

GAHC010108942018



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./508/2018

PABITRA KUMAR KATAKY
S/O- LT KRISHNA KANTA KATAKY, R/O- H/NO-57, SEWALI PATH,
HATIGAON, GHY-38

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION AND 3 ORS.
PLOT NO. 5-B, 6TH FLOOR, CGO COMPLEX,, LODHI ROAD, J.N. STADIUM
MARG, NEW DELHI-110003

2:PUNJAB NATIONAL BANK
THROUGH ITS CHAIRMAN-CUM-MANAGING DIRECTOR
PUNJAB NATIONAL BANK
HEAD OFFICE
7
BHIKAIJI CAMA PLACE
NEW DELHI-110607

3:SAGNIK CHATTERJEE
CIRCLE HEAD
PUNJAB NATIONAL BANK
CIRCLE OFFICE
NORTH EAST CIRCLE
NILGIRI MANSION
G.S.ROAD
BHANGAGARH
GHY-5 (ASSAM)

4:CHIEF MANAGER
FRAUD RISK MANAGEMENT DIVISION
PUNJAB NATIONAL BANK
HEAD OFFICE 7
BHIKHAIJI CAMA PLACE
NEW DELHI-11006

Advocate for the Petitioner : MS. S SARMA, MR. A BARUAH
Advocate for the Respondent : SC, CBI,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER
JUDGMENT & ORDER (CAV)

Heard Ms. S. Sarma, learned counsel appearing for the petitioner. Also heard Mr. M. Haloi, learned standing counsel, CBI.

2. By filing this application u/s 482 Cr.PC, the petitioner has prayed for quashing of the entire proceeding of the SC Case No. 3/2013, pending in the court of learned Special Judge (CBI), Guwahati

3. The case of the petitioner is that the petitioner joined his service as Clerk cum godown keeper on 02.01.1975 in Punjab National Bank (hereinafter referred as PNB), Bongaigaon Branch and continued serving the bank in various capacities until 30.04.2011 when he attained the age of superannuation as senior Manager, Punjab National Bank (herein after as PNB) and posted as Manager, Bhangagarh Branch from 19.01.2009 to August, 2009.

4. On 10.02.2009 a loan proposal was made in the Zoo road branch office of the bank by M/S Double Dee Construction Private Limited and not in the Bhangagarh Branch office of the bank where the petitioner was the Branch head.

5. On 27.01.2012, the then circle head filed a complaint before SP, CBI, Kolkata alleging fraud committed by seven persons including the present

petitioner who had retired on 30.04.2011 as Senior Manager, PNB, Maligaon Branch and was the Branch Manager of Bhangagarh Branch of the bank at the relevant point of time.

6. On 30.11.2012, the CBI submitted charge-sheet against the petitioner on the ground that he dishonestly recommended sanction of cash credit limit of rupees six crore and bank guarantee limit of rupees ten crore in favour of M/S Double Dee Construction Private Limited despite adverse financial indicators and knowing fully well that the account of the party with IOB and NPA and also without verifying irregularities in the loan account of Kotak Mahindra Bank. It was also alleged that the petitioner dishonestly did not justify or substantiate the requirement of such huge limit by the borrower specially when the borrower was new to the bank.

7. The learned counsel for the petitioner has submitted that as per bank circular, the petitioner has no authority to recommend any sanction as alleged in the case and did not authorize verification of any irregularities of any prospective borrower. The duties of the petitioner were confined to forwarding the copy of the loan application of the prospective borrower to the circle office of the bank.

8. It is further submitted that the orders dated 24.01.2013 and 07.04.2018 having overlooked the fact that the FIR dated 13.01.2012 being based on a non-existent written complaint. It is also contended that the petitioner never having processed the loan matters as appearing in the order dated 07.04.2018 passed by the learned trial court, as such the instant proceeding is liable to be quashed.

9. According to learned counsel for the petitioner, there being nothing on record or otherwise even suggesting that the credit information report should be on the date of submitting the report as appearing in the order dated 07.04.2018 passed by the learned trial court. There being no reporting of fraud to the Reserve Bank of India which is mandatory as spelt out in the Vigilance Manual of the bank and the Reserve Bank of India Manual prior to setting the criminal law in motion.

10. The learned counsel for the petitioner also pointed out that admittedly, there being no permission to the Circle Office for filing complaint with any Investigating Agency as such the continuance of the instant proceeding would be an abuse in the process of the court leading to failure of justice. The learned counsel has further submitted that the petitioner is no way connected with either appraisal of sanction or disbursement of the loan and the bank CIBIL report never generated by the petitioner as alleged in the case. The credit information report dated 31.03.2008 was in accordance with the existing bank circulars and not one year back dated as appearing in the order dated 07.04.2018 passed by the learned trial court. Hence, the learned counsel for the petitioner prayed for quashing of the entire proceeding of SC Case No. 3/2013 pending in the court of Special Judge, CBI, Guwahati.

In support of her submission, learned counsel has referred the following case laws:

- (1) (2020) 4 SCC 440 (K. Virupaksha and another vs State of Karnataka and another).

- (2) AIR (1952) SC 16 (Commissioner of police, Bombay vs Gordhandas Bhanji).

11. In response, learned Standing counsel, CBI has submitted that against the order of trial court, the petitioner has filed a revision before this court and this court has already adjudicated the subject matter and accordingly passed the order dated 03.02.2017 whereby the petition No. 582/2014 and 813/2014 filed by the accused petitioner were dismissed. Thereafter, the Special Leave to Appeal (Crl. No. 8443-8445/2017) was filed by the petitioner before the Hon'ble Supreme Court and the same was also dismissed. The petitioner by filing this petition has also challenged the order of framing of charge on the same grounds which were taken earlier by the accused petitioner in the Criminal Petition No. 582 and 813/2014 for quashing of the FIR and the charge-sheet and as there is no new grounds stated in this criminal petition, as such the present petition is liable to be dismissed being devoid of any merit.

12. Learned CBI counsel also has pointed out that after framing of charge, 25 numbers of witnesses have already been examined before the trial court. At this fag end of trial, the proceeding of the case cannot be quashed on the decided matters before this Court and the Hon'ble Supreme Court.

13. The law regarding the exercise of jurisdiction under [Section 482](#) of Cr.P.C. was considered by the Hon'ble Supreme Court in [A.M. Mohan v. State](#), 2024 SCC OnLine SC 339, wherein it was observed: -

“9. The law with regard to the exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of [Indian Oil Corporation v. NEPC India Limited](#) (2006) 6 SCC 736 after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case,

which read thus:

12. The principles relating to the exercise of jurisdiction under [Section 482](#) of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few--[Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre](#) [(1988) 1 SCC 692: 1988 [SCC \(Cri\) 234](#)], [State of Haryana v. Bhajan Lal](#) [1992 Supp (1) SCC 335: 1992 [SCC \(Cri\) 426](#)], [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#) [(1995) 6 SCC 194: 1995 [SCC \(Cri\) 1059](#)], [Central Bureau of Investigation v. Duncans Agro Industries Ltd.](#) [(1996) 5 SCC 591: 1996 [SCC \(Cri\) 1045](#)], [State of Bihar v. Rajendra Agrawalla](#) [(1996) 8 SCC 164: 1996 [SCC \(Cri\) 628](#)], [Rajesh Bajaj v. State NCT of Delhi](#) [(1999) 3 SCC 259: 1999 [SCC \(Cri\) 401](#)], [Medchl Chemicals & Pharma \(P\) Ltd. v. Biological E. Ltd.](#) [(2000) 3 SCC 269: 2000 [SCC \(Cri\) 615](#)], [Hridaya Ranjan Prasad Verma v. State of Bihar](#) [(2000) 4 SCC 168: 2000 [SCC \(Cri\) 786](#)], [M. Krishnan v. Vijay Singh](#) [(2001) 8 SCC 645: 2002 [SCC \(Cri\) 19](#)] and [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque](#) [(2005) 1 SCC 122: 2005 [SCC \(Cri\) 283](#)]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are necessary for making out the

offence.

(v) A given set of facts may make out: (a) purely a civil wrong; (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

14. Similar is the judgment in [Maneesha Yadav v. State of U.P., 2024 SCC OnLine SC 643](#), wherein it was held: -

“We may gainfully refer to the following observations of this Court in the case of [State of Haryana v. Bhajan Lal](#) 1992 Supp (1) SCC 335:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. Reverting to the case in hand, the allegations in the complaint clearly show that the petitioner was the Branch head of PNB, Bhangagarh Branch at the relevant time of incident. As per allegations, the petitioner recommended sanction of cash credit limit of rupees six crores and bank guarantee of Rupees ten crores in favour of M/S Double Dee Construction Ltd. These allegations are whether true or false, at this stage, it is impermissible for this Court to go into the correctness or otherwise of the

allegations while exercising jurisdiction under Section 482 Cr.P.C.

16. In the case of Priyanka Jaiswal vs State of Jharkhand, 2024 SCC OnLine SC 685, the Hon'ble Supreme Court laid down that the Court exercises extra-ordinary jurisdiction under Section 482 of Cr.P.C. and cannot conduct a mini-trial or enter into an appreciation of an evidence of a particular case. It was observed:-

"13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of Akhil Sharda 2022 SCC OnLine SC 820 held to the following effect:

28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in the exercise of powers under Section 482 Cr. P.C., it appears that the High Court has virtually conducted a mini-trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr. P.C. As observed and held by this Court in a catena of decisions no mini-trial can be conducted by the High Court in the exercise of powers under Section 482 Cr. P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr. P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

17. A similar view was taken in [Maneesha Yadav](#)'s case (supra), wherein it was held that: -

"13. As has already been observed hereinabove, the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint at the

stage of quashing of the proceedings under Section 482 Cr. P.C. However, the allegations made in the FIR/complaint, if taken at its face value, must disclose the commission of an offence and make out a case against the accused. At the cost of repetition, in the present case, the allegations made in the FIR/complaint even if taken at its face value, do not disclose the commission of an offence or make out a case against the accused. We are of the considered view that the present case would fall under Category-3 of the categories enumerated by this Court in the case of [Bhajan Lal](#) (supra)“.

18. In view of the aforesaid legal proposition and considering the background of the case, particularly, 25 numbers of witnesses have already been examined by the prosecution, this Court is not inclined to interfere with further proceeding of the case. Hence, Criminal Petition is dismissed.

19. Trial court will proceed with the case in accordance with law.

20. Criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant