

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 283 of 2008

Reserved on: April 22, 2014

Decision on: May 2, 2014

P.K.SHARMA

..... Appellant

Through: Ms. Rebecca M. John, Senior
Advocate with Mr. Harsh Bora, Advocate.

versus

THE STATE THROUGH C.B.I.

..... Respondent

Through: Mr. Manoj Ohri, Spl. PP.

WITH

CRL.A. 295 of 2008

YOGENDER NATH VAID

..... Appellant

Through: Mr. R.M. Tufail with
Mr. Anwar A. Khan, Mr. Farooq
Chaudhary, Mr. Vishal Raj Sehijpal,
Mr. Ghufra Ahmad and Mr. Varun
Agarwal, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Manoj Ohri, Spl. PP

WITH

CRL.A. 284 of 2008

SOYUZ ELECTRONICS P.LTD.

..... Appellant

Through: Ms. Rebecca M. John, Senior Advocate
with Mr. Harsh Bora, Advocate.

versus

THE STATE (THROUGH: C.B.I.) Respondent
Through: Mr. Manoj Ohri, Spl. PP.

And

CRL.A. 285 of 2008

RAVI SHANKAR Appellant
Through: Mr. Vishal Gosain, Advocate.

versus

THE STATE (THROUGH: C.B.I.) Respondent
Through: Mr. Manoj Ohri, Spl. PP.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

02.05.2014

1. These appeals are directed against the impugned judgment dated 18th March 2008 passed by the learned Special Judge, Tis Hazari Courts, Delhi in Corruption Case No. 62 of 2004 convicting the accused H.C. Bangia (now deceased) of the offence under Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 ('PC Act') and for the offence of criminal conspiracy punishable under Section 120 B IPC read with Section 420 IPC. By the said judgment the other four accused were convicted of the offence under 420 IPC and Section 120B IPC read with Section 13 (1) (d) and 13 (2) of PC Act.

2. These appeals are also directed against the order on sentence dated 19th March 2008 whereby H.C. Bangia was sentenced to undergo rigorous imprisonment ('RI') for two years with a fine of Rs. 20,000 and in default of payment of fine, to undergo simple imprisonment ('SI') for three months under Section 13 (2) of PC Act and sentenced to RI for one year and a fine of Rs. 10,000, and in default, to undergo SI for a period of two months for the offence under Section 120B IPC read with Section 420 IPC. By the same order, the other Appellants, P.K. Sharma, Yogender Nath Vaid and Ravi Shankar were sentenced to undergo RI for two years and a fine of Rs. 20,000, and in default, to undergo SI for a period for three months for the offence under Section 420 IPC and one year RI with fine of Rs. 10,000 and in default of payment of fine, to undergo two months SI for the offence under Section 120 B IPC read with Section 13 (2) PC Act. As far as the Appellant, Soyuz Electronics Private Limited was concerned, it was sentenced to pay fine of Rs. 40,000 for the offence under Section 420 IPC along with a fine of Rs. 20,000 for the offence under Section 120 B IPC read with Section 13 (2) PC Act. Both the sentences were directed to run concurrently.

3. The case of the prosecution was that on 17th May 1991 Ravi Shankar, Accused No. 3 (A-3) and P.K. Sharma, Accused No. 2 (A-2) subscribed 10 equity shares and signed the memorandum and articles of association of Soyuz Electronics Pvt. Ltd (A-5) and filed them with the Registrar of Companies ('ROC'). A-5 was not

incorporated on that date. The certificate of incorporation of A-5 under the Companies Act 1956 was issued by the ROC, Delhi and Haryana on 29th May 1991.

4. Even prior to the incorporation of A-5, both A-2 and A-3 on 18th May 1991 itself opened a current account in the name of A-5 with the Punjab National Bank ('PNB'), Nizamuddin West Branch, of which H.C. Bangia (A-1) was the Senior Manager. The introducer for the opening of the account was A-2 in his capacity as proprietor of M/s. Synchem Corporation, which had an account in the same branch.

5. The further case of the prosecution was that as soon as the current account No. 1652 was opened in the name of A-5, on 18th May 1991 itself A-5 drew a bogus bill of exchange (B/E) for Rs. 98,200 on M/s. Kamla Traders, a proprietary concern of which M.S. Rao, brother of A-3 was the sole proprietor. A-1, without sanction any bill discounting limit to A-5, allowed the said B/E to be discounted on that very date. The current account of A-5 was credited for the amount of Rs. 97,453 after deducting the bank's commission.

6. On that very date, i.e., 18th May 1991 A-2 issued a cheque for Rs. 96,025 in favour of the bank for issuance of pay order favouring 'Captain R.H. Malkhani' (PW-11). This was approved by A-1 and cash order for Rs. 96,000 was issued. This was countersigned by A-1. A-2 and A-3 used this cash order towards part payment for the

purchase from PW-11 of Flat No. 156, Somdatt Chamber, Bhikaji Cama Place, New Delhi. The total sale consideration of which was Rs. 2,05,000. The discounted bill was presented to the United Bank of India, Darya Ganj, New Delhi was received unpaid by a letter dated 29th August 1991 with the advise 'payment not forthcoming'.

7. The second transaction involving criminal conspiracy of the accused was that on 23rd May 1991, A-1 by misusing his official position allowed drawing power of Rs. 8,50,000 to A-5 without any application in the prescribed form and without pledge memos signed on behalf of A-5. In terms of the procedure of the Bank for release of drawing power of Rs. 8,50,000 with 25% margin, stocks of A-5 worth Rs. 11.33 lakhs ought to have been pledged with the Bank. However, no such stocks were offered for pledge.

8. A-2 and A-3 by a letter dated 23rd May 1991 written on behalf of A-5 requested that a pay order be issued in the sum of Rs. 8,40,000 in favour of M/s. Universal Computer Technics ('UCT') of which A-2 was the proprietor, for purchase of computers. This request was approved by A-1 and accordingly a cash order dated 23rd May 1991 for Rs. 8,40,000 was issued in favour of UCT. A-2 opened a current account No. 31008 in the name of UCT with Union Bank of India, Okhla Industrial Area, New Delhi and deposited the said sum into that account. From this account A-2 withdrew the amounts by various cheques. A-2 paid Rs. 2 lakh to his brother-in-law, Lekh Raj Bhardwaj (PW-9) who stated that he handed over the amount to A-2

at his residence. On 21st June 1991 A-2 had transferred Rs. 4 lakh to the account of Centurion Plast Chem ('CPC') of which A-2 was the proprietor. On 26th June 1991 A-2 withdrew a sum of Rs. 3,50,000 from the account of CPC by a cheque. According to the prosecution the above amount was withdrawn and utilised for personal benefit of A-2 and A-3 contrary to the undertaking given by A-5 to the Bank that the money would be used only for purchasing computers.

9. The third transaction was that on 26th May 1991 a current account No. 1655 in the name of Universal Trading Corporation ('UTC') was opened by A-4 who is the brother-in-law of A-1. This account was introduced by A-2 as proprietor of M/s. Synchem Corporation. On 26th May 1991 itself A-4 drew a B/E for Rs. 99,800 on M/s. Centurion Plast Chem ('CPC') of which A-2 was sole Proprietor falsely showing that A-4 had supplied material worth that amount to M/s. CPC. On the paying-in-slip for bills in respect of the bogus B/E, A-1 mentioned 'present the documents through Bank of Rajasthan, South Extension, New Delhi accepted in LED'. Although there was no bill purchase limits sanctioned in favour of UTC, this document was sent to Bank of Rajasthan for collection, but was returned.

10. On 26th May 1991 itself a sum of Rs. 94,487 was credited to the account of UTC. On that very date a cash order of Rs. 95,000 was issued in the name of M/s. Super Plastics of which A-2 was the proprietor. On the said application, A-1 mentioned 'please issue pay

order against LED'. A-2 opened a current account No. 29084 in the name of M/s. Super Plastics with the Union Bank of India. Okhla Industrial Area, Phase-II, New Delhi and the cash order was deposited and the party's account was credited on 26th May 1991. Out of the said sum, A-2 transferred Rs. 40,000 and Rs. 50,000 from Super Plastic to UCT on 24th June 1991.

11. By an order dated 22nd October 1997 the learned Special Judge directed that the offence under Section 120 B read with Section 420 IPC and Section 13 (2) read with Section 13 (1) (d) of PC Act be framed against the accused. Although the charge sheet had been filed for the offences under Sections 467, 468 and 471 IPC the learned Special Judge held that those offences were not made out. It was noted that the accused had signed the documents in their own names. The only allegation about forgery in respect of the documents submitted to PNB was that on 17th June 1991 A-3 has allegedly signed as Amit Sudhakar (PW-17) to confirm that M/s. UCT had supplied daisy wheels to A-5. It was found that the confirmation was made after a sum of Rs. 8,40,000 had already been released by a cash order dated 23rd May 1991. It was held that the bank was not cheated as such document was not prepared for that purpose. Separate charges were framed against each of the accused on 11th November 2007 to which they pleaded not guilty.

12. The prosecution examined 19 witnesses. On 28th July 1998 the examination-in-chief and cross-examination of B.M. Mittal (PW-1),

Deputy General Manager, PNB, Zonal Branch, Agra took place. The prosecution evidence concluded fourteen years later with the examination of PW-19 Mr. R.K. Jain, Government Examiner of Questioned Documents, Hyderabad on 15th July 2002.

13. The statements of the accused under Section 313 Cr PC were recorded. The stand taken by A-1 as regards A-5 was that all formalities for the incorporation stood completed on 17th May 1991 and that pre-incorporation contracts and transaction were legally valid and enforceable. Accordingly, the legitimacy of the company would relate back to 17th May 1991. It was denied that the B/E drawn on M/s. Kamla Traders was bogus.

14. As regards the money being utilized for purchase of Flat No. 156, Som Dutt Chambers, A-1 answered that the said property was mortgaged to PNB and the title deeds of the flat were in the possession of PNB and that PNB was aware of the value of the flat which was more than Rs. 2 lakhs. As regards the pledging of stocks he maintained that they were in the custody of the bank under lock and key. A-1 stated that the Bank had written letters to A-5 to take back the pledged stocks and further that the Debt Recovery Tribunal ('DRT') which disposed off the civil suit for recovery, had ordered release of the stocks pledged to the Bank.

15. A-1 also maintained that the bill of exchange drawn on CPC by UTC was not a bogus document and had been validly sent to the

Bank of Rajasthan for collection. The other accused also answered in the same vein and denied any wrong doing.

16. Mr. A.P. Arora, Deputy Manager, PNB, Nizamuddin was examined as DW-1. Mr. P.K. Sharma examined himself as DW-2. Mr. S.K. Chaturvedi, Accounts Officer was examined as DW-3. Mr. M. Rahman, Upper Division Clerk, DRT-I, Jhandewalan was examined as DW-4. Mr. A.P. Arora, Deputy Manager, PNB was again examined as DW-5. The defence evidence was closed on 13th November 2007.

17. The trial Court first examined the validity of the sanction to prosecute A-. The question was answered in the affirmative after analysing the evidence of PW-1. On analysing of the evidence of Mr. G.K. Jain (PW-5), Sub-Manager, PNB, Mr. Karam Vir (PW-6), Loan Officer, PNB and Mr. S.K. Sharma (PW-12), Deputy Director (Technical), Department of Company Affairs, Ministry of Law, Justice and Company Affairs, Shastri Bhawan, the learned trial Court concluded that allowing the opening of account in the name of A-5 on 18th May 1991 through A-1 and A-2 was illegal and a misuse of his official power/position as a public servant. On analysing of the evidence of Mr. S.K. Gupta (PW-4), Senior Manager in PNB, Nizamuddin and Mr. O.P. Lakra (PW-7), Controller of Accounts in M/s. Modi Rubber Limited who purportedly recognized the signature of Mr. M.S. Rao, the real brother of A-3 who is one of the Directors of A-5 and Mr. S.K. Kaushik (PW-15) another colleague

of M.S. Rao, Mr. R.K. Jain (PW-19) and Mr. B.D. Kunda (PW-16) in whose presence the specimen signatures of M.S. Rao were taken. The learned trial Court concluded that the signatures on the B/E drawn on M/s. Kamla Traders (Ex.PW-8/D) and the Hundies (Ex.PW-15/A) was not that of M.S. Rao. The B/E had been returned back unpaid. It was evident that the entire transaction in favour of M/s. Kamla Traders was a bogus one. The withdrawal of the money credited to the account of A-5 as a result was fraudulent.

18. As regards the transaction concerning drawing power limit to the extent of Rs. 8,50,000 by A-1 in favour of A-5 for purchase of computers, the learned trial Court came to the conclusion that a perusal of the two invoices (Ex.PW17/A and PW17/B) of UCT showed that they contained forged signatures of Amit Sudhakar (PW-17). This was proved by R.K. Jain (PW-19), Handwriting Expert. It was proved that neither on 23rd May 1991, when the limit was sanctioned, nor on 17th June 1991 stocks worth Rs. 11,30,000 were pledged with the bank. It was held that obtaining of an insurance policy did not prove the value of the stock pledged and the date of stock pledged with the Bank. The trial Court held that Ex.PW-17/A and Ex.PW-17/B were forged documents prepared by A-3. A-3 could however not be convicted under Section 468 IPC since no charges were framed against him for that offence. From the documents Ex.PW-6/A and B at the most it was proved that the goods worth about Rs. 2,90,000 were purchased by A-5 from Combat Computers. It was clear that till 17th June 1991 sufficient

stocks to cover the security of CC limit of Rs. 8,50,000 were not pledged with the bank.

19. As regards the third transaction involving A-4 and M/s. UTC, the learned trial Court on analysing the evidence held that it was within the knowledge of A-1 and A-2 that it was a bogus invoice (Ex.PW-8/F) purportedly to be invoice of UTC drawn on CPC which was discounted. The learned trial Court noted that although the offence under Section 420 IPC was compoundable, the bank had not compounded the said offence. The offence under Section 13 (1) (d) r/w Section 13 (2) PC Act and Section 120B IPC was not compoundable. Although the civil proceedings had come to an end as a result of the settlement arrived at between the accused and the Bank it would not affect the criminal liability of the accused. It was concluded that the prosecution had been able to prove that the acts done intentionally and dishonestly by the accused resulted in the Bank being induced to pay money to A-2 to A-5 in furtherance of the criminal conspiracy hatched by A-1 to A-5, thus causing loss to the bank and wrongful gain to the accused.

20. This Court has heard the submissions of Ms. Rebecca M. John, learned Senior counsel for the Appellants A-2 and A-5, Mr. R.M. Tuffail, learned counsel for A-4, Mr. Vishal Gosain, learned counsel for A-3 and Mr. Manoj Ohri, learned Special Public Prosecutor ('SPP') for the CBI respectively.

21. In the first place it may noticed that A-1 H.C. Bangia expired during the pendency of his appeal (Criminal Appeal No. 333 of 2008) and therefore, by an order dated 1st April 2014 the said appeal was disposed of as having abated.

22. Ms. John submitted that in terms of Section 15 (h) and 19 (e) of the Specific Relief Act, 1963 ('SRA') contracts entered by promoters of a company prior to incorporation would be enforceable against the company. Reliance was placed on the decision of the Supreme Court in *Jai Narain Parasrampuriah (Dead) v. Pushpa Devi Saraf (2006) 7 SCC 756*. It was submitted that in the present case A-2 and A-3 had not avoided the liability of A-5 and in fact had made payments pursuant to the settlement arrived at in CS (OS) 1483 of 1994. In the plaint of the said suit the Bank had itself acknowledged that A-5 was validly incorporated. It was submitted that the fact that the disputes were settled in the suit and the money, as agreed to be paid, was in fact paid showed that there was no intention to cheat as far as A-2, A-3 and A-5 were concerned.

23. As far as A-1 was concerned, it was submitted the prosecution failed to prove that he had acted without bonafide in granting A-5 the bill discounting facility. Reliance was placed on the decisions of the Supreme Court in *C.K. Jaffer Sharief v. State (through CBI) (2013) 1 SCC 205*, *Subramanian Swamy v. A. Raja (2012) 9 SCC 257* and *P. Seetharamaiah v. State represented by Public Prosecutor, CBI Hyderabad 1997 (3) All India Criminal Law*

Reporter 97 to urge that the offence against A-1 under Section 13 (1) (d) read with Section 13 (2) was not made out and consequently, the charge against the remaining Appellants of the offence under Section 120 B IPC read with Section 13 (1) (d) and (2) PC Act must also fail. It is further submitted that when the B/E drawn by A-5 on M/s. Kamla Traders was presented, it was returned by United Bank of India, Darya Ganj, New Delhi by its letter dated 29th August 1991 with the advise 'payment not forthcoming' and not on the ground that signature of M.S. Rao on behalf of M/s. Kamla Traders was forged or that there was no such firm or proprietary concern. Further, M.S. Rao himself was not produced as witness.

24. The above submissions have been considered. A perusal of the memorandum [Ex.PW-12/A] and articles of association (Ex.PW-12/B) shows that the said documents were signed on 17th May 1991 and also filed with the ROC. However, the fact remains that on the date of opening of account in the name of A-5 with the PNB, A-5 had not been incorporated. The certificate of incorporation (Ex.PW-12/C) was dated 29th May 1991. In the account form (Ex.PW8/A) the column 'certificate of incorporation (for inspection and return)' was left blank although it was required to be mandatorily filled up. Clearly, therefore, A-2 and A-3 did not inform the Bank that on that date A-5 had legally not come into existence. There could be no account in its name on that date. There also cannot be any doubt that A-1 failed to discharge his official duty and acted in a manner detrimental to the interests of the Bank in opening a current account

in the name of A-5 without verifying whether it had been validly incorporated. This was a mandatory requirement. That this was not a merely negligent act becomes clear when the other transactions that took place on the same day are viewed. The fact of opening of account in the name of fictitious entity would attract the offence of cheating under Section 420 IPC.

25. The facts in this case are clearly different from *Jai Narain Parasrampuriah (Dead) v. Pushpa Devi Saraf* which was in the context of Section 15 (h) and 19 (e) SRA. That case involved the promoter of the company falsely representing the company as being incorporated even prior to its formal incorporation. In their capacity as directors of the company the appellants there had acquired properties, the consideration for which had to be paid by the company. It was in that context that the Supreme Court held that merely because the properties were acquired by the promoters, would not mean that no title could have been passed in favour of the company. In the present case, the Court is inclined to agree with the trial Court that neither Section 15 (h) nor 19 (e) SRA will come to the aid of A-5 or its directors, A-2 and A-3 to avoid criminal liability under Section 420 IPC. It is not possible to hold that on 17th May 1991 A-5 was already in existence. This was also clear from the evidence of PW-12 who confirmed that prior to its incorporation A-5 was not entitled to carry out any business in its name. Further, PW-5 confirmed that in terms of the Rules of the Bank A-5 could not have been granted any facility prior to its incorporation. There

could not be any transaction on behalf of A-5 as a company prior to it legally coming into existence i.e. prior to 29th May 1991. Prior to that date, no account could be opened in its name, no cheques issued in its favour or by it. On 18th May 1991 no account opening form for A-5 could have been filled up by A-2 or A-3 acting as its Directors. Further, such an act could never have been committed without the active connivance of A-1.

26. The statement made in the plaint in the civil suit filed by the Bank against A-5 that it was duly incorporated was made on a date when A-5 was already incorporated. This by no means could be treated as an admission by the Bank that A-5 stood incorporated prior to 29th May 1991. In any event, there can be no estoppel in law. The fact remains that prior to 29th May 1991 no bill discounting facility or withdrawal limits could be sanctioned in favour of A-5 under the orders of A-1.

27. The further factor which persuades the Court to concur with the learned trial Court that there was a criminal conspiracy between the accused to cause an illegal loss to the PNB and an illegal gain to themselves is that the account was introduced by A-2 as proprietor of M/s. Synchem Corporation, which was already an account holder in that PNB Branch. Immediately after opening of the account A-2 and A-3 presented the B/E dated 18th May 1991, on the basis of challan dated 17th May 1991 drawn on M/s. Kamla Traders along with hundies which had purportedly been signed by M.S. Rao as

acceptance of the personal computer and computer parts purportedly sold to it for a sum of Rs. 98,200. The said B/E was discounted as local bill discount ('LBD') by A-1 and an amount of Rs. 96,025 was withdrawn from that account by a cheque issued by A-2 dated 18th May 1991. The cheque was signed with the rubber stamp of A-5 on which date the said company had not come into existence. Admittedly, the said amount was utilized for payment of Rs. 96,000 in favour of Mr. R.H. Malkhani (PW-11) by a pay order for the purchase of premises, i.e., Flat No. 156, Som Dutt Chambers, Bhikaji Cama Place, New Delhi which was purchased in the name of A-2 and A-3. That the said property may have been mortgaged by PNB does not alter the patent illegality in the above transactions. What was mortgaged was not the property belonging to A-5.

28. As regards the signature of M.S. Rao on the invoice drawn by A-5 as Kamla Traders (Ex.PW-8/D) the trial Court referred to the opinion of PW-19 which compared the specimen signature of M.S. Rao with the questioned signatures marked as Q.113, 114 and Q.115. The report of Handwriting Expert was exhibited PW-18/C. In para 7 thereof it is stated that M.S. Rao had not signed the questioned signatures 113, 114 and 115. PW-19 gave separate reasons for that opinion. Significantly PW-19 was cross-examined only by learned counsel for A-1 and not by learned counsel for the other accused. Nothing had come in the cross-examination of PW-19 by learned counsel for A-1.

29. Although in its communication dated 29th August 1991 (Ex.PW-8/E) Union Bank of India had only stated that the payment “was not forthcoming”, the fact that the signature of M.S. Rao on the bill raised on Kamla Traders was a forged one stood proved beyond reasonable doubt. This formed the basis of crediting the account of A-5 with the discounted bill amount which was then utilized for purchasing Flat No. 156, Som Dutt Chambers, Bhikaji Cama Place in the names of A-2 and A-3.

30. Consequently, this Court is satisfied that no error has been committed by the trial Court in concluding that as regards the first transaction, the charge against the Appellants stood proved beyond reasonable doubt.

31. As regards the culpability of A-1, this Court finds that the fact situation in the decisions cited by learned Senior counsel for the Appellants is entirely different. In *P. Seetharamaiah v. State* it was held that where an officer of the bank was found to have “carelessly handled the funds”, it could not prove *mens rea*. In the present case, however, for the reasons already discussed the involvement of A-1 in the commission of the offence in terms of Section 13 (1) (d) and 13 (2) PC Act pursuant to a conspiracy with A-2 and A-3 attracting the offence under Section 120-B IPC stands proved beyond all reasonable doubt. Likewise the decisions in *C.K. Jaffer Sharief v. State* and *A. Jayaram v. State of Andhra Pradesh 1995 Supp 3 SCC 333* are distinguishable on facts.

32. In *Subramanian Swamy v. A. Raja (2012) 9 SCC 257* the Supreme Court observed that criminal conspiracy cannot be inferred from the mere fact that there were official discussions between the officers of the Ministry of Finance and of the Department of Telecommunication and between the two Ministers which were all recorded. It was further observed that “a wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between the Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.” However, in the present case A-1 not only permitted the opening of the account in the name of A-5 before it came into legal existence but proceeded to counter sign the documents which had resulted in a bogus B/E being discounted and monies being credited on the same date to the account of A-5 and then permitting the said money to be withdrawn for purchase of the immovable property in the personal; names of A-2 and A-3. On the facts of the present case it is difficult to accept the submission that A-1 acted bonafide in approving the above transactions.

33. Turning to the second transaction, the prosecution has been able to prove that on 23rd May 1991, six days prior to the incorporation of A-5, A-1 permitted drawing power of Rs. 8,50,000 in favour of A-5. A sum of Rs. 8,40,000 was permitted to be used by A-2 and A-3 purportedly for the purchase of computers. The application dated 23rd May 1991 (Ex.PW-6/B) contained signatures of A-2 and A-3 as directors of A-5. They wanted a pay order favouring UTC as they

had wished to purchase computers. The transfer voucher (Ex.PW-6/C) contained the signature of A-2 and A-3 and carbon copy thereof (Ex.PW-6/D) contained the signature of A-1. Transfer and cash order (Ex.PW-6/E and Ex.PW-6/F) bears the signature of A-1, A-2 and A-3 against CC account of A-5.

34. The prosecution had also proved that A-2 opened the bank account in the name of UCT on 27th May 1991. The account was introduced by A-2 as proprietor of UCT. The ledger sheet of the account showed that during the period from 27th May 1991 to 29th June 1991 the entire amount was withdrawn by A-2. PW-9 (Lekh Raj Bhardwaj), brother-in-law of A-2 confirmed that a sum of Rs. 2 lakh had been paid to him. In turn he handed over that amount to A-2 at his residence. A-2 had also transferred Rs. 4 lakh in his own account in the name of M/s. CPC of which he was the proprietor on 21st June 1991. Thereafter he had withdrawn Rs. 3.50,000 on 26th June 1991 from that account by way of cheque. This was contrary to the undertaking given by A-2 and A-3 on behalf of A-5 after sanctioning of CC limit to A-5 (PW-4/G) stating that they would submit a stock report on 1st and 15th of every month and would also maintain a stock register and that the loan was utilized 'only for the establishment and preaction our business purposes and not divert the funds elsewhere.'

35. The Court was taken through the entire evidence and in particular the invoices of M/s. Combat Computers (Ex.PW6/A and

Ex.PW6/B) and that of UCT dated 17th June 1991 (Ex.PW-17/A) and letter of UCT to PNB dated 17th June 1991 (Ex.PW-17/B). Reference has also been made to the fact that the Bank had itself by its letter dated 19th September 2000 after compromising in the civil proceedings asked A-2 to call on the Bank “in connection with them of your goods pledged/hypothecated to the bank in you at Bhikaji Cama Place, New Delhi.” A reference has also been made to the order dated 15th September 2000 in OA No. 231 of 1995 passed by the DRT containing direction to the Bank to issue ‘no objection certificate’ for returning the pledged goods to the certificate debtors within a week’s time to the owner of the building and return of the pledged. Reference has also been made to the affidavit of Anil Kumar dated 22nd November 1995 (Ex.DW-4/A) and its enclosed documents (Ex.PW-4/B to D) confirming the pledged stocks comprising of computer/computer parts/accessories and consumers. It was submitted that even the seizure report of the CBI showed that the godown with the stock of computers was sealed. Reference has also been made to the Fire Policy (Ex.DW-5/A) which showed that stock worth Rs. 12 lakhs were available in the godown. It was accordingly submitted that value of the stock was not Rs. 2,90,000 as held by the trial Court but much more. It was further submitted that the trial Court had erred in dismissing the application under Section 310 CrPC for inspection of the premises, i.e., Flat No. 156, Som Dutt Chambers, Bhikaji Cama Place, New Delhi filed by the accused by a separate order dated 18th March 2008.

36. In response it is pointed by Mr. Manoj Ohri, learned SPP that the question is not whether after 17th June 1991 stocks worth Rs. 11.33 lakhs, i.e., 25% margin over the drawing limit of Rs. 8.5 lakhs, was pledged with the PNB -5 but whether the stocks of that value were pledged on 23rd May 1991 when the said limit was sanctioned.

37. The stock statement (Ex.PW-6/G) contains three items. The first two items are the personal computers purchased from M/s. Combat Computers under invoices dated 21st May 1991 (Ex.PW-6/A and 6/D) for a sum of Rs. 2,90,000. The last item is 'Daisy wheel Hermese-PS' 360 Nos. for a value of Rs. 6,05,772. In the Invoice dated 17th June 1991 of UCT (Ex.PW-17/E) the signature of Amit Sudhakar (PW-17) on behalf of UCT (Question No. 111) has been proved by the Handwriting Expert (PW-19) to be forged. PW-19 was not cross-examined on this aspect. PW-17 disowned it. He stated that there was no such firm operating from Todar Mall Road, New Delhi. He denied signing Ex.PW-17/A. The letter purportedly written by UCT to PNB dated 17th June 1991 has also been proved to contain the forged signature of PW-17. PW-17 was also not cross-examined.

38. In view of the above evidence the Court is of the view that even if the trial Court had permitted an inspection of the godown that would still not have shown that stocks worth Rs. 11.33 lakhs were pledged with the Bank on 23rd May 1991 when the drawing limit for Rs. 8.50 lakhs was sanctioned. The existence of a fire insurance

policy showing the value of the stocks as Rs. 12 lakhs does not prove that there were in fact stocks of that value pledged with the Bank on 23rd May 1991. The correspondence between the Bank and A-5 also does not establish that stocks of the above value were pledged with the Bank on 23rd May 1991. Consequently, this Court finds that no error had been committed by the trial Court in concluding that the conspiracy between the accused and the commission of offence pertaining to the second transaction involving grant of drawing limit of Rs. 8.5 lakhs to A-5 and its subsequent use has been proved beyond all reasonable doubt.

39. It was urged by learned counsel for the Appellants on the strength of the decision in *A. Jayaram v. State of Andhra Pradesh* that the burden was on the prosecution to show the stock position on the relevant date and that the burden could not be shifted to the accused. Reliance was also placed on the decision of this Court in *Madan Mohan v. State 1994 (29) DRJ 433*. In the present case the defence of the accused is that on 17th June 1991 stocks worth Rs. 8.96 lakhs were available in the godown. Therefore, even going by the stock register as claimed by the accused as on 17th June 1991 it did not show the value of the stocks to be Rs. 11.33 lakhs. The case of the prosecution was that on 23rd May 1991 the drawing limit was sanctioned on the stocks worth Rs. 11.33 lakhs which had to be pledged with the bank. Consequently the above decisions do not come to the aid of the Appellants.

40. Coming to the third transaction, it is proved by the prosecution that the B/E dated 25th May 1991 drawn by UTC on CPC (Ex.PW-8/F) was signed by A-4 as proprietor of UTC. The said B/E was allowed to be discounted on the very date that the account was opened. However when the said B/E was presented to the Bank of Rajasthan it was not honoured (Ex.PW-18/D) stating that 'payment is not forthcoming.' This transaction follows the same pattern as that involving M/s. Kamla Traders. Here again CPC is a proprietary concern of which A-2 was the sole proprietor. The bill was discounted under LBD on the same date on which account was opened, i.e., 23rd May 1991. On 26th May 1991 a sum of Rs. 94,874 was credited to the account of UTC. On that date itself a cash order of Rs. 95,000 was issued in the name of M/s. Super Plastics of which A-2 was the proprietor. On the said application, A-2 mentioned 'please issue pay order against LBD vouchers'. Out of the said sum, A-2 transferred Rs. 40,000 and Rs. 50,000 from Super Plastic to UCT on 24th June 1991. It is not in dispute that A-4 was the brother-in-law of A-1. Even otherwise, being a close relative A-1 was aware that A-4 was not running any such firm. Yet, A-4 was allowed to open a current account in the name of UTC with the introducer being A-2 as proprietor of M/s. Synchem Corporation. The prosecution has been able to prove that the invoice itself was a bogus document which was discounted to release the money which was then utilized by A-2. A-4 was part of the criminal conspiracy along with A-1 for defrauding the Bank and causing it harmful loss.

41. The Court next proposes to deal with the submission that with the civil proceedings having been settled by the Bank and payments having been made, the continuation of the criminal case against the accused was not warranted. In particular a reference was made to the decisions in *Nikhil Merchant v. Central Bureau of Investigation* (2008) 9 SCC 677, *Rajendra Harakchand Bhandari v. State of Maharashtra* 2011 (4) Scale 450, *B. Suresh Yadav v. Sharifa Bee* 2007 IX AD (SC) 684 and *CBI, ACB, Mumbai v. Narendra Lal Jain* (decision dated 28th February 2014 in Criminal Appeal No. 517 of 2014). It was submitted that in the present case the Bank had itself written letters accepting the full settlement and acted upon it. It was accordingly submitted that there was justification in CBI to prosecute the case which it had initiated *suo moto* on information. On the other hand Mr. Ohri drew the attention of the Court to the decision in *Central Bureau of Investigation v. Jagjit Singh* 2013 (12) Scale 299 and *Rumi Dhar (Smt.) v. State of West Bengal* (2009) 6 SCC 364 to urge that once the case had gone to trial and the trial has resulted in conviction, there was no justification for entertaining the plea that the offences must be compounded as a result of the settlement between the Bank and the accused. He submitted that at the most the Court may consider it as a relevant factor for taking a lenient view as regards the sentence.

42. In *Nikhil Merchant v. Central Bureau of Investigation* the Supreme Court was considering the question of quashing the criminal proceedings which involved non-compoundable offence

when in the suit between the Bank and the company a compromise had been reached. There the case had not progressed to the stage of trial. In fact one of the grounds that weighed with the Supreme Court was that the continuance of the criminal proceedings after the compromise was arrived at “would be a futile exercise”. However, the instant case is one where the criminal proceedings have resulted in conviction notwithstanding the fact that a compromise was arrived at in the civil proceedings.

43. In ***CBI v. Narendra Lal Jain*** an agreement was entered into by the Bank and the accused in the civil suit for recovery. A clause in the agreement specifically stated that “the Appellants have no grievance of whatsoever nature including of the CBI Complaint against the Respondents.” On that basis the application for discharge was filed by the accused which was rejected and the charges were framed. The matter did not proceed to trial in the said case. It was held that the “continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr PC.”

44. In the present case it cannot be said that exercise of the trial being taken to its logical end had been futile. No doubt it has stretched over a period of 20 years but it has resulted in conviction of the accused. As rightly pointed out by Mr. Ohri in a case where the trial of the case has concluded the Court has invariably not

compounded the offence but considered it to be a factor for taking more lenient view as regards sentence. In ***Rajendra Harakchand Bhandari v. State of Maharashtra*** the Supreme Court adopted this approach and confined the sentence to the period already undergone while maintaining the amount of fine. Likewise in ***Central Bureau of Investigation v. Jagjit Singh*** the compromise with the Bank pursuant to the order passed by the DRT was not held to be a good enough ground to quash the charges.

45. In ***Rumi Dhar (Smt) v. State of West Bengal*** the Supreme Court observed that “the 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.” It was further observed as under:

“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.”

46. Further, while the offence under Section 420 IPC is compoundable, the offence under Section 120-B IPC read with Sections 13 (1) (d) read with Section 13 (2) PC Act is not.

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Consequently, the Court is of the view that merely because there has been a settlement arrived at with the Bank in the proceedings before the DRT and money has been repaid by the Appellants it would not be permissible, at a stage where the trial has resulted in conviction, for the appellate Court to reverse the conviction on that basis.

47. That brings up the question of the sentences awarded to the Appellants. Considering that the trial has gone on for well over 20 years, and that in the civil proceedings by the Bank a compromise was recorded and acted upon, the Court is prepared to take a lenient view in the matter. Under the PC Act 1988, there is a minimum mandatory sentence of one year for the offence under Section 13 (2) read with Section 13 (1) (d) thereof. Accordingly, this Court modifies the order on sentence passed by the learned trial Court by directing that the Appellants each be sentenced to RI for one year, for each of the offences under Section 420 IPC and Section 120B IPC read with Section 13(2) and 13 (1) (d) of the PC Act with no modification in the fine amounts imposed by the learned trial Court.

48. Consequently, the conviction of the Appellants for the offences under Section 420 IPC and Section 120B read with Section 13(2) read with 13 (1) (d) of the PC Act as ordered by the learned trial Court by the impugned judgment dated 18th March 2008 is confirmed. The order on sentence dated 19th March 2008 is, to the limited extent as indicated in para 47 above modified.

49. The bail bonds of the Appellants are cancelled. They will surrender forthwith, failing which they will be taken into custody forthwith, to serve out the remainder of their sentence.

50. The appeals are disposed of in the above terms. The trial Court record be sent back forthwith.

May 2, 2014

Rk

S. MURALIDHAR, J.

