IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3414 OF 2014

Pooja Jignesh Bhatt ... Petitioner
V/s.
Central Bureau of Investigation,
Economic Offences Wing and anr. ... Respondents

WITH
WRIT PETITION NO. 3413 OF 2014

Prarthana T. Brahmabhatt ... Petitioner
V/s.
Central Bureau of Investigation,
Economic Offences Wing and anr. ... Respondents

Mr. Subhash Jha a/w. Mr. Siddharth Jha, Ms Alka Pandey, Mr.D.Dubey and Mr. Tushar Bansode i/b Law Global for the Petitioners.
Ms Ameeta Kuttikrishnan for Respondent No.1/CBI.
Mr. J.P. Yagnik, APP for the Respondent No.2/State.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.

RESERVED ON : 13 JULY 2022.
PRONOUNCED ON : 12 AUGUST 2022.

ORDER *(PER : N. R. BORKAR, J.)*

. The Petitioner in Writ Petition No. 3414 of 2014 is accused No.12 and Petitioner in Writ Petition No. 3413 of 2014 is accused No.13 in CBI Special Case No. 35 of 2012 pending on the file of learned Special Judge for CBI for Greater Bombay at Mumbai and are facing trial with other accused for the offences punishable under Sections 465, 467, 468, 471, 420 read with 120-B of the Indian Penal Code, 1860 (for short "IPC") and Sections 13 (2) read with 13(1) (d) of the Prevention of Corruption Act, 1988. The prayer in both these petitions is to quash the proceedings in the aforesaid special case q*ua* the Petitioners. Both these petitions were therefore, heard together and are being disposed of by this common order.

2. On 9 September 2010, Shri. C.S. Veeraraghavan who was then working as Dy. General Manager with Bank of India, M.G. Road, Fort, Mumbai lodged the report with CBI/EOW, Mumbai alleging that on 27 July 2009 their branch received a Letter of Credit (for short "L.C.") dated 20 July 2009 purportedly issued by HDFC Bank, Lower Parel, Mumbai on behalf of M/s. Jayant Agro Organic Limited for discounting and the beneficiary of the said L.C. was M/s. Infinite Transmission (accused No.1). According to the Complainant, on 27 July 2009 itself, the said L.C. was sent to HDFC Bank for acceptance / verification. On 31 July 2009, their branch received a fax message confirming the acceptance of bill under the said L.C. It is alleged that after receipt of confirmation, on 3 August 2009, their branch discounted the said L.C. for accepted bill of Rs.3,55,32,000/- and remitted an amount of Rs.2,47,12,213/- through RTGS to the bank account of accused No.1 with

Abhyudaya Cooperative Bank, Borivali branch, Mumbai and Rs.62,00,000/- to the bank account of accused No.6 Ilesh Shah. According to the Complainant, an amount of Rs. 95,73,750/- was utilized to foreclose another outstanding bill discounted by their branch in February 2009 for accused No.1 under L.C. dated 10 February 2009 purportedly issued by Oriental Bank of Commerce, Charkop branch, Kandivail, Mumbai on behalf of Hindustan Aluminium Corporation.

3. According to the Complainant, the LC purportedly issued by Oriental Bank of Commerce was due for payment on 13 August 2009 and thus on 14 August 2009, the request was sent to the said bank to remit the funds in respect of the accepted bill under the said LC. dated 10 February 2009. Pursuant to the said request, it was informed to them that L.C. dated 10 February 2009 was not issued by them and this fact was conveyed to their Senior Manager Shri. Manoj Kumar (accused No.7) on 28 February 2009 when he contacted them for verification /confirmation of the said LC. It is alleged that accused No.7 concealed the said information which resulted in discounting the LC dated 10 February 2009 purportedly issued by the Oriental Bank of Commerce and funds were transferred to the bank accounts of accused Nos.3,4,5 and 6.

4. According to the Complainant, in the meantime, on 13

August 2009 their branch received an e-mail from HDFC bank that the L.C. dated 20 July 2009 sent to them for verification/confirmation was not signed by their authorized signatories. It was thus realised that the L.C. dated 20 July 2009 was fake and they immediately contacted the bank of accused No.1 i.e. Abhyudaya Cooperative Bank where funds were remitted after discounting the said LC. However, they found that the accused got transferred the major portion of funds through RTGS to various other accounts and only about Rs.50,000/- were available in the said account. First Information Report was registered and investigation was started.

5. During the course of investigation, it was found that on 4/5 August 2009, out of siphoned off money, Rs.24,00,000/- were transferred in the bank account of Petitioner in Writ Petition No. 3414 of 2014 and Rs. 26,00,000/- were transferred in bank account of the Petitioner in Writ Petitioner No. 3413 of 2014. It was further found that the Petitioners withdrew the entire amount on 5 August 2009 itself.

6. The allegations against the Petitioners and other accused are that they entered into criminal conspiracy and defrauded the Complainant bank to the tune of Rs.3,40,00,000/- by using forged documents as genuine.

7. We have heard the leaned counsel for the Petitioners and the learned counsel for the Respondents.

8. The learned counsel for the Petitioners submits that there is no evidence at all to connect the Petitioners with alleged crime. It is submitted that no inference of involvement of Petitioners in alleged crime can be drawn on the basis of credit and debit entries of alleged siphoned off money in the bank accounts of Petitioners in absence of any other evidence of conspiracy. The learned counsel for the Petitioners submits that at the relevant time the husband of Petitioner in Writ Petition No. 3414 of 2014 namely Jignesh Bhatt was Proprietor of M/s. Shriti Enterprises and was engaged in the business of trading in shares. It is submitted that the elder brother of Jignesh Bhatt namely Himanshu Bhatt requested him to use his firm's bank account for deposit of certain amounts through RTGS and further requested him to withdraw the said amount so credited and hand over the cash to him. It is submitted that said Jignesh Bhatt, who at the relevant time was out of India, acceded to request of his elder brother and instructed his office to do the needful. According to the learned counsel for the Petitioners Rs.1,45,00,000/- were remitted in the bank account of M/s. Shriti Enterprises and as it was not possible to withdraw the huge amount of Rs.1.45 crores the amounts so received was transferred to different accounts. It is submitted that Rs.24,00,000/- were thus transferred

to the account of Petitioner in Writ Petition No. 3414 of 2014 and Rs.26,00,00/- were transferred in the account of the Petitioner in Writ Petition No.3413 of 2014 as the husband of the Petitioner in Writ Petition No. 3413 of 2014 was Partner in M/s. Shriti Enterprises. It is submitted that considering these facts and circumstances, continuation of prosecution in question against the Petitioners would be abuse of process of law and thus needs to be quashed. The learned counsel for the Petitioners submits that the Petitioners cannot be made to face the trial in absence of any evidence of conspiracy and the trial court can very well summon them as accused under Section 319 of Code of Criminal Procedure, if such evidence comes on record during the trial.

9. The learned counsel for the Petitioners further submits that the prosecuting agency acted in a pick and choose manner. It is submitted that the accused No.1 is main beneficiary however, it's Director namely Sapna Sharma is not made accused in the crime in question, whereas the Petitioners against whom there is no evidence of conspiracy have been made accused. It is submitted that the prosecuting agency has thus acted in a discriminatory manner and the act of prosecuting agency to charge-sheet the present Petitioners is not *bona fide*.

10. The learned counsel for the Petitioners in support of his submissions has relied upon the decisions of the Hon'ble Supreme Court in *(i) Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and ors.*[1]*; (ii) Sham Sunder and ors. vs. State of Haryana*[2]*; (iii) State of Haryana vs. Brij Lal Mittal and ors*[3]*; (iv) Dilawar B. Kurane vs. State of Maharashtra*[4]*; (v) State of Karnataka vs. Muniswamy and ors.*[5]*; (vi) State of Madhya Pradesh vs. Sheetla Sahai and ors.*[6] *and (vii) Sunil B. Mittal vs. Central Bureau of Investigation*[7] *,* the decision of the High Court of Andhra Pradesh in the case of *Vunna Visali vs. State of A.P. and anr.*[8] and the decision of this Court in the case of *Eng. Sheldon S. Martins vs. State of Goa and ors.*[9] .

11. On the other hand, the learned counsel for the Respondents submits that the Petitioners are not disputing that out of siphoned off money, Rs.50,00,000/- were deposited in their accounts and the same were withdrawn by them. It is submitted that the defence of the Petitioners that they were not part of the conspiracy is a matter of trial and cannot be considered at this stage. It is submitted that both the petitions thus needs to be dismissed.

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1 (1983) 1 SCC 1
2 (1989) 4 SCC 630
3 (1998) 5 SCC 343
4 (2002) 2 SCC 135
5 (1977) 2 SCC 699
6 (2009) 8 SCC 617
7 (2015) 4 SCC 609
8 (2001) 4 CCR 491
9 2021 SCC OnLine 1097

12. There is a material on record to show that out of Rs.3,40,00,000/- (defrauded amount) Rs.50,00,000/- were transferred to the bank accounts of the Petitioners. The argument of the Petitioners that the Petitioners were not aware of any banking transactions and they being housewives cannot be considered as part of conspiracy, is too simple to be believed. Large amounts were transferred to the bank accounts of the Petitioners and they were withdrawn in cash on the same day. This factual material stressed by the learned counsel for the Respondents does not rule out the possibility of the Petitioners being involved. The degree of involvement of the Petitioners would be a matter of trial. The documents on record also show that the Petitioners were involved in the regular banking transaction along with the other accused.

13. The Hon'ble Supreme Court in *Shivnarayan Laxminaryan vs. State of Maharashtra*[10] has observed:

> *"A conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from the acts or illegal omissions committed by conspirator in pursuance of common design".*

14. The defense of the Petitioners can not be considered at this stage. Considering the material on record, no case is made out to quash the proceedings in question against the Petitioners.

10 AIR (1980) SC 439

15. We have gone through the decisions relied upon by the learned counsel for the Petitioners. Most of the decisions are in relation to vicarious liability of Directors of a Company or Partners of a partnership firm for the offences committed by the Company or the partnership firm. None of the decisions are even remotely close to the facts of the present case.

16. As regards the submission of a pick and choose, the learned counsel for the Respondents submits that no material was found against said Sapna Sharma to connect her with alleged crime. Even otherwise that cannot be a ground to quash the proceedings against the Petitioners. There is no merit in these petitions. Accordingly, both Writ Petitions are dismissed.

(N.R. BORKAR, J.) **(NITIN JAMDAR, J.)**

17. The learned counsel for the Petitioners submits that the interim order dated 14 October 2014 staying the trial be continued for the period of six weeks. Considering the fact that the trial is of the year 2012, we are not inclined to continue the interim order. Request is rejected.

(N.R. BORKAR, J.) **(NITIN JAMDAR, J.)**