I-23 & 22

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

Date of Decision: April 07, 2015

\+ **<u>CRL.M.C. 1322/2015 & Crl. M.A.Nos.4857-4858/2015</u>**

SUBODH GUPTA & ORS. ..... Petitioners
Through: Mr. Narinder Rai, Senior Advocate with Ms. Manita Verma, Advocate

versus

C.B.I. ..... Respondent
Through: Mr. Narender Mann, Special Public Prosecutor with Mr. Manoj Pant & Ms. Uttkarsha Kohli, Advocates

\+ **<u>CRL.M.C. 1321/2015 & Crl. M.A.Nos.4855-4856/2015</u>**

SUBODH GUPTA & ORS. ..... Petitioners
Through: Mr. Narinder Rai, Senior Advocate with Ms. Manita Verma, Advocate

versus

C.B.I. ..... Respondent
Through: Mr. Narender Mann, Special Public Prosecutor with Mr. Manoj Pant & Ms. Uttkarsha Kohli, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

% **(ORAL)**

Vide impugned order of 27^{th} February, 2015, petitioners have been called upon to face trial for the offences under Sections 409/420/467/468/471/477A/201 read with Section 120B of the IPC and Section 13(2) read with Section 13 (1) (c) & (d) of the *Prevention of Corruption Act, 1988* in CC No.132/01, titled as *C.B.I. Vs. Deepak Kumar Nayyar & ors.*

Since the above captioned two petitions arise out of CC No.132/01, titled as *C.B.I. Vs. Deepak Kumar Nayyar & ors.*, therefore, with the consent of learned counsel for the parties, both these petitions were heard together and are being disposed of by this common judgment.

In the above captioned first petition [Crl.M.C.No.1322/2015], impugned order of 27th February, 2015 is assailed on the ground that petitioners are not public servants and their prosecution along with co-accused with the aid of Section 120-B of the IPC is unjustified in view of the fact that the allegations against the petitioners of misappropriation of the money due to the complainant-bank stands settled between the parties and in terms of settlement, the suit filed by the complainant-bank against the petitioners stands withdrawn.

To submit so, attention of this Court is drawn by learned senior counsel for petitioners to order of 15th February, 2005 in CS(OS) No.2664/2000 *(Annexure P-14)*. Thus, it is submitted on behalf of petitioners that continuance of proceedings against petitioners would be an exercise in futility and so, the impugned order deserves to be quashed. Reliance was placed by learned senior counsel for petitioners upon decision in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466 in support of above contentions.

In the above captioned second petition [Crl.M.C.No.1321/2015], petitioners are aggrieved by impugned order of 27th February, 2015 vide which petitioners' application raising the bar of territorial jurisdiction stands dismissed. It is the case of petitioners that the alleged fraudulent loan transaction took place at Agra, Uttar Pradesh and so, petitioners are liable to be tried by a notified court at Ghaziabad, Uttar Pradesh and not in Delhi.

According to learned senior counsel for petitioners, the entire transaction took place at Agra, Uttar Pradesh and the drafts were issued at Agra and the alleged offence was purportedly committed at Agra, Uttar Pradesh. It was pointed out that utilization of funds in question is not the subject matter of investigation and since the substantial cause to prosecute petitioners takes place at Agra, therefore, Delhi courts have no jurisdiction to try petitioners for the offences in question. Thus, it was submitted that the impugned order is unsustainable and deserves to be set aside.

At the hearing, learned Special Public Prosecutor for respondent-CBI supported the impugned order and submitted that mere payment of outstanding dues under the one time settlement with the complainant-bank does not wash away the criminality. The prayer made in the above captioned first petition [Crl.M.C.No.1322/2014] was vehemently opposed by learned Special Public Prosecutor for respondent-CBI by submitting that *prima facie* case is made out against petitioners and so, the first petition ought to be dismissed.

With regard to prayer made in the above captioned second petition [Crl.M.C.No.1321/2015], learned Special Public Prosecutor for respondent-CBI submitted that the forged drafts were presented in Delhi and petitioners are the beneficiaries and the cheated amount was withdrawn in Delhi and because the substantial cause of action arose within the jurisdiction of Delhi courts, thus, there is no infirmity in the impugned order.

Upon hearing and on perusal of the impugned order, material on record and the decision cited, I find that the complainant-bank is not a party to the above captioned first petition [Crl.M.C.No.1322/2015] and stand of complainant-bank in respect of continuance of these proceedings is not forthcoming. Otherwise also, impugned order deals with the role played by petitioners and their co-accused and highlights the conspiracy angle as well. Merely because outstanding dues have been cleared, would not justify quashing of the criminal proceedings. Apex Court in *Narinder Singh (supra)*, has reiterated that in serious offences, criminal prosecution of such nature ought not be quashed. The pertinent observations of the Apex Court in *Narinder Singh (supra)* are as under:-

> *"29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender."*

Apex Court in *State of Maharashtra through CBI Vs. Vikram Anantrail Doshi & ors.* 2014 SCC OnLine SC 745 has reiterated that merely upon obtaining of a *'no dues certificate'* an accused cannot enjoy the benefit of quashing of the criminal proceedings, as financial frauds can seriously dent the economic spine of the country.

Applying the afore-noted dictum of the Apex Court in *Narinder Singh (supra)* and *State of Maharashtra through CBI (supra)* to the facts of the instant case [Crl.M.C.No.1322/2015], no case for quashing of the impugned order or criminal proceedings qua petitioners is made out.

With regard to the above captioned second petition [Crl.M.C.No.1321/2015], this Court finds that Section 178 of the Cr.P.C. has been rightly invoked by the trial court, as the offence in question originated in Agra, Uttar Pradesh but realization of the illegal proceeds purportedly takes place in Delhi and so, it cannot be said that the Delhi courts have no territorial jurisdiction to try petitioners for the offence in question. In the considered opinion of this Court, there is no palpable error in the impugned order and so this petition is accordingly dismissed.

The above captioned two petitions and applications are dismissed, while refraining to comment upon the merits of the case.

(SUNIL GAUR)
JUDGE

APRIL 07, 2015
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