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

Date of decision: 19.11.2019

+ CRL.A. 895/2019 and CRL.M.A. 32685/2019

M/S. NATIONAL FERTILIZERS LTD. Appellant

Through: Mr. Bijender Singh, Adv.

versus

CBI & ORS. Respondents

Through: Mr. Ripu Daman Bhardwaj, SPP for
R-1/CBI

Mr. C.K. Rama Krishnan, R-2 in
person

Mr. D.B. Goswami, Mr. S. Gaurav
Sasan and Mr. S. Saurabh Sasan,
Adv. for R-5

Mr. Mahmood Alam, Adv. for R-6

Mr. Puneet Kumar Rai, Adv. for R-7

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Vide the present appeal, the appellant/ complainant seeks direction thereby to set aside the impugned order on sentence dated 12.07.2018 passed by learned Special Judge (PC Act) (CBI)-04, Central District, Tis Hazari Courts, Delhi in CC No. 532219 of 2016 to the extent of awarding inadequate compensation to the petitioner.

2. In the present case, while convicting the respondents, learned trial

Court has imposed fine of ₹212,06,00,000/- upon the respondents. However, 80% of the total fine i.e. ₹169,70,40,000/- has been imposed on respondent Nos.2 to 9 and 20% of the said fine i.e. ₹42,42,60,000/- imposed upon respondent No.1 under Section 357(1) Cr.P.C.

3. Case of the appellant is that Ministry of chemicals and Fertilizers vide Government Order dated 25.10.1994, appointed the appellant as a canalizing agent and authorized it to import urea and pursuant to the aforesaid government order, tenders were floated by the appellant. The appellant entered into an agreement on 09.11.1995 with a Turkish Company namely, M/s. Karsan Daanismanlik Turizm Sanayi Ticaret Limited STI (herein after referred to as "M/s Karsan") for supply of 2,00,000 Metric Ton of Urea 46 Fertilizer at price of US \$190 PMT (hereinafter referred to as "said agreement"). Mr. Tuncay Alankaus and Mr. Cihan Karanci who are also convicted vide judgment dated 09.07.2018 by the Ld. Special Judge and sentenced to undergo punishment vide impugned order, are the beneficial owners of M/s. Karsan. However, subsequently, the appellant came to know that the respondent No. 2 to 9 herein and Late Sh. A. E. Pinto arrayed as accused No. 9 in the judgment dated 09.07.2018 and the impugned order dated 12.07.2018, were in collusion and they conspired with each other and

some unknown persons to siphon off the exchequer's money to the tune of Rs.133 Crores approx. (\$38 Millions) under the guise of said agreement dated 09.11.1995. and, therefore, a complaint dated 19.05.1996 was made by then ED (Vig.), NFL. Consequently, CBI registered the case being RC 3(A)/ 96- ACU-I under Section 120B/ 409/ 420/ 201 IPC & under Section 13(2) read with Section 13(1) (c) & (d) PC Act.

4. The respondent No. 2 and 3, public servants, had dominion over the funds of the petitioner at the relevant time being Managing Director and Executive Director (Marketing & Personnel Administration) of the appellant company. The respondent No. 4 was Indian agent of M/s. Karsan and was one of the Director of M/s. Sai Krishna Implex Pvt. Ltd., Hyderabad, of which the respondent No.9 was also a partner. The respondent No. 4 was a close confidant of the respondent No.7 who was relative of the then Prime Minister of India. The respondent No. 8 was also a public servant, being member of Legislative Council (MLC) of Bihar and son of then Minister of Chemicals & Fertilizers, Govt. of India. The respondent Nos. 5 and 6 were president/CEO and Vice president of M/s. Karsan and actual beneficiaries under the said agreement and accused No. 9 was close associate of the respondent Nos.4 to 6.

5. Learned counsel appearing on behalf of the appellant submits that it is clearly established beyond the reasonable doubt that aforesaid accused persons colluded and conspired with each others to swindle the appellant's money and they succeeded. They all are beneficiaries of the defrauded money. Inter-alia, the Ld. Trial Court clearly observed that in furtherance of their aforesaid ill-motives; how the respondent No. 4 along with the respondent No. 7 and 8 deliberated various ways to hatch the conspiracy and achieved the aforesaid objective; how the respondent No. 7 and 8 used their influence and were found instrumental in providing the desired connections needed to win the said agreement from the petitioner; how the respondent No. 4 to 6 misrepresented about M/s. Karsan for procuring the said agreement; how the money remitted without approvals; how the said defrauded money was distributed by the accused persons amongst themselves and other unknown persons or entities; how *hawala* channel was used to bring part of the defrauded money in India and how the accused persons tried to bury material facts to avoid criminality; how they made subsequent steps to hide their crime behind the said agreement, treating it as only a civil dispute.

6. It is further submitted that the fact remains that the respondent Nos. 2

and 3 deliberately and dishonestly approved the said agreement and let the whole payment i.e. to the tune of 37.62 Millions US \$ (99% of consideration) besides another 1% towards insurance amount, remitted to the M/s. Karsan's bank accounts without getting even a grain of Urea from M/s. Karsan under the signature of the respondent No. 3 and other subordinate staff. The respondent Nos. 5 and 6 got the defrauded money and they created such cobwebs by transferring the money in various accounts and withdrawals along with the respondent No. 4 to 9 and A. E. Pinto so that it would become difficult to trail the money.

7. It is further submitted that the learned Trial Court has observed in the judgment dated 09.07.2018 that the respondent Nod. 2 and 3 were acting as per the conspiracy. Their actions were shrouded with mystery, suspicion, great haste and recklessness who turned blind eye to all the details, terms of agreement favouring other side and above all the non-existence of the relevant documents in file.

8. It is further contended that the learned Trial Court had also observed that the conspirators shifted the defrauded money immediately from M/s. Karsan's account, where the amount was remitted by the respondent Nos. 2 and 3 and usurped the same with other conspirators without supplying a

grain of Urea to the appellant. Thus, it is clearly established that various documentations were done, agreements were executed prior to the said agreement in such a manner only to create cobwebs so much so that the appellant could never come across the ill motive and intentions of the accused persons and they could easily siphon off the public money. The learned Trial Court clearly recorded in the judgment dated 09.07.2018 how the accused persons planned and succeeded in their ill-motives.

9. Learned counsel for the appellant submits that the money (amount of ₹133 Crores) was misappropriated by the respondents/ accused persons in the year 1996. The learned Trial Court, while convicting the respondents, has imposed fine of ₹212,06,00,000/-. Out of the said amount, 80% is directed to be paid in favour of the appellant and 20% in favour of the CBI.

10. He submits that against an amount of ₹133 Crores, which was misappropriated in the year 1996, the awarded amount of ₹206 Crores plus is inadequate in favour of the appellant.

11. It is further submitted that the Ld. trial Court failed to appreciate the fact that the value of one dollar at the relevant time was around ₹35. Hence, that time the duped amount was to the tune of ₹133,00,00,000 (One Hundred and Thirty Three Crore) approx. However as on date of impugned order the

said amount is enormous i.e. more than Rs. 1400 Crores even if monetary loss of the petitioner is to be computed on the basis of simple interest based on 5 years interest rate on deposits by RBI.

12. Learned counsel submits that the learned Trial Court should have taken into consideration an amount of ₹133 Crores, misappropriated in 1996 with interest thereon, however, compensation is of peanut size.

13. Fact remains that the compensation amount granted under Section 357 Cr.P.C. is to compensate the complainant/ aggrieved person.

14. For the convenience, Section 357 Cr.P.C. is reproduced as under:

“357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

15. On perusal of the aforesaid provision, the Court has power to order the whole or any part of the fine recovered to be applied in defraying the expenses properly incurred in the prosecution. In the present case, 20% of the total fine amount has been paid in favour of the prosecution. Under the said provision, the Court may, while passing judgment, order whole or any

part of the fine recovered to be applied in the payment to any person for compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. Further, when any person is convicted for any offences which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

16. It is not in dispute that during the investigation, the investigating agency has not recovered any amount from the accused persons.

17. It is also not in dispute that when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

18. Thus, in the aforesaid provision, it is not mentioned that the Court

shall compensate the victim fully, therefore, I am of the view that the Trial Court has taken into consideration the entirety of the facts and the fact that the money was misappropriated to the tune of ₹133 Crores in the year 1996 and the Trial Court imposed fine of ₹212,06,00,000/- upon respondents, out of which 80% has already been awarded in favour of the appellant.

19. In view of above, to that extent, I find no illegality or perversity in the impugned order passed by the Trial Court.

20. Since the appeal filed by the respondents is pending adjudication, therefore, I am not making any opinion on the merits or demerits of the appeal.

21. The present appeal is accordingly dismissed. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 19, 2019

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