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

Date of decision: 25.09.2019

+ CRL.M.C. 4261/2019 and CRL.M.A. 34533/2019

M/S. DAYA ENGINEERING WORKS
(SLEEPER) LTD. & ANR.

..... Petitioners

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Akash Chatterjee, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION
& ANR.

..... Respondents

Through: Mr. Mridul Jain, Spl. PP, CBI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T
(ORAL)

1. Vide the present petition, the petitioner seeks quashing of FIR No. RCBD1/2016/E/0012, registered at Police Station CBI, BS & FC for the offences punishable under sections 120-B/420/467/468/471 IPC along with the consequential proceedings emanating therefrom.
2. The gist of the allegation in the FIR registered is that M/S Daya Sugar a unit of M/s Daya Engineering Works (sleeper) Ltd., through its Directors, in conspiracy with unknown accused bank officials and private persons cheated the consortium of banks to the tune of Rs.5261.63 Lacs.

3. M/s Daya Engineering Works (Sleeper) Ltd. for its sugar unit M/s Daya Sugar applied for various credit facilities and also availed the same from Indian Overseas Bank, Chakrata Road Branch, Punjab National Bank SME Branch and Oriental Bank of Commerce, Ambala Road branch, all located at Saharanpur.

4. The present FIR has been registered on 20.12.2016 on the complaint of Shri S. Chakrapani, Chief Regional Manager, Indian Overseas Bank, Regional Office, Meerut , UP who is respondent no.2 in the present petition. The Consortium of banks including the Punjab National Bank and Oriental Bank of Commerce led by Indian Overseas Bank initiated recovery proceedings under SARFAESI Act, 2002 and also instituted a recovery suit bearing O.A. No. 125 of 2014 before the Debt Recovery Tribunal, Lucknow for the outstanding amounts in various accounts with consortium banks totalling up to ₹5261.63 Lacs. On 10.11.2016, Indian Overseas Bank accorded sanction for acceptance of ₹4053.60 Lacs as OCS sanction and the same was duly accepted and honoured by the petitioner. Vide its letter dated 22.11.2017, the Indian Overseas Bank released the original title deeds of the petitioner after realization of the full and final recovery amount along with

charges, dues and interest on the delayed period, which marks the end of the controversy and therefore, now there remains no dispute between the parties.

5. Mr.Sudhir Nandrajog, learned senior counsel appearing on behalf of the petitioner submits that vide order dated 10.01.2018, the Debt Recovery Tribunal, Lucknow was pleased to dispose of the O.A. No. 125 of 2014 with the following direction:

"Ld. Counsel for the defendants submits that defendants have paid the entire dues of the applicant- Bank. Applicant-Bank has also issued a letter to this effect on 22.11.2017. The said letter is enclosed at Exhibit No. D/2 along with application dated 30.11.2017. He also submits that dues of the applicant-bank have been paid by the defendants after taking loan from M/s. B.K. Investment Services Pvt. Ltd. Heard learned Counsels for both the parties. Since there is no cause of action, hence, O.A. stands disposed of."

6. He further submits that petitioner and the complainant bank have arrived at a compromise coupled with the fact that the complainant bank now has nothing to recover from the petitioner. Moreover, learned DRT in O.A. No. 125 of 2014 vide its order dated 10.01.2018 has recorded the settlement between the parties. Further, the complainant bank has also issued a letter dated 22.11.2017, wherein original title deeds of the company

have been released as a result of the payment of full and final dues of the Respondent No.2. Thus, the present petition deserves to be allowed.

7. To strengthen his arguments, learned senior counsel has relied upon the case of ***Nikhil Merchant versus Central Bureau of Investigation and Ors.: AIR 2009 SC 428***, wherein it was held as under:

"21. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company, M/s Neemuch Emballage Limited, Mumbai, In order to avail of credit facilities to an extent to which the company was not entitled. In other words, the main intention of the company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the company was not otherwise entitled.

22. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi's case (supra) becomes relevant.

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 where under 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.

25. We, therefore, set aside the order passed by the High Court dismissing the petitioner's revision application No. 49 of 2003 in Special Case No. 80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed."

8. Learned senior counsel also relied upon the Civil Appeal No. 11907 of 2018 titled ***State Trading Corporation of India Ltd. versus M/s Global Steel Holding Limited & Ors***, where the Hon'ble Supreme Court was of the following view:

"1. Pursuant to the Order dated December 6, 2018 passed by this Court, we are informed by Senior Counsel Mr. D. A. Dave representing the State Trading Corporation of India, and Mr. Kapil Sibal, Senior Advocate for the Respondents, that the amount of Rs. 600 crores payable by the Respondents towards Interest @ 8% p.a. by 28th February, 2019 has been paid. As a consequence, all the liabilities under the Settlement

Agreement dated 15.11.2010, and Further Settlement Agreement dated 17.05.2012, stand fully satisfied. It is stated on behalf of S.T.C. that there is no further claim of the Appellants against the Respondents, arising out of the aforesaid Agreements.

2. As a consequence, in exercise of our powers under Article 136 r.w. Article 142 of the Constitution of India, we hereby quash the following proceedings which have arisen from the Agreements mentioned hereinabove:

i. F.I.R. lodged by C.B.I, on Complaint of State Trading Corporation bearing R.C. No. - 217/2017/A0005/CBI//ACU-VI/AC -II/New Delhi.

ii. E.C.I. R. by Enforcement Directorate on the basis of the F.I.R. lodged by C.B.I, bearing ECIR No. ECIR/03/DZ-I/2017 dated 29.03.2017.

iii. Show Cause Notice dated 29.12.2017 issued by the High Commission of India, Passport & Consular Wing, India House, London.

iv. Any Look Out Notice issued against Mr. Pramod Mittal or his wife, or their children, by the Authorities and/or Agencies arising from the aforesaid Agreements.

V. Eleven Complaints under S.420 and 409 I.P.C. pending before the Court of Shri Dharmendra Kumar, Ld. Metropolitan Magistrate, Patiala House Courts, New Delhi."

9. He also relied upon CRL.M.C.5722-30/2006 & CrI.M.A.9675/2006 titled ***B.B. Agarwal & Ors. versus Central Bureau of Investigation & Ors.*** where the Hon'ble High Court of Delhi had placed reliance on the judgment of this Hon'ble Court in ***Nikhil Mermachant v. CBI: 2008(4) JCC 2311*** and ***Manoj Sharma v. State JT: 2008(11) SC 674*** and quashed the criminal

proceedings against the petitioners therein, holding the view that no purpose would be served in keeping the criminal proceedings pending in view of the settlement arrived at between the parties. The above stated view of the High Court was challenged by the CBI before Hon'ble Supreme Court in Criminal Appeal Nos. 2107-2125 of 2011 tiled as ***C.B.I. New Delhi versus B.B. Agarwal & Ors.*** and the Hon'ble Supreme Court was of the following view:

"7. It is not in dispute that PNB had also filed two civil suits bearing Nos. 342/1995 and 2740/1995 against the Companies-WCBDL(R-7) and NBFAL (R-6) and its Directors in Bombay High Court for recovery of the outstanding dues and for settlement of the accounts which were later transferred to the Debt Recovery Tribunal, Mumbai (OA No.3174/2000) for trial. It is also not in dispute that during the pendency of these civil suits and pursuant to orders passed therein directing the parties to undertake reconciliation of the accounts, the PNB and the two companies through their Directors reconciled their accounts and compromised the matter by entering into a one-time settlement on 06.06.2006. The consent application in O.A. No.3174 of 2000 was accordingly filed by the parties in DRT, Mumbai for disposal of the OA in terms of the settlement arrived at between them.

8. The DRT by its order dated 11.05.2006 accepted the settlement and accordingly disposed of OA No. 3174/2000 in terms of settlement. (See documents filed in IA-12323/2019). In terms of settlement order, the two companies were liable to pay a total sum of Rs. 12.20 crores to PNB, which the two Companies, through their Directors, paid to the PNB. It is not in dispute that now there are no outstanding dues payable by these two Companies to the PNB and the order of DRT stood complied with.

9. It is with these background facts, the 12 respondents (accused) filed the petitions in the High Court of Delhi under Section 482 of Cr.P.C. seeking to quash the criminal proceedings filed against them.

10. By impugned order, the High Court allowed the petitions and quashed the criminal proceedings, which has given rise to filing of the present appeals by way of special leave by the CBI in this Court.”

10. Accordingly, the Hon’ble Supreme Court has upheld the view of the High Court and was pleased to dismiss the appeals against order of quashing of the CBI proceedings. The relevant paras are produced below:

“18. We find no merit in her submission. When we take into account the entire undisputed controversy mentioned above, we also find that there is no criminality issue surviving qua those accused, who are alive so as to allow the prosecuting agency to continue with the criminal trial on merits. Indeed, it would be an abuse of process, as was rightly held by the High Court to which we concur.

19. In view of the foregoing discussion, we find no merit in these appeals. The appeals are accordingly dismissed.”

11. Learned senior counsel submits that there is no issue of criminality involved in the facts and circumstances of the case and continuation of proceeding will be a futile exercise in the present case. Thus the petition deserves to be allowed.

12. The outstanding amount in various accounts with consortium banks was totalling upto ₹5261.63 lacs whereas on 10.11.2016, the Indian Overseas Bank accorded sanction for acceptance of ₹4053.60 lacs as One Time Scheme.

13. As per the complaint made by the bank against the petitioner dated 20.10.2016 M/s Daya Sugar - a unit of M/s Daya Engineering Works (sleeper) Ltd. & its Directors, in conspiracy with unknown accused bank officials and private persons, cheated the consortium of banks to the tune of ₹5261.63 Lacs. The complaint is reproduced below:

Sl. No.	Facility	Limit
	Indian Overseas Bank	
1.	Working Capital Term Loan	227.00
2.	Key Cash Credit (Pledge)	1603.00
3.	Open Cash Credit (Hypothecation)	300.00
4.	CP	25.00
	Total	2155.00
	Oriental Bank Of Commerce	
1.	Term Loan	158.00
2.	Key Cash Credit (Pledge)	1430.00
	Total	1588.00
	Punjab National Bank	
1.	Term Loan	157.00
2.	Key Cash Credit (Pledge)	1100.00
3.	Open Cash Credit (Hypothecation)	225.00
	Total	1482.00
	Grand Total	5225.00

14. The company began to show signs of irregularity from the month of June 2011. As the company failed to repay the loan amount and adhere to the terms and conditions agreed upon between the parties, accounts of the company were declared as NPA on 30.12.2011 by IOB, on 30.11.2011 by PNB and on 30.09.2011 by OBC.

15. The company was availing Key Cash Credit Limit (Pledge) and open Cash Credit Limit (Hypothecation) by submitting statements of stocks periodically. The company lastly submitted statement dated 13.07.2011 declaring stocks of ₹50.76 crores including sugar quantity of 158961 quintals and accordingly availed credit facilities against the said stocks. However, it is on record that around the same time, the company had submitted stock statements to the Central Excise Department, Saharanpur showing total quantity of sugar as 38671 quintals as on 30.06.2011 and 38149 quintals as on 31.07.2011, meaning thereby in order to avail higher credit limits from consortium banks, company resorted to submission of false stock statements and defrauded banks causing huge financial loss. Again on 30.09.2011, the company submitted stock statement to the Central Excise Department showing total quantity of sugar as 37538 quintals. In October 2010, the company opened a current account with State Bank of

Patiala, Jogian Pul Branch, Saharanpur contrary to agreed terms of sanction without obtaining NOC of the consortium banks. Through aforesaid account transactions amounting to ₹540.20 lacs were routed during the period from October 2010 to August 2011, thus the company used this account to siphon off the funds. This account was opened in order to cheat the Bank despite knowing the fact that it was improper on their part to open account with other bank, when they were enjoying various credit facilities with the consortium banks. They concealed the fact of having opened the account with State Bank of Patiala and availed additional credit facility as adhoc limit of ₹4.40 crores in February, 2011 from the consortium banks.

16. But the fact remains that this court has in ***Crl.M.C.944/2010 titled as Y.N. Kashyap & Anr. Vs. CBI & Anr.*** and ***Crl.M.C.3819/2010 titled as Y.N. Kashyap & Ors. vs. State Thr. CBI & Anr.*** both dated 16.02.2012 declined to quash the FIR therein while relying upon the decision of the Hon'ble Supreme Court in the case of ***Sushil Suri vs. Central Bureau of Investigation & Anr.: (2011) 5 SCC 708.***

17. However, in the case of ***B.B. Aggarwal (supra)*** the Hon'ble Supreme Court in Crl. Appeal Nos.2107-2125/2011 has not considered the principles

laid down in the case of *Sushil Suri (supra)*. Thus, the said decisions are *per incuriam*.

18. In the present case, the total amount to be paid was ₹5261.63 lacs whereas the petitioners have paid an amount of ₹4053.50 lacs, thus, it is net loss to the exchequer to the tune of ₹1208.03 lacs. Moreover, as discussed above, petitioners by misrepresentation cheated the consortium of banks.

19. Acceptance of amount under One Time Settlement Scheme from the petitioners by the bank is towards satisfaction of civil liability whereas the criminal liability still survives against the petitioners.

20. In view of above discussion and the view already taken by this Court in *Y.N. Kashyap (supra)* relying upon the case of Hon'ble Supreme Court in *Sushil Suri (supra)*, I find no ground to quash the FIR and all other proceedings emanating therefrom and the same is, accordingly, dismissed.

21. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 25, 2019

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