

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

+ CRL.M.C. No. 944/2010

% Judgment reserved on : 29th November, 2011
Judgment delivered on: 16th February, 2012

Y.N. KASHYAP & ANR. Petitioners
Through: Mr.Rakesh Kr. Khanna, Sr. Adv.
with Mr. Rajiv Garg, Mr. Rajiv Kapoor and
Mr. Ashish Garg, Advs.
versus

CBI & ANR. Respondents
Through: Mr. Narender Mann, Spl. PP for
CBI with Mr. Manoj Pant, Adv.

AND
+ CRL.M.C. No. 3819/2010

Y.N. KASHYAP & ORS. Petitioners
Through: Mr.Rakesh Kr. Khanna, Sr. Adv.
with Mr. Rajiv Garg, Mr. Rajiv Kapoor and
Mr. Ashish Garg, Advs.
versus

STATE THR. CBI & ANR. Respondent
Through: Mr. Narender Mann, Spl. PP for
CBI with Mr. Manoj Pant, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Before addressing the respective contentions and factual matrix,
it would be appropriate to mention here that by this common order,

both the petitions are being dealt.

2. Vide order dated 29.08.2011, this Court has passed the following order:-

“1. Mr. Rakesh Khanna, ld. senior counsel for the petitioners submits that FIR No.RC-0712009(E) 0002 dated 13.02.2009 at PS EOW-II was registered under Section 120-B Indian Penal Code, 1860 read with Section 420, 467, 468, 471 Indian Penal Code, 1860 and Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act against the petitioners.

2. Ld. Sr. counsel further submits that respondent No.2 UCO Bank has compromised with the petitioners on 30.11.2009 and the respondent No.2 has no objection if the aforesaid FIR is quashed.

3. On the last date of hearing learned counsel for the bank appeared and submitted that they have received the entire amount from the petitioners and the matter has already been compromised.

4. Ld. counsel for the respondent Bank further submit that they do not want to pursue the case further.

*5. Ld. counsel for CBI submits that the petitioners may have cleared the entire amount to the bank, even then the present FIR cannot be quashed in the light of the judgment of the Hon'ble Supreme Court in case of **Sushil Suri Vs. Central Bureau of Investigation & Anr.** (2011) 5 SCC 708.*

6. Ld. counsel for CBI further submits that the question before the Hon'ble Supreme Court was whether under Section 482 Cr.P.C., FIR can be quashed.

7. While dismissing the above stated case, having regard to the modus operandi, process of charge-sheet, therefore, the Supreme Court observed that this is not a fit case for exercise of power under Section 482 Cr.P.C.

*8. Ld. counsel for the petitioner submits that before taking the decision, the Court has to see the facts of the case in **Sushil Suri(supra)** as referred in para No.3 of the same judgment as under :*

“3.The relevant portion of the FIR reads thus:

“That in June 1999, S/Sh. K.B. Suri, Sushil Suri and Smt. Kanta Suri, the Executive Directors of M/s. Morepen Labs Ltd. having their office at 416-418, Antriksh Bhawan (sic), 22, K.G. Marg, New Delhi, conspired together and in furtherance of the said criminal conspiracy they, dishonestly and fraudulently made an application to Punjab and Sind Bank, Connaught Place, New Delhi for Hire-Purchase Finance to the tune of `300 Lacs, by submitting fake and forged purchase orders, invoices and bills relating to supply of machineries and equipments to be installed in their factory/works situated in Distt. Solan (HP). That the above Executive Directors of the company, dishonestly, fraudulently and in conspiracy with other accused persons submitted to the bank, fake and forged invoices of fictitious/non-existent supplier i.e. M/s. R.K. Engineers, M/s. Teem Metals Pvt. Ltd. and M/s. Malson Impex, made accommodation payments representing as genuine advance payments to suppliers and thereby caused the bank to release funds to the tune of `300 lacs towards cost of machineries and equipments and pay orders in various amounts issued by the bank for the purpose of making payments to suppliers. These amounts were then fraudulently deposited in several fictitious accounts of S/Sh. Sanjay Malik and Bipin Kakkar at Corporation Bank and Canara Bank and encashed. The bank finance raised by the company on the pretext of procurement of machineries and equipments were not used for the purpose stated in the application for loan, instead the bank loan was diverted by the above Executive Directors, in collusion with S/Sh. Sanjay Malik and Bipin Kakkar, for other undisclosed non-business purposes.

That during the year 1998 also the above Executive Directors of M/s. Morepen Labs Ltd. had adopted a similar modus-operandi in collusion with some other

unknown persons/Chartered Accountants and applied for bank finance to the tune of `200 lacs for purchase of machineries and equipments with an object to divert bank finance for undisclosed non-business orders, invoices and bills of fictitious suppliers, i.e. M/s. B.K. Chemi- Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. and caused the bank to release loan of `200 lacs for the purpose of procurement of machineries and equipments to be installed in their factory works situated in Distt. Solan (HP). The bank loan thus released by Punjab and Sind Bank (Hire- Purchase Branch), Connaught Circus, New Delhi was not actually used for the purpose stated in the loan proposal rather the pay orders issued by the bank in the name of fictitious suppliers M/s. Chemi-Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. were deposited in fictitious accounts opened in the above name and style at Bank of Rajasthan, Kamla Nagar Branch, Delhi and encashed. No suppliers of machineries and equipments were made by M/s. B.K. Chemi-Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. to M/s. Morepen Labs. Ltd. and bank finance availed by the company for the said purpose were again used for some undisclosed non-business purposes.

The above facts and circumstances disclose the commission of offences u/s 120-B, IPC r/w 420, 409, 468 and 471 IPC and substantive offences thereunder against Chartered Accountants S/Sh. Sanjay Malik and Bipin Kakkar and S/Sh. K.B. Suri, Sushil Suri and Smt. Kanta Suri, Executive Directors of M/s. Morepen Labs. Ltd., New Delhi and other unknown persons. Therefore, a regular case is registered and entrusted to Sh. A.K. Singh, Dy. SP/SIU-VII, for investigation”

9. Ld. counsel for the petitioner submits that in the case of *Sushil Suri (Supra)*, total fraud was played by the accused person, whereas, in the instant case facts are entirely different from the facts of the case of *Sushil Suri (Supra)*.

10. Ld. counsel for Respondent No.1/CBI submits that in the instant case Sh. R K Joshi, the then Asst. General Manager of UCO Bank and Sh. Y N Kashyap, R/o House No.1361-P, Sector-14, Faridabad owing to their acts of criminal conspiracy and cheating etc. UCO Bank, Delhi High Court, New Delhi sustained a lost of `1.74 crores.

11. Ld. counsel for CBI further submits that on the basis of application dated 21.10.2004 (On a plain paper and not on the prescribed format) from Sh. Y N Kashyap, Sh. R K Joshi, the then Asst. General Manager (since dismissed from Bank's service) of UCO Bank, Delhi High Court, New Delhi had sanctioned a loan of `01 crore to petitioner No.1/Sh. Y N Kashyap under Bank's UCO Rent Scheme.

12. Ld. counsel for CBI further submits that moreover the copy of the lease deed from where the details of monthly rent payable and period of tenancy had to be obtained are not on record. It appears that the above named Branch official in connivance with the borrower had first decided the quantum of loan and later on completed the paper work, mentioned the figures of monthly rent required to sanction a loan of `1 crore and `32 lakhs. Moreover, both the abovesaid loan accounts had been secured by creating the equitable mortgage of immovable property in the name of Sh. Y N Kashyap. The subject property had been allotted to Sh. Y N Kashyap by HUDA for creation of equitable mortgage of the involved property, pre-permission from HUDA and created the equitable mortgage in the bank's books.

13. Ld. counsel for CBI further submits that as the borrower failed to repay the installments in time in both the abovesaid loan accounts, bank referred the matter to HUDA for making its lien on the subject property. It was found that the subject property had already been mortgaged to two other banks namely Andhra Bank and Standard

Chartered Bank, New Delhi. The title deeds deposited with the bank were also found not genuine.

14. Ld. counsel for the petitioner has clarified that the loan amount was sanctioned in the year 2004 and he continued to pay the installments up to 2009, when the complaint was filed and case was registered.

15. Ld. counsel for the petitioner further submits that respondent No.2 UCO Bank had filed OA before DRT to recover the balance amount from the petitioner.

16. Ld. Sr. counsel further submits that during the proceeding before DRT the petitioners and respondent No.2/Bank have settled the total amount.

17. In addition, ld. Sr. counsel has relied upon the order passed by this Court on 11.08.2011 in WP(Crl.) 485/2011 and also relied upon an order passed in a batch matter vide leading Crl.M.C.1050/2009 wherein both the aforesaid orders, the cases under the same offences were quashed.

18. Ld. Sr. counsel further submits that if the intention of the party at taking the loan is malafide then only Section 420 Indian Penal Code, 1860 will be attracted.

19. In the present case, the petitioner continued to repay the loan for five years and even till date of the complaint he was regularly paying, therefore, he had no intention to cheat the bank at the time of sanctioning the loan.

20. Ld. Sr. counsel further submits that the petitioner No.1 had paid `07 crores to Andhra Bank and there was no complaint filed on behalf of the said bank. `250 lakhs paid to Punjab National Bank along with interest.

21. The respondent/CBI has filed the reply in this matter and stated in para 11 that the petitioners were hand in glove with Sh. R K Joshi, Asst. General Manager and got sanctioned the loan of `132 lakhs, under UCO Bank's Rent Scheme, on the basis of forged title deed of property No.1361-P, Sector-14, Faridabad, because, the original title deed had already mortgaged with Andhra Bank. The forged title deed of the property is not the same copy as compared with the copy available in the office of Haryana Urban Development Authority. Both the witnesses of the conveyance deed denied their signatures on it.

3. Ld. Counsel for CBI has drawn the attention of this Court to the reply filed by respondent no. 2 i.e. UCO Bank wherein it is stated that:-

“Offer of Rs.68 Lacs made by the petitioners was accepted by the bank towards full and final settlement of the claim, which was also paid by the petitioners and a No Dues Certificate dated 03.12.2009 was issued by the respondent no. 2. However, it is to be clarified that said amount of Rs.68 Lacs was towards discharge of petitioners civil liabilities only.

Keeping in view the gravity of the criminal act, the R.C. cannot be quashed.”

4. More so, it is admitted fact that father of Ranjan Kashyap, i.e. petitioner no. 2 has filed a UCO Rent Scheme and got sanctioned Rs.1.32 Crore in January – February, 2005. As on 21.01.2008, a sum of Rs.1,74,29,877/- inclusive was shown outstanding in an original application filed by the UCO Bank. The amount was inclusive of interest in the outstanding dues to the tune of Rs.87,61,867/- and payment towards principal outstanding without interest was Rs.48 lacs approximately and he had settled the matter with the UCO Bank by paying a sum of Rs.68 lacs on 30.09.2009 as an amicable settlement at the amount agreed with the bank.

5. I am conscious that in ***Sushil Suri (Supra)*** it was held that High Court and Apex Court would not direct quashing of cases involving crime against society, particularly, where the *prima facie* case has been made out against the accused. His Lordships while referring to several earlier decisions on the point, including ***R.P. Kapur (Supra); State of Haryana and Ors. Vs. Bhajan Lal & ors. 1992 Supp (1) SCC 335; Janata Dal vs. H.S. Chowdhary & Ors.1992 (4) SCC 30510; B.S. Crl.M.C.944/2010 & Crl. M.C. 3819/2010***

Joshi & Ors. (Supra); Nikhil Merchant (Supra) has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of the cases. It has been further observed that the inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case, where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the court and the issues involved, where factual or legal are of such magnitude that they cannot be seen in their true perspective without sufficient material.

6. In the case of ***Nikhil Merchant vs. CBI & Anr. 2008 (4) JCC 2311*** it is recorded that allegation under the chargesheet was that accused persons had conspired with each other in fraudulently diverting the funds of the Bank. Offence alleging forgery was included in the chargesheet. In the meantime, suit for recovery of money filed by the bank against the company, to which the appellant in that case was also a party, was disposed of on a written compromise arrived at between the parties. Consequent upon the compromise of the suit which stipulated that neither the party had any claim against each other and parties had withdrawn all allegations and counter-allegations against each other and the said appellant filed an application for discharge. The application was rejected by the trial court. Petition preferred under Section 482 Cr.P.C. was also dismissed by the High Court. In further Appeal to the Hon'ble Supreme Court, accepting the contention of the appellant that the court could not transcend the limitation imposed under Section 320 of the Cr.P.C. and passed orders

quashing the criminal proceedings even where non-compoundable offences were involved.

7. In the case of *Sushil Suri (Supra)* having regard to the *modus operandi* adopted by the accused as projected in the chargesheet, Hon'ble Supreme Court held that it was not fit case for exercise on jurisdiction by the High Court under Section 482 Cr.P.C. and Supreme Court under Article 142 of the Constitution of India. The accused had not only duped the bank, but they had also availed of depreciation on the machinery, which was never purchased and used by them causing loss to the exchequer, a serious economic offence against the society. Therefore, it is held that merely, because the dues of the Bank have having been paid up, accused cannot be exonerated from the Criminal liability.

8. In the instant case, respondent no. 1 CBI has strongly opposed the case and respondent no. 2 Bank has clearly stated in its reply that they had issued No Dues Certificate only towards the civil liability and not against the criminal liability. Thus, both the respondents are not in favour of quashing of the FIR.

9. On perusal of the affidavit filed by Ranjan Kashyap, petitioner no. 2, it is clear that matter under the One Time Scheme (OTS) was settled amicably by paying a sum of Rs.68 Lacs on 30.09.2009 at the agreed amount with the Bank against the outstanding dues to the tune of Rs.87,61,867/-.

10. Therefore, there is net loss of more than Rs. 20Lacs to the public exchequer. More so, the loan he advanced from the UCO Bank was in connivance with the co-accused R.K. Joshi, the then AGM and

got sanctioned loan of Rs.1.32 Crore from UCO Bank, Delhi High Court Branch under UCO Rent Scheme on the basis of forged documents (as the case of prosecution) or photocopies (as the case of petitioner), as original Title Deed was already mortgaged with the Andhra Bank. Thus, the petitioners had procured the loan in connivance with the bank officers.

11. Though the petitioners have paid the agreed amount and settled with the bank. The bank has also issued 'No Dues Certificate', however, under the 'one Time Scheme', the petitioners have caused the net loss to the public exchequer. In such a situation, I am of the considered view, where the parties have played tricks, documents were forged or adopted by illegal means, due to which the Government/public sector undertaking has been duped and suffered loss, the parties are not entitled for any favour or lenient view. If the issues would have been settled between the private parties and no loss is caused to the public institution, then the position may be different.

12. Keeping the above discussion into view, I am not inclined to quash the R.C.NO. 71/2009 IPC under Section 420/467/468/471/120-B Indian Penal Code, 1860 and Section 13 (2) of PC Act and R.C. No. 72/2008 under Section 13(2) and 13(1)(d) of P.C. Act.

13. Criminal M.C. No.944/2010 and Crl.M.C.3819/2010 are hereby dismissed.

14. No order as to costs.

SURESH KAIT, J

FEBRUARY 16, 2012/jg