

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

Judgment reserved on: April 01, 2011
Judgment delivered on: April 05, 2011

+ **CRL.M.C. No.3066/2008 & CrI.M.A. No.205//2011**

R.N. SHARMA

....PETITIONER

Through: Mr. Siddharth Luthra, Sr. Advocate with
Mr. I.L. Kapoor, Advocate, Mr. Pramod Kumar
Dubey, Advocate & Mr. Ashish Dixit Advocate.

Versus

C.B.I.

.....RESPONDENT

Through: Mr. Harish Gulati, Advocate with
Mr. Anindya Malhotra, Adovcate, Ms. Aditi
Dixit, Advocate.

WITH

+ **CRL.M.C. No.3772/2008**

HARISH JAIN

....PETITIONER

Through: Mr. Siddharth Luthra, Sr. Advocate with
Mr. Pramod Kumar Dubey, Advocate, Mr. Kunal
Sood & Mr. Vivek Suri, Advocate.

Versus

C.B.I.

.....RESPONDENT

Through: Mr. Harish Gulati, Advocate with
Mr. Anindya Malhotra, Adovcate, Ms. Aditi
Dixit, 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.

1. By this, I propose to decide above referred two revision petitions raising similar questions of law and fact.

2. Petitioners R.N. Sharma and Harish Jain through above referred petitions under Section 482 Cr.P.C. have sought quashing of the charge sheet in case RC No.7(A)/93 CBI New Delhi under Section 420, 468, 471 IPC titled CBI Vs. A.C. Jain and Ors and setting aside of the order dated 06.01.1997 of learned C.M.M. whereby he took cognizance of the offence in the aforesaid case qua them and others.

3. Briefly stated, the facts giving rise to the present petition are that on 04.11.1993 case RC No.7(A)/93 CBI New Delhi was registered by the CBI wherein the petitioner is arrayed as an accused. It is alleged in the FIR that in April, 1965, the Industrial Development Bank of India (IDBI) floated a scheme with the objective that manufacturer of indigenous machinery/capital equipment could push up their sales on deferred payment facility availed by prospective users. Under this scheme, the purchaser/user of the machinery could purchase the machinery and repay its costs over a period of time generally within five years

whereas the manufacturer/seller could get the payment for the machinery supplied within few days by discounting the bills with its bankers.

4. It is also alleged in the FIR that in the year 1983, the petitioners and their co-accused persons entered into a criminal conspiracy to cheat New Bank of India by illegally exploiting the scheme floated by IDBI.

5. It is the case of the prosecution that in order to achieve the object of the conspiracy, the petitioners and their co-accused persons drew various forged bills of exchange falsely declaring the purchase of machinery fictitious and non-existent firms M/s. Pneumitic & Hydraulic Industries, Bombay, Easter Machinery Corporation, Bombay and M/s. Ash Impex Corporation, Hyderabad and thereby induced Ghaziabad Branch of the aforesaid bank discounting of above bills of exchange and allow credit to the accused company in terms of the scheme floated by IDBI, which credit would not have been allowed but for the deception committed by the petitioner and co-accused persons in furtherance of criminal conspiracy by illegally forging and using aforesaid bills of exchange.

6. Learned ACMM, on consideration of the charge sheet vide impugned order dated 06.01.1997 took cognizance of offences under Section 120B IPC read with Section 420, 467, 468 & 471 IPC and

substantive offences under Sections 420/467/468 & 471 IPC against the accused persons including the petitioner.

7. On 19.02.1999, learned C.M.M. was pleased to frame charge against all the accused persons including the petitioner under Section 120B read with Section 420/467/468/471 IPC. Feeling aggrieved by the order framing charge, the petitioners filed respective Criminal Revision Petitions No.17/1999 and 33/1999 in the court of Sessions and the learned Sessions Judge vide order dated 05.06.2000 dismissed the Revision Petitions thereby maintaining the order framing charges against the petitioners.

8. It is alleged in the petition that prior to the initiation of the prosecution, the bank filed civil suit for recovery against the company and the accused persons which was subsequently transferred to Debt Recovery Tribunal numbered as TA No.1144/2000.

9. The above suit for recovery was ultimately compromised and Punjab National Bank agreed to accept a sum of ₹1.51 crores from M/s. Bridge Stone Forgings Pvt. Ltd. in full and final settlement towards the principal amount as well as the interest due. In terms of settlement, M/s. Bridge Stone Forgings Pvt. Ltd. paid a sum of ₹1.45 lakhs to the Bank and also issued three post-dated cheques of ₹2 lakhs each dated 07.01.2004, 14.01.2004 and 20.01.2004 for balance ₹6 lakhs. This payment was certified by Manager, Punjab National Bank vide his letter

dated 01.01.2004. Reference, of which is also there in the order of learned C.M.M. dated 09.01.2004.

10. Learned Shri Sidharth Luthra, Sr. Advocate appearing for the petitioners has submitted at the outset that petitioners are not challenging the order framing charges against them on merits. His only submission is that the charge sheet is liable to be quashed for the reason that the complainant Bank has already settled the matter unconditionally and received a sum of ₹1.51 cores from the company against the principal amount as well as the interest accrued thereon. Learned Sr. Advocate contended that since the subject matter of the prosecution arises out of a civil transaction which has been amicably settled, there is no purpose left in continuing with the prosecution of the petitioner. As such, on the strength of the judgment of the Supreme Court in the matter of *Nikhil Merchant Vs CBI* 2008 (9) SCC 677, he has strongly urged for quashing of the charge sheet. Learned Sr. Advocate has also relied upon the judgment of the Supreme Court in **Ruchi Agarwal Vs. Amit Kumar Agrawal and Others**, (2005) 3 SCC 299, **B.S. Joshi And Others Vs. State of Haryana and Another**, (2003) 4 SCC 675, **Jagdish Chanana & Others Vs. State of Haryana & Another**, (2008) 15 SCC 704, **Manoj Sharma Vs. State & Others**, (2008) 16 SCC 1, **Ramesh Kumar Vs. State**, 106 (2003) DLT 534 and **Court on its Own Motion Vs. Jai Prakash Prasad & Ors.**, Crl. Cont. Ref.2/2009 and WP(Crl) No.802/2010.

11. Learned Shri Harish Gulati, Advocate appearing for the respondent CBI on the contrary has submitted that there is sufficient, prima facie, evidence on record to support the charges framed against the petitioners. Learned counsel contended that it is well settled that in a given case civil as well as criminal procedures can proceed simultaneously. It is further contended that if the Bank with a view to protect its financial interest and to recover the cheated money has opted to settle the civil dispute with the petitioners, it cannot be taken as a circumstance to quash the FIR against the petitioner, particularly when the parties have not compromise in relation to the criminal charges. In support of this contention, learned counsel for the respondent has placed strong reliance on the judgment of the Supreme Court in **Rumi Dhar(Smt) Vs. State of West Bengal & Another**, (2009) 6 SCC 364.

12. I have carefully considered the rival submissions and perused the record.

13. In **B.S. Joshi Vs. State of Rajasthan**, 2003(4) SCC 675, the Supreme Court has held the powers of High Court under Section 482 Cr.P.C. to quash criminal proceedings have no limits and it is not restricted by Section 320 of Code of Criminal Procedure. The aforesaid view has been followed by five Judges Bench of this Court in **Ramesh Kumar Vs. State**, 106 (2003) DLT 534 and by three Judges Bench of

this Court in **Court on its Own Motion Vs. Jai Prakash Prasad & Ors.** *Crl.Cont Ref. 2/2009 and WP(Crl) No.802/2010*.

14. There can be no dispute about the aforesaid proposition of law laid down by the Supreme Court in B.S. Joshi's case and followed by this Court in other two matters. However, the issue for determination in this case is whether or not the settlement relied on by the petitioner justifies the quashing of criminal proceedings under Section 482 Cr.P.C.

15. Learned Senior Counsel for the petitioner has placed strong reliance upon the judgment of Supreme Court in **Nikhil Merchant Vs. Central Bureau of Investigation & Another**, (2008) 9 SCC 677. In the said case, the accused company was granted financial assistance by Andhra Bank, Opera House Branch under various facilities. On account of default in repayment of loans, the bank filed a suit for recovery of the amount payable and in addition, a complaint was made by General Manager and the Chief Vigilance Officer of the Bank on basis whereof, the investigation was undertaken by CBI which filed the charge sheet against five accused persons under Sections 120 read with Section 420, 467, 468 and 460 IPC read with Section 5(2) and 5(1)(d) of P.C. Act, 1947 and Section 13(2) read with 13(1)(d) of P.C. Act, 1988. Nikhil Merchant, appellant before Supreme Court in said case was former Managing Director of M/s. Neemuch Emballage Ltd., Mumbai and other three accused were the officials of Andhra Bank. During pendency of the civil proceedings, parties arrived at an

amicable settlement and the compromise was reduced into writing and filed in the suit. On the basis of compromise, the suit was disposed of as per the consent terms. One of the clauses of the settlement agreement reads thus:

“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.”

16. The Supreme Court in view of the settlement arrived between the parties, particularly the above referred clause 11 of the terms of settlement reversed the order of High Court declining to discharge the petitioner from criminal case in view of the settlement with following observations:

“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 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.”

17. In **Jagdish Chanana Vs. State of Haryana**, 2008(15) SCC 704, the Supreme Court quashed the criminal proceedings on the basis of compromise with following observations:

“2. During the pendency of these proceedings in this Court Crl.Misc. Petition No.42 of 2008 has been filed putting on record a compromise deed dated 30-4-2007. 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.

3. 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 transactions that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise. We accordingly allow the appeal and quash FIR No.83 dated 12-3-2005, PS City Sonapat and all consequent proceedings.”

18. In **Manoj Sharma Vs. State & Others**, 2008(16) SCC 1 also the criminal proceedings were quashed because the parties had arrived at a settlement and the complainant had agreed to withdraw the allegations against each other including the FIR.

19. On careful reading of aforesaid judgments, it is apparent that the High Court in exercise of its powers under Section 482 Cr.P.C. can quash the criminal proceedings depending upon the nature of offence in view of the compromise arrived at between the parties and the

complainant having agreed to withdraw his allegations against the accused or to assist the accused in seeking quashing or criminal proceedings under Section 482 Cr.P.C.

20. The facts in the instant case, in my considered view, are different. The petitioner has relied upon the letter dated 01.01.2004 of Manager, Punjab National Bank, Ambedkar Marg, Ghaziabad, which is stated to incorporate the terms of settlement arrived at between the parties. Aforesaid letter reads thus:

“TO WHOM IT MAY CONCERN

This is to certify that Head Office Authorities have approved the compromise in the account of M/s. Bridge Stone Forgings Pvt. Ltd for ₹ 151 lac (Rupees one crore fifty one lacs only) vide letter dated ZOH: PAD: MRT-BRLIDG dated 30.9.2000 Under General Policy. The party has deposited ₹1,45,000,00/- (Rupees one crore forty five lacs only) upto 31.12.2003 and also deposited postdated cheques each of ₹200000/- (₹ Two Lac only) dated 7-1-04, 14-1-04 and 20-1-04.”

21. On reading of this letter, it is apparent that Punjab National Bank has settled the dispute under civil suit for ₹1.51 crores, out of which the accused company deposited ₹1.45 crores in cash and gave three post-dated cheques for ₹2 lakhs each against the aforesaid ₹6 lakhs of the said amount. There is no promise extended by the bank in this certificate that it shall withdraw its complaint or assist the accused persons in getting the complaint quashed. Thus, in my considered view, the judgments in Manoj Sharma Vs. State, Nikhil Merchant Vs. CBI

and Jagdish Chanana Vs. State of Haryana are of no help to the petitioner in seeking quashing of the FIR.

22. In **Rumi Dhar(Smt) Vs. State of West Bengal & Another, (2009) 6 SCC 364**, similar question came up for consideration before the Supreme Court. The Supreme Court, inter alia, observed thus:

“13. The 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.

14. 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.

15. 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, 1872. The judgment in the civil proceedings will be admissible in evidence only for a limited purpose.

16. It is not a case where the parties have entered into a compromise in relation to the criminal charges. In fact, the offence alleged against the accused being an offence against the society and the allegations contained in the first information report having been investigated by the Central Bureau of Investigation, the bank could not have entered into any settlement at all. CBI has not filed any application for withdrawal of the case. Not only a charge sheet has been filed, charges have also been framed.

23. Our attention has also been drawn to a recent decision of High Court in Nikhil Merchant v. CBI, 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 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.”

24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstance of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing charge.”

23. From the above observations of Supreme Court, it is apparent that every criminal case cannot be quashed merely on the basis of compromise between the parties. The High Court, while exercising

powers under Section 482 Cr.P.C., is under obligation to have regard to the gravity of the offence and if the crime committed is against the society, the High Court should refrain from quashing the criminal proceedings.

24. In the instant case, learned Additional Sessions has found the petitioner, prima facie, guilty of cheating a public sector bank, namely, Punjab National Bank in furtherance of a criminal conspiracy and has charged him for the offences punishable under Section 120B IPC read with Section 420, 467, 468 and 471 IPC. The merits of the order framing charges is not disputed by the petitioner. Petitioner is only relying upon the terms of settlement mentioned in the letter/certificate issued by Manager, Punjab National Bank, Ambedkar Marg, Ghaziabad reproduced above. In the said certificate, the Manager has only referred to the compromise of civil dispute. There is no promise extended by the Bank to settle the criminal dispute or to assist or help the petitioner in quashing of the criminal prosecution against him. Thus, the aforesaid settlement is of no avail to the petitioner. Otherwise also, as per the FIR, the petitioners in furtherance of conspiracy have cheated a public sector bank which offence, in my considered view, is a grave offence against the society. As such, in view of the judgment in Rumi Dhar case, this is not a fit case for quashing of FIR and the charge sheet. One cannot ignore that victim bank is in business of banking and its prime interest is to recover the loan/credit advanced to the client. If in order to protect its business

interest, the bank agreed to settled the suit for recovery for ₹1.51 crores, it cannot be taken as the consent of the victim bank for quashing of the criminal proceedings registered against the petitioner and others.

25. The result of above discussion is that this is not a fit case for exercising inherent powers under Section 482 Cr.P.C. to quash the criminal prosecution, particularly when there is no settlement between the parties in regard to the criminal proceedings. Petitions are accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

APRIL 05, 2011
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