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

+ **CRL.M.C. 3305/2011**

% *Judgment delivered on :30th September,2011*

HARDAYAL GUMBER & ORS. Petitioners
Through : Mr. S K Sharma, Adv.

versus

CBI & ORS. Respondents
Through : Ms. Sonia Mathur, Adv. for
CBI

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J. (Oral)

Crl.M.A.11768/2011

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

CRL.M.C. 3305/2011

1. Vide instant petition the petitioner has sought as
under:

“to quash the FIR No.RC BD/I/E/0005 under section 120-B, read with section 420/467/468/471 IPC, pending before Sh. Vidya Prakash, M.M. Rohini Courts, New Delhi.”

2. Ld. counsel for the petitioner submits that the above mentioned FIR was registered under Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences thereof against one Mr. Bimal Kr. Sood, Bank Officer and other unknown persons. After verification charge-sheet was filed against the petitioners.

3. Ld. counsel for the petitioner further submits that in pursuance to the direction by DRT-III, the total amount of ₹12 lakhs has been paid to the complainant bank i.e. Allahabad Bank. Thereafter, vide communication dated 29.06.2010, the said bank has issued 'No Due Certificate' in favour of the petitioners. The possession of the property has also been handed over to the petitioners by the aforesaid bank.

4. Ld. counsel for the petitioner has drawn the attention of this Court to order dated 15.05.2010 passed by Id. Special Judge, CBI-II, Rohini, Delhi, wherein it is recorded as under :

“Accused B.K.Sood being an employee of a nationalised bank is a public servant within the meaning of Chapter IX of the Indian Penal Code. Sub section (1) of Sec. 4 provides that only Special Judge shall try the offence specified under Sub Section (1) of Sec.3. Offences specified therein and conspiracy in relation to them are triable only by a Special Judge and he alone can take the cognizance. Section 7 of the Act confers exclusive jurisdiction on the Special Judges appointed U/s 6 of the Act to try the offence relating conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause(a).

The trial by Special Court will arise only for the offences alleged to have been committed under the P.C.Act. As per allegation in the instant case, B K Sood being Incharge of RBB committed the offence of criminal misconduct by abusing his official position as a public servant by entering into a criminal conspiracy with the accused Har Dayal & Geeta Gumber to cheat Allahabad Bank to the tune of Rs.13,65,130/- by sanctioning housing loan no.6/23 on the basis of forged, false and fabricated documents.

I have already arrived at a conclusion that the act of B. K. Sood being Incharge of RBB was in no manner connected with any of the irregularity as so alleged by prosecuting agency as no clinching evidence collected by the prosecution against him showing sinister conduct on his part for the inference of conspiracy against him. There is nothing on record to indicate that he being public servant acted against public interest and had obtained the pecuniary benefit even for any other person than himself. Thus, Prevention of Corruption Act is not attracted. B. K. Sood is discharged in this case. His bail bond stands cancelled and surety is discharged.”

5. Thus, the Bank Officer B K Sood has been discharged

from this case, therefore, case under Section 120B of IPC has been demolished against the petitioners. Therefore, he cannot be held guilty and the trial court cannot continue the proceedings against him.

6. He further submits that since they have paid the entire amount due and there is no loss to Exchequer. Moreso, the complainant is no more interested to pursue the matter. In these circumstances, aforesaid FIR may be quashed.

7. Ld. counsel for the petitioner has also relied upon judgment of Hon'ble Supreme Court in **Nikhil Merchant Vs. Central Bureau of Investigation and Anr.** reported in MANU/SC/7957/2008 wherein the case dispute between the company and the bank had been set at rest on the basis of compromise arrived by them whereas the dues of the bank had been cleared and bank did not appear to have any further claim against the complainant. However, the fact remains that in the said case certain documents were alleged to have been created by appellant therein in order to avail of credit facilities beyond the limit to which the company was entitled. The dispute involved therein had

overtones of a civil dispute with certain criminal facets. The question required to be answered in this case was 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 and if the court is satisfied then technicality should not be allowed to stand in the way of proceedings.

8. Ld. counsel for the petitioner submits that special court has already sent the case to concerned trial court saying no conspiracy involved vis-a-vis government service, therefore, the matter is referred to the Magistrate.

9. He further submits that FIR was lodged way back and in the year 2004, Id. Special Judge has discharged the Bank Officer in 2010 and sent the matter back. It will take further substantial time to adjudicate the same.

10. Ld. St. counsel for CBI submits that very allegations against the petitioners is that income papers were required to be compared/verified with originals. They utilised the forged documents knowing it fully to be fabricated. The loan

application was appraised and considered for sanction of loan as was required. After sanction and disbursement of each instalment, the documents and papers were inspected and checked by Branch Manager/Senior Bank Officials/ Concurrent External Auditor. The next instalment was used to be considered for disbursement only after their clearance. This procedure was adhered to during sanction of loan. Therefore, the Bank Officer B K Sood was discharged from the case.

11. In the case of the petitioner the total amount sanctioned was ₹7,70,000/- as housing loan No.6/23 in the name of petitioners for construction at Space No.201 & 202, Second Floor, S-1, Ajay Enclave, New Delhi on the basis of sale deed dated 25.09.1992. Suppressing the fact that he had already sold the said property to his wife Geeta Gumber and that the said property had already been mortgaged with Allahabad Bank. Geeta Gumber stood as one of the guarantor to the loan when she was fully aware that property was mortgaged with Allahabad Bank.

12. Investigation further revealed that State Bank of

Patiala, Nehru Place Branch, New Delhi has taken possession of the said mortgaged property in pursuance of a 'Decree' by the concerned court.

13. Further submits that since the Special Judge has already sent the matter to Id. Magistrate, therefore, charges are yet to be framed.

14. Ld. St. Counsel for CBI has produced the copy of the charge-sheet in RC BD1/2004/E/0005 CBI/BS&FC/NEW DELHI bearing No. 02/05 and has drawn attention to para 4, 5 and 8 of the same, which is as under :

“

(4) Investigation revealed that the loan was sanctioned on sale deed executed by Har Dayal Gumber (A-2) in favour of his wife, Smt. Geeta Gumber (A-3). Shri B.K. Sood (A-1) did not obtain the original copy of the sale deed dated 25.09.1992 in violation of bank rules and regulations. He obtained only photocopy and thereby allowed Har Dayal Gumber to use the said sale deed dated. 25.09.1992 to obtain another loan from State Bank of Patiala, Nehru Place Branch. It is revealed that Shri Har Dayal Gumber (A-2) availed loan from State Bank of Patiala, Nehru Place Branch on 01.11.2002 by mortgaging the said property by deposit of old Sale Deed dated 25.09.1992 suppressing the fact that he had already sold the said property to Smt. Geeta Gumber (A-3) and that the said property had

already been mortgaged with Allahabad Bank. Smt. Geeta Gumber (A-3), knowingly signed as one of the guarantors to this loan, when she was fully aware of the fact that the said property was already mortgaged with Allahabad Bank. Investigation revealed that State Bank of Patiala, Nehru Place Branch, New Delhi has taken possession of the said mortgaged property in pursuance of a 'Decree' by the concerned court, thereby jeopardising the security held by Allahabad Bank. Shri B. K. Sood accepted the mortgage even though it was based on suspicious sale transaction from husband to wife. (5) Investigation revealed that Shri Har Dayal Gumber (A-2) and Smt. Geeta Gumber (A-3) submitted false Income Tax Returns for the Assessment Years 2000-01, 2001-02 and 2002-03 in the bank as proof their income for the purpose of availing the loan. It is revealed that no entry has been found in the database of the Income Tax Department against the PAN of the borrowers.

.....
(8) The accused persons fraudulently and dishonestly used as genuine the aforesaid documents which they knew or had reason to believe the same to be forged documents and the loan amount was revealed to the accused borrowers, causing loss to the bank and corresponding wrongful gain for the accused persons. Smt. Geeta Gumber (A-3) and Shri Har Dayal Gumber (A-2) defaulted in repayment and the loan account has been classified as NPA with a debit balance of Rs.13,56,130/- thereby wrongful loss to the tune of Rs.13,56,130/- was caused to the bank and corresponding pecuniary advantage was obtained by the accused persons."

15. Ld. St. Counsel has also relied upon judgment of Apex

Court in **Sushil Suri Vs. CBI & Anr.** as 2011(5) SCALE whereby Hon'ble Supreme Court while considering the case of **Nikhil Merchant (supra)** and **B.S.Joshi & Ors. Vs. State of Haryana & Anr.** (2003) 4 SCC 675 and **Mahan Mohan Abbot Vs. State of Punjab** (2008) 4 SCC 582 has held as under:-

"Having examined the case in light of the allegations in the Charge-sheet, it is clear that the gravamen of the allegations against the appellant as also the co-accused is that the Company, acting through its directors in concert with the Chartered Accountants and some other persons: (i) conceived a criminal conspiracy and executed it by forging and fabricating a number of documents, like photographs of old machines, purchase orders and invoices showing purchase of machinery in order to support their claim to avail hire purchase loan from PSB; (ii) on the strength of these false documents, PSB parted with the money by issuing pay orders & demand drafts in favour of the Company and (iii) the accused opened six fictitious accounts in the banks (four accounts in Bank of Rajasthan and two in Bank of Madura) to encash the pay orders/bank drafts issued by PSB in favour of the suppliers of machines, thereby directly rotating back the loan amount to the borrower from these fictitious accounts, and in the process committed a systematic fraud on the Bank (PSB) and obtained pecuniary advantage for themselves."

16. Finally the Double Bench of the Hon'ble Supreme Court held that merely because the dues of the bank have been

paid up, the appellant cannot be exonerated from the criminal liability. Therefore, the charge-sheet was not allowed to be quashed.

17. Ld. counsel for petitioner submits that in the case of **Sushil Suri (Supra)** the conspiracy was established and under the conspiracy there was loss to the public exchequer whereas in the present case there is no loss to the public exchequer. More so, he has already suffered 06 years in trial and further he has to suffer for substantial period in trial before the Id. Magistrate.

18. He further submits that though the exercise under Section 482 Cr.P.C. should be exercised sparingly, however, in the interest of justice to secure the ends of justice, this is a fit case to be exercised.

19. In case of **Sushil Suri (supra)**, Hon'ble Supreme Court has held that three instances under which the inherent jurisdiction may be exercised by the High Court, namely: (i) to give effect to an order under the Cr.P.C.; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice.

20. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, the Supreme Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Cr.P.C. Though, it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

21. In the present case the loan was sanctioned on the basis of sale deed executed by Har Dayal Gumber (A-2) in

favour of his wife Geeta Gumber (A-3) on the basis of photocopy of the sale deed dated 25.09.1992 in violation of bank rules and regulations. Whereas, Har Dayal Gumber had used the original sale deed dated 25.09.1992, to obtain another loan from State Bank of Patiala, Nehru Place Branch. The offence of the petitioners is of criminal nature by producing false and forged work completion certificate, bill receipt, etc. purportedly issued by M/s Addies Interiors.

22. I note B K Sood was not found guilty and has been discharged, however, the guilt of the petitioners has to be established and if required to be tried by the trial court. Though they have paid the entire amount due to the bank and were issued "No Due Certificate". However, the method adopted by the petitioners to get the loan sanctioned cannot be accepted.

23. In view of the above, I am not inclined to quash the FIR in question against the petitioners.

24. The finding recorded herein shall not be looked into while deciding this case.

Crl.M.A.11767/2011 (Stay)

In view of the order passed in CRL.M.C. 3305/2011, the application is dismissed as infructuous.

SURESH KAIT, J

September 30, 2011

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