

Neutral Citation No. - 2023:AHC:202533

Reserved on 18.10.2023

Delivered on 19.10.2023

Court No. - 48

Case :- APPLICATION U/S 482 No. - 15671 of 2021

Applicant :- Harveer Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vivek Dhaka,M.N. Singh,Mahesh Narain Singh,Shishir Tandon

Counsel for Opposite Party :- G.A.,Sanjay Kumar Yadav

Hon'ble Saurabh Shyam Shamshery,J.

1. This application under Section 482 Cr.P.C. is nominated to this Bench. Pleadings are complete. Learned counsel for parties were heard at length and judgment was reserved.

2. Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Shishir Tandon, learned counsel for applicant and Sri Sanjay Kumar Yadav, Advocate appearing for Central Bureau of Investigation, are in agreement that facts of present case could be taken from an order passed by Coordinate Bench on 09.09.2022.

3. This application is filed by applicant-accused for quashing of charge sheet dated 22.12.2020 as well as impugned orders dated 06.02.2021, 20.02.2021, 03.04.2021 and 03.08.2021 in Criminal Misc. Case No. 03 of 2021 (CBI vs. Bharat Kalra and others), FIR No. RC2202018E0013, under Sections 120B, 420, 468, 471 IPC and Sections 13(2), 13(1)(d) of Prevention of Corruption Act, Police Station CBI/EOU-IV/EO-II, New Delhi as well as the entire proceedings of the aforesaid case, qua to applicant.

4. Facts of present case are taken from above order dated 09.09.2022 that Mr. Bharat Kalra who is Proprietor of M/s S.M. Enterprises, registered on 16.02.2007 was engaged in trading of building-material such as cement, bricks, steel etc. and opened a current account in Union Bank of India, Mid Corporate Branch, Kaushambi, District Ghaziabad on 28.02.2017. On 06.03.2017 M/s S.M. Enterprises applied the credit facility for CC limit of Rs.16.35 Crores at Rajendra Nagar Branch, U.B.I., Ghaziabad. The loan application was submitted by Mr. Bharat Kalra under his signature and also offered properties as collateral securities, personal guarantee of his mother Smt. Kiran Kumari, credit information form signed by Mr. Bharat Kalra and his mother Smt. Kiran Kumari and provisional balance sheet. On 24.03.2017, said proposal was approved by RLCC-1 members of the bank. Thereafter, a CC limit account no. 555305040000104 was opened by M/s S.M. Enterprises on 09.05.2017 in Raj Nagar Branch Ghaziabad and sanctioned limit of Rs. 16.12 Crores was released in the said account. On 26.09.2017 also Mr. Bharat Kalra applied for ad-hoc limit of 4 Crores on urgent basis, which was also approved by the sanctioning authority on 27.09.2017 and released in favour of M/s S.M. Enterprises.

5. Thereafter on the basis of complaint dated 26.12.2018 of Mr. Pawan Kumar Gaur, Divisional Head, Union Bank of India, an F.I.R. dated 27.12.2018 was lodged by CBI against Mr. Bharat Kalra-Proprietor of M/s S.M. Enterprises, unknown public servants and other unknown persons under Section 120-B, 420, 467, 468 and 471 IPC. The main allegation against Mr. Bharat Kalra is that he, within a period of one year, closed down his business by

selling out all the hypothecated stocks without depositing the sale proceed to the loan account and siphoned off the loan amount for his personal gain causing wrongful loss to the extent of Rs. 20.58 Crores to the bank.

6. Sri G.S. Chaturvedi, learned Senior Advocate for applicant, submitted that argument of behalf of applicant has already been recorded in above order and he reiterated the same. In these circumstances, the argument of learned counsel for applicant are taken from above referred order dated 09.09.2022 as under:

- i- The applicant is not named in F.I.R.
- ii- The applicant is neither borrower nor guarantor nor given any collateral security against the loan sanctioned in favour of Mr. Bharat Kalra.
- iii- The applicant had no role even in opening of the account of M/s S.M. Enterprises in Bank.
- iv- The applicant had no concern with the process of sanction of CC limit and ad-hoc limit by the bank in favour of M/s S.M. Enterprises.
- v- The aforesaid sanctioned amount has been directly credited in the account of Firm M/s S.M. Enterprises from the concerned loan account of the bank.
- vi- After release of loan amount in favour of the Firm M/s S.M. Enterprises by the bank, it was not the fund of bank but the Firm M/s S.M. Enterprises was having control over the same.

vii- Liability of payment of loan amount is upon the borrower-Mr.Bharat Kalra as well as his mother-Smt. Kiran Kumari, who is guarantor.

Viii- There is no liability of payment of loan amount upon the applicant.

ix- The applicant is neither family member nor even otherwise associated with the Firm M/s SM Enterprises of co-accused Mr. Bharat Kalra.

x- The applicant-Harveer Singh is the proprietor of M/s R.S.R. Enterprises, which is involved in the business of sand and concrete.

xi- Due to business deal/transaction, applicant's firm received an amount of Rs. 5,08,52,800/- from M/s S.M. Enterprises.

xii- The applicant was neither aware nor had any concern with the source of fund/amount which were transferred by M/s S.M. Enterprises in the account of M/s R.S.R. Enterprises.

xiii- Except the allegation of transfer of some amount by M/s R.S.R. Enterprises to various other account holders, there is no allegation against the applicant.

xiv- The applicant has paid GST and income tax on the said amount.

xv- The applicant was not arrested during investigation.

xvi- It is also pointed out that earlier vide order dated 30.9.2021, interim anticipatory bail was granted to the

applicant in Criminal Misc. Anticipatory Bail under Section 438 Cr.P.C. No 16287 of 2021 and in compliance of order dated 30.09.2021, applicant furnished bail bond on 05.10.2021. Thereafter, said anticipatory bail application has been disposed of vide order dated 24.03.2022 on prayer of withdrawal of the same by the applicant.

7. On the strength of aforesaid facts, it is submitted by Mr. Chaturvedi that the case of present applicant is distinguishable from the case of main accused Mr. Bharat Kalra, bank officers and other co-accused of this case who had played an active role and are beneficiary in the matter, therefore, no offence is made out against the present applicant, and as such criminal proceedings against the applicant is an abuse of the process of the Court and in order to secure the end of justice, the same is liable to be quashed.

8. Per contra, Sri Sanjay Kumar Yadav, learned counsel appearing for Central Bureau of Investigation, has also submitted that in addition to his arguments referred in order dated 09.09.2022, the relevant part of charge sheet may also be taken note of and he referred paragraphs 30, 58 and 59A of charge sheet, which are also reproduced hereinafter:

From Order dated 09.09.2022

“Per-contra Mr. Sanjay Kumar Yadav, learned counsel for the Central Bureau of Investigation/opposite party no. 3 argued that the investigation of this case revealed that provisional balance sheet of M/s S.M. Enterprises, rent agreement and other documents submitted by Mr. Bharat Kalra were found to be forged documents. Above loan

amount was fraudulently sanctioned and released in favour of Mr. Bharat Kalra in violation of law without following due procedure in collusion with some bank officers who are also co-accused in this case. Loan amount has been siphoned off by the borrower Mr. Bharat Kalra transferring the same to the accounts of different firms including the firm M/s R.S.R. Enterprises of the applicant without any actual business transaction with M/s S.M. Enterprises.”

From Charge Sheet

“30. During investigation the concerned office bearers of M/s Simplex Infrastructure, M/s A-1 Ready Mix Concrete, JMD Enterprises/JMD Builders submitted that their Firms/companies never gave any work order to M/s S M Enterprises nor did any business with the firm and the said confirmation letters and work orders were not signed/issued by them. They also denied to have received/served such confirmation letters dated 05.05.2017 of Ms. Shefali Sharma, Branch Head, found in the records of Branch. Sh. Deepak Chauhan, Director of M/s Kukki Infrastructure Pvt Ltd. and Prop of M/s Deepak Enterprises and Sh. Harveer Singh Prop. M/s RSR Enterprises accepted to have signed those replies letters but stated that no actual business was conducted regarding same. They both have been found instrumental in diversion of bank funds and are a part of alleged conspiracy.

58. Investigation has revealed that no genuine business transaction was done by M/s SM Enterprises and fund of the CC limit were diverted into the accounts of entitles

which were their Sister concern or were controlled/owned by his family members, relatives and friends. This fact has been confirmed during the stock audit of the account as well as bank's internal investigation conducted/done subsequent to the account was declared NPA.

59. Investigation regarding actual use of funds disbursed from the initial cc limit Rs. 1612 Lacs and ad-hoc limit of Rs 400 lacs has revealed that the most of the parties to whom the funds were transferred from the cc limit account did not do any actual business with M/s S.M. Enterprises. The details of firms and companies revealed during investigation through which borrower had siphoned off the bank funds are:-

(a) No actual business transaction had taken place between M/s RSR Enterprises and M/s SM Enterprises against the amount of Rs 5,08,52,800/- received from the initial cc limit from 11.5.2017 to 30.5.2017 and Rs. 93,50,000/- on 27.09.2017 from ad-hoc limit account of M/s S M Enterprises. Sh. Harveer Singh @ Harbeer Singh is the proprietor of M/s RSR Enterprises. Out of this, an amount of Rs. 3,24,00,000/- was diverted to account no. 8011235411 in the joint name of Kiran Kumari, Bharat Kalra and Harmesh Kumar and Rs. 38,00,000/- in a/c No. 5611163014 in the name of Harmesh Kumar. Some of the amount received by M/s RSR Enterprises was also withdrawn cash.” (Emphasis supplied)

9. Learned counsel has also referred a recent judgment passed by Supreme Court in **Central Bureau of Investigation vs. Aryan**

Singh Etc., AIR 2023 SC 1987 that at the stage of considering a prayer for quashing of charge sheet, the High Court may not conduct a mini trial.

10. Before adverting to rival submissions the law on inherent powers of High Court under Section 482 Criminal Procedure Code 1973 is as under :-

(I) "Inherent Power" of the High Court under Section 482 Cr.P.C., an extraordinary power is with purpose and object of advancement of justice, which is to be exercised "to give effect to any order under the Cr.P.C.", or "to prevent abuse of process of any Court", or "to secure ends of justice", making arena of the power very wide, yet it is to be exercised sparingly, with great care and with circumspection, that too in the rarest of rare case.

(II) It is no more res integra that exercise of inherent power could be invoked to even quash a criminal proceeding/First Information Report/complaint /chargesheet, but only when allegation made therein does not constitute ingredients of the offence/offences and /or are frivolous and vexatious on their face, without looking into defence evidence, however such power should not be exercised to stifle or cause sudden death of any legitimate prosecution. Inherent power does not empower the High Court to assume role of a trial court and to embark upon an enquiry as to reliability of evidence and sustainability of accusation, specifically in a case where the entire facts are incomplete and hazy. Similarly quashing of criminal proceedings by assessing the

statements under section 161 Cr.P.C. at initial stage is nothing but scuttling a full fledged trial.

(III) There can not be any straight jacket formula for regulating the inherent power of this Court, however the Supreme Court has summarised and illustrated some categories in which this power could be exercised in catena of judgments. Some of them are **State of Haryana Vs Bhajan Lal : 1992 Supp (1) SCC 335**, **Zandu Pharmaceutical Works Ltd Vs Mohd Sharaful Haque: (2005) 1 SCC 122**, **Ahmed Ali Quarashi and Anr Versus The State of Uttar Pradesh : 2020 SCC Online SC 107**, **Joseph Salvaraja A v. State of Gujarat (2011) 7 SCC 59**, **Sushil Sethi and another Vs The State of Arunachal Pradesh and others (2020) 3 SCC, 240**, **Priti Saraf and Anr Vs State of NCT of Delhi and Anr : 2021 SCC Online SC 206**. Some categories/ circumstances as illustrations but not exhaustive are : allegations made in FIR / complaint, if are taken at their face value and accepted do not prima facie constitute any offence or are so absurd and inherently improbable to make out any case or no cognizable offence is disclosed against the accused, criminal proceedings is maliciously instituted with an ulterior motive and with a view to spite the accused due to private and personal grudge, or where there is a specific legal bar engrafted in any of the provisions of the Code or in the concerned Act to the institution and continuance of the proceedings or when dispute between the parties constitute only a civil wrong and not a criminal wrong, further Courts

would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

(IV) In **Sau. Kamal Shivaji Pokarnekar v. The State of Maharashtra : (2019) 14 SCC 350**, the Apex Court has laid emphasis on the principles laid down in two of its previous judgements namely, **State of Karnataka v. M. Devendrappa : 2015 (3) SCC 424** and **Indian Oil Corporation v. NEPC India Ltd. & Ors.: (2006)6 SCC 736** and held that quashing of criminal proceedings is called for only when the complaint does not disclose any offence, or the complaint is frivolous, vexatious, or oppressive and further clarified that defences available during a trial and facts/aspects whose establishment during the trial may lead to acquittal cannot form the basis of quashing a criminal complaint. The criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature, if the ingredients of the alleged offence are prima facie made out in the complaint.

(V) The Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd Versus State of Maharashtra and Others : (2020) 10 SCC 118**, has categorically held that High Court is not justified in passing the order of not to arrest and or no coercive steps either during the investigation or till the final report/charge sheet is filed under Section 173 Cr.P.C., while dismissing/disposing petition under Section 482Cr.P.C. and/or under Article 226 of the Constitution and even in exceptional cases where High Court is of the opinion that a prima facie case is made out for stay of further

investigation, such order has to be with brief reasons, though such orders should not be passed routinely, casually and/or mechanically.

(VI) Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. (see **Ramveer Upadhyay & Anr. versus State of U.P. & Anr. 2022 SCC Online SC 484**)

(VII) A careful reading of the complaint, the gist of which we have extracted above would show that none of the ingredients of any of the offences complained against the appellants are made out. Even if all the averments contained in the complaint are taken to be true, they do not make out any of the offences alleged against the appellants. Therefore, we do not know how an FIR was registered and a charge-sheet was also filed.....It is too late in the day to seek support from any precedents, for the proposition that if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed. (See, **Wyeth Limited & others vs, State of Bihar & another, 2022 SCC OnLine SC 2038**).

(VIII) The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an

opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it. (See, **Supriya Jain vs. State of Haryana and another, (2023) 7 SCC 711**)

11. I have heard learned counsel for parties and carefully perused the material available on record.

12. It is not seriously disputed that co-accused, Bharat Kalra, Proprietor of M/s S.M. Enterprises, has procured credit facility of CC limit of Rs. 16.35 Crores and the collateral securities and personal guarantee of her mother, Smt. Kiran Kumari was also submitted. It is also not seriously disputed that borrower has defaulted in repayment of loan as well as that alleged business of M/s S.M. Enterprises was closed.

13. As referred above, the allegations against present applicant is of participating in conspiracy to the effect that his Company, M/s R.S.R. Enterprises has helped to siphon off the money procured through loan by committing forgery and cheating.

14. In aforesaid circumstances, it would be relevant to refer that during investigation it was revealed that an amount of about Rs. 5 crores was transferred to M/s S.M. Enterprises to M/s R.S.R. Enterprises. Applicant has shown transaction details of said amount in para 35 of application and, therefore, he is not disputed that transaction was actually occurred and it would be very clear from the averments made in paragraphs no. 36, 37, 38, 39 and 40 and for reference the same is quoted hereinafter:

“36. That, the aforesaid would clearly go on to show that the amount which had been transferred in the account of the applicant's firm M/s R.S.R. Enterprises was immediately transferred to the accounts of Mr. Bharat Kalra or of his family members/ friends and the money in question was not at all utilized by the applicant for even a single day.

37. That, the applicant is a small business man and only in order to get enhancement in his turn-over, the applicant unknowingly became the puppet and has been used by Mr. Bharat Kalra for his personal gain. In fact the applicant himself has suffered a huge loss on account of the transactions as the applicant had to pay tax on the same which resulted in severe monetary loss to the applicant.

38. That, the account of the applicant was being used by Mr. Bharat Kalra for his own gain and eventually only in order to enhance the turn-over of the companies the said act has been done.

39. That, the amount of Rs. 5,08,52,800-00, as was received by the applicant, was duly returned to the bank-accounts of Mr. Bharat Kalra, his family members and his friends. The amount of Rs. 10,00,000-00 was withdrawn by the applicant from the aforesaid account which also was handed over to Mr. Bharat Kalra.

40. That, no any act whatsoever has been done or committed by the applicant resulting in monetary loss to the Bank. To the best of knowledge of the applicant almost 75 to 80 percent of the loan amount has already been

recovered by the Bank by attaching the property and forfeiting the Fixed Deposits of Mr. Bharat Kalra.”

(Emphasis supplied)

15. In aforesaid circumstances, the applicant is taking a plea of receiving huge money unknowingly, i.e., without any knowledge that this was an amount being a proceed from a crime. It would be evident from the contents of long charge sheet submitted by Central Bureau of Investigation that main accused hatched a conspiracy with co-accused including bank officials and procured huge amount of loan and immediately diverted and siphoned off the proceed of crime through shell companies in his direct or indirect control and thereafter the said amount was further diverted to individuals (relatives) or other companies. It is also clear that the present applicant has taken benefit of crime proceed when it was transferred from company of main accused and has not returned back to said company but siphoned off and transferred to the accounts of individuals who are close relatives of main accused. The said transaction is not disputed, as referred above and details mentioned in para 35 of this application. The plea of applicant would not be sufficient to stifle or cause sudden death of prosecution ignoring evidence collected during investigation as in brief referred in preceding paragraphs of this judgment.

16. The applicant is charge sheeted for the offences under Sections 120B, 420, 468, 471 IPC and 13(2), 13(1)(d) of Prevention of Corruption Act. It is well settled that a conspiracy is always hatched within close walls and it would be revealed only on basis of subsequent events. The main plea of applicant

that he is innocent person that he unknowingly received transactions from other company and immediately returned to other persons as directed, however, it would be his defence which could be a subject of trial. Therefore, applicant has prima facie participated actively in siphoning off money which actually belongs to customers of Bank, i.e., the hard earned money of depositors who have reposed faith in banking system.

17. The act of applicant has an element of dishonesty since he has not returned the money from the company he has taken but admittedly diverted to close relatives of main accused which was nothing but a dishonest act. The aforesaid evidence is sufficient to make out a more than prima facie case against applicant that he was part of larger conspiracy and as referred above in **Aryan Singh (supra)** and law discussed above with regard to power under Section 482 Cr.P.C., this Court cannot conduct a mini trial in order to come to conclusion, whether any case is made out against applicant or not. There is no document to show even prima facie that transaction between two companies was bona fide to the extent that money was transferred in lieu of any service or supply of materials. There are some averment with regard to transaction in rejoinder affidavit but that also would be a subject matter of trial.

18. The outcome of above discussion is that from the material collected and statements of witnesses recorded during investigation as well as averments made in application, clearly indicate that it would not be a case that allegations are frivolous or do not disclose any offence. The applicant has failed to show that prosecution was illegitimate which resulted in an abuse of

the process of law, whereas prosecution is successful in showing that there were sufficient grounds to proceed against the applicant also.

19. In view of above, prayers made in this application cannot be allowed. Application is accordingly dismissed. Interim order, if any, stands vacated.

Order Date :- 19.10.2023

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