IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31272-2018 (O&M)
Reserved on: 06.07.2022
Pronounced on: 18.07.2022

M/s Sarvodaya Highways Ltd. and others
...Petitioners

Versus

Central Bureau of Investigation and another
...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Sangram S. Saron, Advocate,
Mr. Shoryaveer, Advocate
for the petitioners.

Ms. Shubhra Singh, Advocate
for respondent No.1-CBI.

Mr. Amit Bansal, Advocate for
Mr. Akshay Jain, Advocate
for respondent No.2.

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ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR bearing RC No.BD1/2015/E/0002/CBI/BS&FS/DLI dated 03.02.2015 and final report

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dated 30.11.2016 as well as the consequential proceedings arising out of the FIR.

It is worth noticing her that on 25.07.2018, while issuing notice of motion, the Co-ordinate Bench noticed that there is a compromise between the petitioners and respondent No.2 and as per the settlement, an amount of Rs.12.00 crores has been paid to respondent No.2-Bank, as mentioned in Annexure P-9. Meanwhile, the trial Court was directed to adjourn the case beyond the date fixed before this Court.

Brief facts of the case are that on 09.01.2015, Branch Manager, State Bank of Bikaner & Jaipur gave a complaint forming basis of FIR. As per the FIR, the complainant-Bank sanctioned credit facility of Rs.50.00 crores fund based limits and Rs.10.00 crores non-fund based limits to the petitioners, who are Managing Director and Directors of M/s Sarvodaya Highways Ltd. (hereinafter referred to as 'company'). As per loan application, the company stated that it is engaged in the construction of residential/commercial complexes, townships, highways, bridges and flyovers across India and is awarded 10 works to the tune of Rs.348.24 crores. Later on, credit limit was sanctioned, however, when the loan was not repaid, an internal inquiry was conducted by the bank and it was found that no lien of the bank was marked in the revenue record by the Patwari Halqa of Dhakoli in Zirakpur and thus, record was manipulated. It was alleged that later on, the account was declared NPA on 28.07.2013 and on the basis of

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internal inquiry, it is found that a fraud of Rs.52.50 crores has been committed.

Learned senior counsel for the petitioners submits that the entire loan amount has been repaid and in the proceedings, which were pending before the Debt Recovery Tribunal-III, Chandigarh, on 15.12.2017, following order was passed: -

> *"The counsel for the bank and bank officer stated that there are some legal defects in the notice issued under Section 13(2) and 13 (4) of SARFAESI Act by the bank in this case, due to which they are withdrawing the above proceedings and after initiating the recovery proceedings afresh, will file the above case. Hence, as the above proceedings has become ineffective, the above SA is hereby dismissed.*
>
> *Copy of the order be supplied to the parties as per rules."*

Learned senior counsel has referred to various letters dated 07.01.2020, 18.02.2020, 24.04.2020, 30.04.2020, 20.07.2020 and 01.10.2020 issued by respondent No.2-Bank (Annexure P-14 colly.), to submit that the bank issued certificates from time to time and as per compromise settlement approved by the bank, the capital loan account of the company has been closed and later on, a communication was sent to Tehsildar, Zirakpur with a request to remove the bank's charge on the land mortgaged by the company. It is further submitted that as per aforesaid

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letters, from time to time, the mortgaged land, against the credit facility availed by the company, was released by the bank in Village Peermuchalla, District SAS Nagar (Mohali), which was in the name of M/s Girisha Towers Ltd. as well as the land situated in Village Gazipur, Teshil Dera Bassi, District SAS Nagar (Mohali) in the name of M/s JMR Infrastructure Ltd.

It is further submitted that even in the reply filed by CBI, to a Court query to verify the facts from the State Bank of India regarding the compromise proposal between the company and the Bank, a letter dated 27.05.2022 sent by SBI to the Superintendent of Police, CBI, New Delhi is attached with the reply dated 04.07.2022 filed by Sub Inspector of Police, CBI/BSFB, New Delhi, which reads as under: -

> *"…We refer to your letter No.2497/RC BDI/2015/0002/BSFB/New Delhi dated 23.05.2022 and confirm that a compromise proposal for Rs.34.30 crore plus interest was sanctioned on 08.11.2019 to M/s Sarvodaya Highways Limited relates to account Nos.61147911274, 61162230468 & 61183469309 (FITL A/c) and proposal was conveyed to them on 27.11.2019. The accounts were settled in the banks book under the above mentioned compromise on 24.04.2022."*

Learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in **CBI New Delhi Vs. B.B. Aggarwal and others, 2019 (5) RCR (Crl.) 573,** wherein it is held that when it come to notice of

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the investigating agency that a bank is defrauded while making the public issues of a company and later on, chargesheet is filed in the Court and the company compromised the matter with the Bank before the Debt Recovery Tribunal and the company reconciled their accounts, on settlement of the accounts before DRT, no live issue survived, therefore, there exists no occasion to prosecute the accused and uphold the order passed by the High Court quashing the criminal complaint. It is submitted that in the instant case also, DRT proceedings stands decided in view of the compromise and the bank itself has released the mortgaged property by writing letter to Tehsildar concerned and has even given a certificate to the Superintendent of Police, CBI, Chandigarh that the loan account of the company stands closed, therefore, the proceedings are liable to be quashed.

Learned senior counsel has further referred to another judgment in **Jaswant Singh Vs. State of Punjab and another, 2021 SCC Online SC 1007,** wherein the Hon'ble Supreme Court held that once the matter has been compromised between the parties, High Court should exercise the powers under Section 482 Cr.P.C. and quash the criminal proceedings.

Learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in **CBI, ACB, Mumbai Vs. Narendra Lal Jain and others, 2014 (5) SCC 364,** wherein the following observations were made: -

> *"In the present case, as already seen, the offence with which the accused-respondents had been charged are under* Section 120-

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B/420 of the Indian Penal Code. The civil liability of the respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120- B is not. To the latter offence the ratio laid down in B.S. Joshi (supra) and Nikhil Merchant (supra) would apply if the facts of the given case would so justify. The observation in Gian Singh (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B IPC.

In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly

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unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 Cr.P.C. it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C."

Learned senior counsel has also relied upon **Central Bureau of Investigation Vs. Sadhu Ram Singla and others, 2017 (2) RCR (Crl.) 339,** to submit that in a case where the allegations were of forging the stock statement, in view of settlement between the Bank and the accused, the Hon'ble Supreme Court quashed the FIR.

Learned senior counsel for the petitioners has referred to the final report submitted under Section 173 Cr.P.C. (Annexure P-2), to submit that in the investigation, it could not be proved that there was any fault in the first appraisal and sanction of CC limit of Rs.25.00 crores to M/s Sarvodaya Highways Ltd. and due compliance to the terms and conditions was made by the petitioner and the bank, after disbursement of the CC limit. It is argued that after CC limit was enhanced to Rs.50.00 crores, again terms and conditions, as laid down by the bank, were complied with by the petitioners and only thereafter, disbursement of the amount was made. It is further submitted that even in the revenue record, loan was made in favour of the

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bank as collateral security. It is also argued that the stage, when the first appraisal was made and sanction of CC limit of Rs.25.00 crores was allowed by the bank as well as in the second stage, when the CC limit was enhanced to Rs.50.00 crores, the bank in all respects was satisfied with regard to compliance of terms and conditions, therefore, this aspect was not noticed by the CBI, while furnishing report under Section 173 Cr.P.C. It is next argued that the allegations in the charge sheet that work order provided by M/s Sarvodaya Highways Ltd. is based on forged documents, but in the investigation (stage-B), it is stated by the CBI that during the investigation, sincere efforts were made to obtain work order, but of no avail and only on this incomplete investigation, CBI drawn an inference that work order is forged document, which is factually incorrect.

It is further argued that allegation in the charge sheet that M/s Sarvodaya Highways Ltd. has not disclosed about sister concern companies, is contrary to the CBI remarks itself, where it is noticed in the charge sheet that no inquiry with respect to the directors of M/s Sarvodaya Highways Ltd. was made from MCA/ROC website by the bank. It is also submitted that despite the fact that these are the public documents and can be assessed by anyone, CBI, without conducting a prior inquiry, made fake averments in this regard. Directors of M/s Sarvodaya Highways Ltd. never concealed the group and associates of company from knowledge of the bank, as it is clear from the sanction letter No.875 dated 23.12.2011, wherein, in clause 2, it is

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stated that head office duly confirmed this fact by imposing a condition regarding special limit for receivables firm group and associate companies to be restricted on 25% of drawing power available against receivables.

It is next argued that the bank has duly conducted spot inspection regarding verification of identify of the companies and it has come in the charge sheet that while spot inspection was conducted by the officials, charge sheet states that sites were in process shown raw materials like bricks, machinery, bajri etc. The construction on sites was started, which is also evident from the photographs and google map. It is also submitted that as per stage-C in the charge sheet, it is clear that the lien in the revenue record was made in favour of the bank for the collateral security and it is duty of the bank to get the lien established on the properties as per the standing circular issued by the head office. It is further submitted that the lien removal letters issued by the bank as well as the order passed by DRT also establish that the bank had knowledge about the lien created on collateral security. It is submitted that from time to time, the bank released the properties as the amount was paid in phases and the property of M/s JMR Infrastructure Ltd. was released on 20.07.2020, though it was to be released on 16.08.20212.

Learned senior counsel has further referred to Annexure P-15 to submit that the properties were mortgaged with the bank all the time till the payment was made and in fact, an excess of 08 bigas of land was mortgaged,

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on which a lien was marked by the bank and the same was released on 16.08.2012 as per ED agenda No.AM/121, which shows that even in the year 2012, the bank had knowledge that lien with regard to collateral security has already been created. It is argued that with regard to utilization of the funds, M/s Sarvodaya Highways Ltd. had availed a loan of Rs.140 crores excluding the interest and had paid back to the bank Rs.12.00 crores as on 31.08.2018 and thereafter, Rs.34.30 crores plus interest i.e. total Rs.46.30 crores, as is clear from Annexure P-15 itself, which shows that the respondent-bank has recovered much more than the principal amount of loan, which was cleared along with payment of interest and therefore, it is a simple case where there was a default in making the payment and nothing has come on record that any forgery was done by the petitioners, therefore, the FIR is liable to be quashed.

Learned counsel for the respondent-CBI, on the basis of first reply dated 13.09.2018, has submitted that after completing the investigation, chargesheet was filed. It is further submitted that the petitioner moved an application for discharge, which was declined by the trial Court, as it was found during the investigation that the petitioners produced false disbursement certificate. However, neither One Time Settlement dated 05.03.2018 (Annexure P-8) between the company and the bank nor the letters issued by the bank from time to time releasing the property from the

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mortgage, is disputed. Even as per the reply dated 04.07.2022, CBI could not dispute a certificate sent by SBI to SP, CBI, as noticed above.

Learned counsel for the respondent-CBI has, however, argued that in view of judgment of the Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another, (2017) 9 SCC 641,** an exception to the principle of quashing of criminal proceedings is that economic offences involving the financial and economic well being of the State having implications lie beyond the domain of a mere dispute between private parties and the High Court should not quash the proceedings involving an activity akin to a financial or economic fraud or misdemeanour.

In reply, learned senior counsel for the petitioner has referred to the FIR and chargesheet, to submit that nothing has come on record that the petitioners had not obtained the credit limit by way of presenting any fake documents and only allegation is that when an internal inquiry was conducted by the bank, it was found that revenue officials have not made an endorsement of charge on the land, which was kept under mortgage with the bank and secondly, the loan account was declared NPA. It is submitted that any inaction on the part of the revenue official in not entering a charge over the mortgaged property was not in the domain of the petitioners, as it was official duty of the revenue officials and so far as declaration of NPA is concerned, later on, as per One Time Settlement, entire amount has been

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repaid and even the bank itself has released the entire mortgaged property, therefore, in the absence of any allegation of fraud having been committed by the petitioners, it is a simple case, where the loan account was declared NPA and later on, repaid the amount, therefore, it would fall in the exception to the directions given by the Hon'ble Supreme Court in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur**'s case (supra).

Learned senior counsel for the petitioners has reiterated his arguments on the basis of recent judgment of the Hon'ble Supreme Court in **Jaswant Singh**'s case (supra), wherein the FIR was quashed. He also relied upon a judgment of Karnataka High Court in **M. Rama Reddy and others Vs. State by Central Bureau of Investigation, ACB, Bellary Road, Ganganagar, Bangalore, 2021 (4) KantLJ 421**, wherein, after relying upon various judgments including the judgment in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur**'s case (supra), quashed the proceedings on the basis of One Time Settlement, observing that no criminal issue is found involved as per the chargesheet.

Learned counsel for respondent No.2 could not dispute that after paying back the entire amount, property, which was mortgaged with the bank, stands released, in terms of certificate dated 24.07.2018, issued by the bank to CBI, however, it is submitted that mere clearance of the loan did not absolve the petitioners from their criminal liability.

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After hearing learned counsel for the parties, I find merit in the present writ petition, for the following reasons: -

(a) It is admitted case that cash credit facility was availed in the year 2012 and on account of account being declared NPA, some proceedings were initiated before DRT, where the petitioners had paid back the amount as per settlement arrived at between the petitioners and the bank.

(b) It is also admitted case of the bank that at no point of time, the petitioners tried to sell off or siphon off of the loan amount to any third party and it is a simple case where the loan was not repaid in time, for which it was declared NPA and once the recovery proceedings were initiated before DRT, the petitioners repaid the entire amount along with interest to the respondent-Bank in installments and similarly, in the same manner, the respondent-Bank was releasing the mortgaged properties by issuing the letters, as noticed above.

(c) The respondent-Bank as well as CBI have filed affidavits that the entire amount stands paid and at no point of time, any action of the petitioner was of any criminal intent except that the loan amount was not paid in time.

In view of the observations made above and also in view of judgment of the Hon'ble Supreme Court in **B.B. Aggarwal**'s case (supra),

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present petition is allowed and FIR bearing RC No.BD1/2015/E/0002/CBI/BS&FS/DLI dated 03.02.2015 and final report dated 30.11.2016 as well as the consequential proceedings arising out of the FIR are ordered to be quashed.

[ARVIND SINGH SANGWAN]
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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