note that no security will be released till finalisation of the case with the CBI".

10. On reading of the aforesaid compromise offer, it is evident that the offer starts with a reservation that settlement offer is without prejudice to the criminal case pending with CBI. Thus, it is clear that the complainant bank had never consented to compromise the

criminal proceedings or help the petitioner in getting the FIR quashed.

11. Otherwise also, the judgment of the Supreme Court in **Nikhil Merchant's** case was considered and discussed by the Supreme Court in the case of **Rumi Dhar Vs. State of West Bengal.**, JT 2009 (5) SC 321, wherein in the peculiar facts of that case, it was observed thus:

17. Appellant is said to have taken part in conspiracy in defrauding the bank. Serious charges of falsification of accounts and forgery of records have also been alleged. Although no charge against the appellant under the Prevention of Corruption Act has been framed, indisputably, the officers of the bank are facing the said charges.

18. It is now a well settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan, criminal offences have been committed by the persons accused thereof including the officers of the bank, criminal proceedings would also indisputably be maintainable. When a settlement is arrived at by and between the creditor and the debtor, the offence committed as such does not come to an end. The judgment of a tribunal in a civil proceeding and that too when it is rendered on the basis of settlement entered into by and between the parties, would not be of much relevance in a criminal proceeding having regard to the provisions contained in Section 43 of the Indian Evidence Act.

.....

.....

22. Our attention has also been drawn to a recent decision of this Court in **Nikhil Merchant v. Central Bureau of Investigation and Anr.**, (2008) 9 SCC 677 , wherein this Court refused to refer the matter to a larger Bench, stating:

30. 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?

31. 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.

12. In the matter of **Central Bureau of Investigation Vs. A. Ravishankar Prasad & Others**, (2009) 2 SCC (Cri) 1063, Supreme Court, inter alia, observed thus:

36. In a recently delivered judgment of this Court in *Rumi Dhar v. State of W.B.* this Court approved the observations of the Special Judge. The observations of the Special Judge are set out as under:

"19. The learned Special Judge in his order dated 16-12-2006 rejected the contention raised on behalf of the appellant herein, stating:

'I have gone through the record citation and considered the circumstances. It is true that the accused has put a good gesture by paying off the dues of the Bank but I am at one with the learned Public Prosecutor that this payment cannot exonerate the accused from a prima facie charge. If I allow this, then I may have to swallow in a case of bribery that the accused has paid back the amount to the sufferer the amount received as bribe.

It is a question of trial whether there was any criminal intention on the part of this lady accused in this crime. The criminal intention is to be inferred from the evidence to be adduced by the prosecution. Simply because the money has been returned, I cannot shut the mouth of the prosecution from adducing evidence against this accused. Thus, I do not like to pass any order in favour of the accused. The prayer for discharge of Accused 7, Rumi Dhar stands rejected. Let the case proceed. Fix 7-2-2007 for consideration of charge. The sureties must produce all the accused persons on that date.' "

.....

.....

46. Before parting with the case we would like to observe that mere repayment of loan under a settlement cannot exempt the accused from the criminal proceeding in the facts of this case."

13. In the instant case, there is, prima facie, evidence on record that the petitioner was a party to conspiracy to cheat the bank in connivance with the bank Manager and she obtained sanction for loan of ₹35 lakhs on the strength of forged and false title deeds produced as security and that she introduced an imposter who stood guarantee for loan, as her relative. Prima facie, she is the main person who has benefited from the sanction of loan. Therefore, merely because she has settled the loan amount and repaid the money, she cannot be absolved of her criminal act without prosecution by quashing the FIR. It may be noted that if the fraudsters and forgers are allowed to go scot free by quashing of FIR only because of settlement with the complainant, it would send a negative signal to the society and encourage people to indulge in

such unlawful practices. Thus, I do not find merit in request for the quashing of FIR on the strength of the settlement arrived at between the parties, particularly when the compromise offer itself is without prejudice to the criminal proceedings initiated by the CBI.

14. Petition is accordingly dismissed.

15. Observations made in this order are based upon prima facie view of the material on record and they shall not be treated as comments on merit of the case.

(AJIT BHARIHOKE)
JUDGE

FEBRUARY 17, 2011

akb/pst