IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38522 of 2014

Arising Out of PS.Case No. -16 Year- 2012 Thana -C.B.I CASE District- PATNA

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Neeta Keskar Choudhary wife of Sri Ashok Choudhay, resident of House No. C-9/9558, Vasant Kunj, P.S. - Vasant Kunj, New Delhi

.... Petitioner/s

Versus

The State of Bihar through CBI

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Ashutosh Ranjan Pandey, Advocate
Mr. Rakesh Narayan Singh, Advocate
Mr. Prabhat Ranjan Singh, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar, SC, CBI

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 19-04-2016

The Petitioner seeks quashing of the order of cognizance dated 7.7.2014 passed by the Special Judge, CBI – I, Patna in Case No. RC 16(A) of 2012/ Special case No.9 of 2012.

2. The case of the prosecution, which is the C.B.I., is that one M/s Vaishali Trading Private Limited, of which the Petitioner was one of the two Directors, approached the Bank for various credit facilities in the year 2007. As guarantor one Rajesh Kumar furnished personal guarantee and deposited property papers as mortgage for the said purpose. The Bank accepted the said documents and sanctioned term loan of Rs.160 lacs and cash credit facilities of Rs.140 lacs. Later the Bank discovered that the land documents, furnished by the guarantor Rajesh Kumar, were forged. The Bank then issued notices

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to him. On notice, he furnished another set of documents. In the meanwhile some loan amount was disbursed for which the Company was required to submit money receipts from the Supplier firm which it did, but, on inquiry it was learnt they were false.

3. The submission of the Petitioner is that there is no doubt that she had joined as Director of the Company on 18.11.2007 but subsequently resigned from the same on 1.3.2009. She thus effectively stayed in the company as a Director for just over a period of one year which reveals that she was merely a name lender and was not in actual control of the Company. It was only on two occasions cash was withdrawn from the Bank on her signature but not in her personal capacity but as a Director of the Company. This fact is evident from the circumstance that the subsequent eleven money receipts were not under her signature nor was the money, disbursed by the Bank, deposited in her account or used for her purpose.

4. Further submission is that initially the Bank had instituted a Case on 27.5.2011 which after due investigation ended in a closure report on 25.11.2011. Later a fresh the First Information Report was instituted on 27.7.2012 by the CBI, in which, apart from the officials of the Company, even Bank officials, and Advocates were arrayed accused. Thereafter investigation proceeded and the first charge sheet was submitted on 12.12.2013. Petitioner was however not named therein. More than two years later a supplementary charge

sheet was filed on 2.7.2014 in which she has been sent up with the only material that she being a Director was responsible for the affairs of the company and, therefore, was required to be put on trial.

5. The submission of the Petitioner assailing the stand of the C.B.I. is that when it has not proceeded against the Company under whose name the Petitioner, as a Director had purportedly acted, she cannot be prosecuted. Independent of the company the Petitioner had not acted in her personal capacity.

6. Moreover there is no averment that the Petitioner was in charge of or running the day to day business of the company which would be an essential ingredient as laid down in the decision reported in 2008(5) SCC 662 [S.K. Alagh vs. State of Uttar Pradesh & ors].

7. On the contrary, the Counsel for the C.B.I. submits that since the Petitioner was a Director, she should be put on trial and no leniency be given to her on the plea that she was a sleeping partner and had no actual control over the affairs of the company. He relies on a decision of the Hon’ble Supreme Court in the case of Rumi Dhar (Smt) vs State of West Bengal & Anr reported in (2009)6 SCC 364.

Facts of the case there were that the Petitioner therein had repaid the loan amount and entered into a settlement with the Bank and therefore she pleaded that she be not criminally charged. The High Court refused to quash the proceedings on the basis of a settlement having been arrived at, between herself and the Bank. The

Apex Court in such circumstances stated the following :

> "24. The jurisdiction of the Court under under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstance of each case. 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 the charge."
> [underlining mine]

8. He further relies on a decision of Central Bureau of Investigation vs Ravi Shankar Srivastava, IAS and another (2006)7 SCC 188 wherein the Court had set aside the order of the High Court which had quashed the First Information Report against the respondent on certain grounds. It held that:

> "Coming to the pivotal stand of Respondent 1, as has been rightly submitted by learned counsel for the appellant, there is no notification revoking the earlier notification. The letter on which great emphasis has been laid by the Respondent 1 and highlighted by the High Court, the authority to write the letter has not been indicated. It has also

not been established that the person was authorized to take a decision. In any event, the same does not meet requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. The High Court was, therefore, not justified in holding that there was a notification rescinding the earlier notification.

The High Court was not justified in quashing the proceedings instituted on the basis of the FIR lodged. The impugned judgment of the High Court is set aside. The appeal is allowed."

9. He further relies on a decision in Sushil Suri vs C.B.I. & Anr (2011)5 SCC 708, wherein the facts were as below:

"2. Briefly stated, the facts, material for adjudication of the issue, arising in this appeal, are as follows:

A source information was received by the Central Bureau of Investigation (for short "the CBI") that in the year 1999 two Chartered Accountants, namely, Sanjay Malik and Bipin Kakkar, had dishonestly and fraudulently opened/caused to be opened several fictitious accounts in some banks in the names of certain concerns, with an intention and object to facilitate the diversion of bank finance availed by various public limited companies for the purpose other than what had been stated in the loan application. On the basis of the said

> information, a First Information Report (FIR) was registered against the afore-mentioned Company and its directors.
>
> 35. We respectfully concur with the afore-extracted observations. In the final analysis, we hold that merely because the dues of the bank have been paid up, the appellant cannot be exonerated from the criminal liability. Therefore, the Chargesheet against him cannot be quashed."

10. He also relies on a decision in the case of C.B.I. vs. Jagjit Singh (2013)10 SCC 686. To understand the facts of the case I quote below paragraphs 10 and 11:

> "10. Learned senior counsel for the appellant submitted that by a mere settlement between two offenders, the personal intent of criminal conspiracy under Sections 420 and 471 IPC which are even otherwise not compoundable cannot be compounded. According to him, the impugned order passed by the learned Judge of the Calcutta High Court is in the teeth of well established and settled law laid down by this Court.
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> 11. Per contra, according to the respondent, it is always open to the Court to quash the criminal proceedings if the dispute is of civil nature and if matter is settled between the parties. It was contended that the dispute being civil in nature and the parties to the dispute being reached settlement, the High Court rightly set aside the

criminal proceedings arising out of the same very dispute."

The Apex Court then decided as follows:

"15. The debt which was due to the Bank was recovered by the Bank pursuant to an order passed by Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with Banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well being of the society. <u>These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity.</u> Prima facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any Court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice.

16. In the instant case, the High Court has not considered the above factors while passing the impugned order. Hence, we are of the opinion that the High Court erred in addressing the issue in right perspective."

[Underlining mine]

11. I have reproduced relevant parts of the decisions relied upon because I am myself at a loss as to how any of the aforesaid decisions are applicable to the facts of the present case.

12. Not, to get back to the facts of the instant case.

Undoubtedly the Petitioner is a lady and she is one of the two Directors of the Company who subsequently resigned. Also admitted is the position that the Company is not an accused and there is no material to suggest that she was in actual control of the business of the company or had at any point in time acted in her personal capacity. The Hon'ble Supreme Court in almost similar circumstances in the case of Sharad Kumar Sanghi v. Sangita Rane 2015 AIR SCW 4202 wherein it relied upon the decision cited on behalf of the Petitioner i.e. (2008)5 SCC 668 held as follows:

> "9. The allegations which find place against the Managing Director in his personal capacity, as we notice, are absolutely vague. When a complainant intends to proceed against the Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In Maksud Sajyad v. State of Gujarat, it has been held, thus :
> "Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the

Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so far the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant."

13. Further on going through the Charge sheet it appears that altogether thirteen money receipts purportedly issued by one Standard Engineering Works were submitted in the Bank. The first two contained the signature of both the Directors including the Petitioner. The rest eleven money receipts did not contain her signature. The charge sheet further reveals that it was the co-accused Pramod Kumar Choudhary who received the bank drafts of Rs.1,17,32,000/- against the money receipts. It was he who then opened fictitious Bank accounts in the State Bank of India and Bank of India claiming to be the Proprietor of Standard Engineering Works and deposited the aforesaid amount therein. Thereafter Rs.75 lacs were transferred into the account of co-accused Arvind Kumar Choudhary or his company and the rest amount were withdrawn in cash by himself i.e. Pramod Kumar Choudhary.

So I find that it is the case of the CBI itself that it were the co accused who had defrauded the Bank, committed forgery and impersonation and defalcated the amount. The money trail traced by the CBI reveals only the complicity of the co accused and not the Petitioner.

14. In such circumstances, in my opinion continuance of the prosecution of the Petitioner would be a gross abuse of the process of the Court and hence the application is allowed and the proceeding

including the order of cognizance dated 7.7.2014 passed by the Special Judge, CBI – I, Patna in Case No. RC 16(A) of 2012/ Special case No.9 of 2012 so far as the Petitioner is concerned is hereby set aside.

(Anjana Prakash, J)

Narendra/-

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