

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-M-27064 of 2009
Date of Decision: 06.12.2017

Rajesh Kumar Aggarwal

...Petitioner

VERSUS

Central Bureau of Investigation and another

...Respondents

2. CRM-M-27151 of 2009

Vijay Kumar Mehra

...Petitioner

VERSUS

Central Bureau of Investigation and another

...Respondents

3. CRM-M-31121 of 2009

Naresh Kumar Jain

...Petitioner

VERSUS

Central Bureau of Investigation and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Virk, Advocate
for petitioners in CRM-M-27064 & CRM-M-27151 of 2009.

Mr. Salil Sabhlok, Advocate
for the petitioner in CRM-M-31121-2009.

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI.

SURINDER GUPTA, J.

FIR No. RCCHG2003A0024 dated 28.08.2003 was registered by Anti-Corruption Branch of CBI, Chandigarh on the complaint of Chief Manager, Bank of India, Model Town Branch, Ludhiana (Annexure P-2) in CRM-M-27151-2009, which reads as follows:-

“We are a public sector bank having a branch at 579-R,

Model Town, Ludhiana. The undersigned, who is chief manager of the branch (Model Town Branch) has to report an instance of fraud committed against the bank by an unscrupulous borrower.

One Shri Naresh Kumar Jain, resident of 45-B, Tagore Nagar, Ludhiana claiming to be proprietor of a firm M/s Vee Jay Jewellers, 95-Fountain Plaza, College Road, Civil Lines, Ludhiana applied to this branch on 04/10/2000 for cash credit limit amounting to ₹30.00 lac.

He enclosed copies of Income Tax returns duly received by Income Tax Deptt. as proof of existing and previous income, copy of SSI registration number audited balance sheets for the years 1998-1999 and 2000. The pre-sanction inspection and appraisal was conducted by Sh. V.K. Mehra, the then Dy. Manager (Credit) on 16.10.2000 and the requested cash credit facility of ₹30.00 lac was sanctioned by Shri Mukesh Chaturvedi, the then Chief Manager, Bank of India, Model Town Branch, Ludhiana on 24.10.2000.

However, after around six months, it was found that some of the payments were made in cash by means of cheques drawn in favour of "Self" indicating a strong possibility of diversion of funds. On investigation, it was found that some disbursement did not pertain to business. The account was declared NPA w.e.f. 31.3.2002. As on 31.7.2003, there is outstanding balance of ₹28,47,206/- and uncharged interest ₹704567/- aggregating to ₹3551773, which remains unpaid

despite repeated notices to the borrower. The copies of income tax returns SSI registration number and audited final accounts of M/s Vee Jay Jewellers also appear to be fictitious and forged. The final accounts of three years enclosed with the loan application are shown to have been audited by M/s R.K. Gupta and Associates, Chartered Accountant Industrial Estate Ludhiana. However there is no CA firm by such name at the given address. It has also been disclosed that M/s Vee Jay Jewellers was a bogus firm and the shop for which the aforesaid CC limit was obtained was being earlier run as a jewellery shop under the name and style of M/s Vallabh Jain Jewellers which had already availed credit facilities from State Bank of Bikaner and Jaipur. This fact of having availed credit facilities in the name of M/s Vallabh Jain Jewellers in which Smt. Bharati Jain w/o Sh. Naresh Kumar Jain and Shri Rajiv Jain were two partners and Mr. Naresh Kumar Jain was the guarantor was concealed from the bank. The borrower and guarantor concealed their liabilities with their previous banker.

It has been further disclosed that Shri V.K. Mehra, the then Dy. Manager while processing Shri Mukesh Chaturvedi, the then Chief Manager while sanctioning the aforesaid limit failed to comply with the following requirements:-

- (i) The antecedents of the borrowers were not verified and no enquiries of any kind were made before sanctioning the loans. The previous banker's report was also not obtained;*

- (ii) *The loan application and final accounts did not give name of the previous bankers, which was not possible looking into sales volume shown in the audited final accounts of the firm. The audited final accounts (copies) enclosed with the loan application indicated the name of the firm to be M/s V.J. Jewellers whereas title of the account was M/s Vee Jay Jewellers. Thus the analysis of the loan application was not done properly;*
- (iii) *Most of the transactions in the account were for purpose other than business. During inspection by the bank on 22.11.2001, it was found that the name of the firm was not displayed on the shop and records were not made available to the Inspecting Officer. Thus, post sanction inspection and monitoring of the account was unsatisfactory;*
- (iv) *Instead of original documents, photocopies of crucial documents like audited final accounts were accepted, which turned out to be bogus.*

From the aforesaid facts and circumstances, it is clear that Shri Naresh Kumar Jain created a fictitious firm by the name of M/s Vee Jay Jewellers solely for the purpose of obtaining the loan from Bank of India, Model Town Branch, Ludhiana by misrepresenting the facts as narrated above and defrauded the bank to the tune of ₹30.00 lac. Shri V.K. Mehra, the then Dy. Manager (Credit) now retired and Shri Mukesh Chaturvedi, the then Chief Manager of the bank processed and

sanctioned the cash credit limit without proper verification, scrutiny followed by unsatisfactory post sanction monitoring and thus by their acts and omissions exposed the bank to fraud.

We therefore request you to register a case as per the relevant provisions of law.”

2. Petitioner(s) have sought quashing of FIR mainly on the ground that matter has been compromised between main accused, namely, Naresh Kumar Jain and the Bank. No useful purpose will be served by allowing continuation of proceedings before the trial Court. Vide order dated. 23.08.2010, petitions filed by Rajesh Kumar Aggarwal, Vijay Kumar Mehra and Naresh Kumar Jain were allowed and the main FIR alongwith consequential proceedings arising therefrom were quashed.

3. Central Bureau of Investigation (CBI) filed Criminal Appeals No. 879-881 of 2015 {arising out of SLP (Criminal) No. 2512-2514 of 2011}, which were allowed by the Hon'ble Apex Court with the observations as follows:-

“Learned counsel for the parties point out that the impugned order passed by the High Court primarily proceeds on the basis of the earlier order passed by the said court whereby Criminal Misc. No. M-2117 of 2009 had been allowed and the prosecution against the petitioner in the said case for similar offences quashed. The High Court had in that case held that since the accused persons had entered into a settlement with the bank concerned the on-going criminal proceedings deserved to be quashed. It is further submitted by learned counsel for the parties that the said earlier order

passed by the High Court in Crl. Misc. No. M-2117 of 2009 when challenged by the C.B.I. before this Court in Criminal Appeal No. 1710 of 2011 was set aside and the matter remitted back to the High Court. In that view of the matter, therefore, we see no reason why a similar order setting aside the impugned order passed by the High Court should not be passed in the present proceedings also.

We accordingly allow these appeals, set aside the impugned order and remit the matter back to the High Court with the request to consider the matter afresh and pass appropriate orders in accordance with law as expeditiously as possible.”

4. I have heard learned counsel for petitioners and learned counsel for the respondent-CBI and have perused the paper-book with their assistance.

5. Allegations levelled in the FIR are as follows:-

- (i) Petitioner-Naresh Kumar Jain applied for cash credit limit of ₹30 lacs in his capacity as proprietor of a firm M/s Vee Jay Jewellers, 95 Fountain Plaza, College Road, Civil Lines, Ludhiana.
- (ii) With his application he enclosed copies of income tax returns as proof of existing and previous income of the firm, copy of SSI registration number, audited balance-sheets for the year 1998-1999 and 1999-2000.
- (ii) Pre-sanction and appraisal of the application and documents was conducted by V.K. Mehra, who was

Deputy Manager (Credit) of Bank of India and the cash credit limit of ₹30 lacs was sanctioned by Sh. Mukesh Chaturvedi, the then Chief Manager, Bank of India, Model Town Branch, Ludhiana on 24.10.2000.

6. After about six months of sanction of cash credit limit, it was found that funds were being diverted by issuing cheques drawn in favour of 'self' and on enquiry it was found that some disbursement were not pertaining to business of firm. Investigation after registration of the FIR, revealed that while moving application, Naresh Kumar Jain in his capacity as proprietor of M/s Vee Jay Jewellers had indicated that the firm was in existence since 13.04.1996 with sales of ₹1.51 crores in the year ending 31.03.2000. It was found that M/s Vee Jay Jewellers was a bogus/non-existent firm and the premises of the firm mentioned in the application as 95, Fountain Plaza, College Road, Ludhiana was actually the premises of another firm M/s Vallabh Jain Jewellers, which is also engaged in sale of gold and jewellery. This firm was a partnership firm in which Smt. Bharti Jain wife of Naresh Kumar Jain is a partner. Investigation also revealed that income tax return, sales tax returns, SSI registration certificate, audited balance-sheet enclosed by Naresh Kumar Jain with loan application were forged, false and fabricated documents got prepared by Naresh Kumar Jain in connivance with petitioners, namely, Rajesh Kumar Aggarwal, Chartered Accountant. Funds drawn from the cash credit limit were misused by Naresh Kumar Jain. He had withdrawn nearly ₹10.5 lacs through 7 self bearer cheques and two cheques worth ₹5 lacs were issued in favour of Bharti Jain. Rajesh Kumar Aggarwal, Chartered Accountant is introducer of the CC account of the said fictitious firm M/s Vee Jay Jewellers in Bank of India

and had forged documents enclosed with loan application pertaining to hypothecation of stocks. He (Rajesh Kumar Aggarwal) had got prepared through his employee Sh. Arun Walia statements, sales tax returns and income tax returns enclosed with loan application on his instructions and Sh. Arun Walia had signed on two false and forged stocks statements as Naresh Kumar Jain under his instructions and these statements were made made part of loan application to the Bank. The evidence collected by the investigating agency revealed that petitioner-Rajesh Kumar Aggarwal was actually running a bogus chartered accountancy firm. The connivance of Rajesh Kumar Aggarwal in the entire loan transaction was further confirmed from the fact that there were regular transactions between CC account of M/s Vee Jay Jewellers and the bank account of two firms, namely, M/s R.S. Maheshwari & Company and M/s Raghav Enterprises, which were operated by Rajesh Kumar Aggarwal himself. The various transactions, which were verified between aforesaid firms, were found not relating to jewellery business for which CC limit was obtained.

7. It was also established during investigation that petitioner-V.K. Mehra, the then Deputy Manager got conducted the pre-sanction inspection and submitted the credit proposal recommending sanction of the CC limit of ₹30 lacs without making thorough verification regarding antecedents and genuineness of the borrower. He reported false facts in his pre-sanction information and credit proposal stating therein that borrower had very good reputation and business premises of the borrower were well located. This shows his connivance with other two petitioners.

8. Learned counsel for petitioners has argued that the matter was finally settled with the Bank, which accepted the offer of petitioner vide

letter dated 18.10.2004 as per terms settled therein. The entire loan was paid and the bank asked the investigating agency (CBI) to return the original title deed as the laonee (Naresh Kumar Jain) had paid the loan amount. He argues that once the matter has been settled with the Bank, no cause to continue the prosecution subsists and this Court while quashing FIR rightly relied upon the observation in the case of **Nikhil Merchant vs. Central Bureau of Investigation and anr, 2008 (9) SCC 677**. He submits that after the compromise between petitioner-Naresh Kumar Jain and the bank continuation of trial will be misuse of the process of Court. The petitioner had no reason to fabricate any document to get the loan when he had hypothecated his property, which was worth three times the loan amount as security for sanctioning of cash credit limit. The observation of investigating agency (CBI) that the documents were fake has no basis. In the case of **Nikhil Merchant (supra)**, Hon'ble Apex Court has observed in paras 23 to 24 as follows:-

“23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is

required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

24. *On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.”*

9. A similar matter came for consideration before the Hon'ble Apex Court in case of **Central Bureau of Investigation vs. Maninder Singh, 2015 (4) RCR (Criminal) 190**. In that case, Hon'ble Apex Court in para 10 to 12 has observed as follows:-

“10. The allegation against the respondent is ‘forgery’ for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an

enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

11. *The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.*

12. *In recent decision in Vikram Anantrai Doshi¹ (supra),*

this Court distinguished Nikhil Merchant's case and Narendra Lal Jain's case where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case laws under subject in Vikram Anantrai Doshi's case, this Court observed that cheating by bank expositis fiscal impurity and such financial fraud is an offence against society at large in para (23), this Court held as under:-

"23. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The

cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a “no due certificate” and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent

jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible”.

10. In the aforesaid cases, observations of Hon'ble Apex Court in case of ***Nikhil Merchant (supra)*** were also considered and discussed and it

was observed that “to quash proceedings merely on the ground that accused has settled the amount with the Bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.”

11. Hon'ble Apex Court in case of **Sushil Suri vs. C.B.I. and another, 2011 (5) SCC 708** again considered the case of **Nikhil Merchant (supra)** and **B.S. Joshi vs. State of Haryana, 2003 (4) SCC 675** and observed in paras 20 and 21 as follows:-

“20. A bare reading of the afore-extracted paragraphs would indicate that the question posed for consideration in that case was with regard to the power of this Court under Article 142 of the Constitution of India to quash the criminal proceedings in the facts and circumstances of a given case and not in relation to the powers of the High Court under Section 482 of the Cr.P.C. The Court came to the conclusion that it was a fit case where it should exercise its powers under Article 142 of the Constitution. In our opinion, Nikhil Merchant (supra) does not hold as an absolute proposition of law that whenever a dispute between the parties, having overtones of a civil dispute with criminal facets is settled between them, continuance of criminal proceedings would be an exercise in futility and, therefore, should be quashed. Similarly, in B.S. Joshi & Ors. (supra), which has been relied upon in Nikhil Merchant (supra), the question for consideration was whether the High Court

*in exercise of its inherent powers can quash criminal proceedings or FIR or Complaint for offences which are not compoundable under Section 320 of the Cr.P.C. It was held that Section 320 cannot limit or affect the powers of the High Court under Section 482 of the Cr.P.C., a well settled proposition of law. We are of the opinion that Nikhil Merchant (supra) as also the other two judgments relied upon on behalf of the appellant are clearly distinguishable on facts. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See: **Zee Telefilms Ltd. & Anr. Vs. Union of India & Anr., (2005) 4 SCC 649**). In this regard, the following words of Lord Denning, quoted in **Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr., 2002 (1) RCR (Civil) 794; (2002) 3 SCC 496**, are also quite apt:*

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide

cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

21. *In the present case, having regard to the modus operandi adopted by the accused, as projected in the Charge-sheet and briefly referred to in para 17 (supra), we have no hesitation in holding that it is not a fit case for exercise of jurisdiction by the High Court under Section 482 of the Cr.P.C. as also by this Court under Article 142 of the Constitution of India. As noted above, the accused had not only duped PSB, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society.”*

12. Similar observation was also made by Hon'ble Apex Court in case of **State represented by Inspector of Police, Chennai vs. M/s Intek Eng. & Ser. P. Ltd. and others, 2016 (2) RCR (Criminal) 357** and **State represented by Inspector of Police Central Crime Branch vs. R. Vasanthi Stanley and another, 2016 (1) SCC 376.**

13. Complaint and final report submitted by CBI categorizes the allegations against petitioners in two categories. Firstly, Naresh Kumar Jain in connivance with other petitioners filed application for loan supported by fake and forged documents; and secondly, the loan was advanced and

misused against terms of advancement. So far as second part of the transaction is concerned, petitioners have settled with the Bank and repaid the loan amount under settlement. However, the Bank has never settled with petitioners so far as submission of fake and forged documents is concerned and getting sanction of loan on fraud. The settlement part of the compromise is concerned with repayment of loan and the bank is always concerned with recovery of loan amount for which it entered into a settlement with Naresh Kumar Jain. However, this settlement has absolutely no impact or concern with the offence of submitting forged and fake documents, conspiracy, cheating and forgery.

14. In view of law laid down in case of ***Maninder Singh (supra)***, observations in case of ***Nikhil Merchant (supra)*** are not of any help to petitioners in this case. There are specific allegations of forgery and connivance against all the petitioners. The fact that Naresh Kumar Jain has also hypothecated his property to secure the loan amount also has no relevance, if the prosecution succeeded in proving that the documents produced in support of application for loan were fake and fabricated and the firm for which loan was also non-existent.

15. Keeping in view above facts and circumstances, I find no reason to accept submissions of learn counsel for petitioners. These petitions have no merit and are dismissed.

December 06, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No