IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)

Present:
The Hon'ble Justice Rai Chattopadhyay

C.R.R No. 245 of 2016
With
CRAN 1 of 2016 (Old No: CRAN 759 of 2016)
With
CRAN 2 of 2017 (Old No. CRAN 836 of 2017)

Bhaswar Goswami & Ors.
Vs.
CBI

For the Petitioners : Mr. Naba Kumar Das,
: Ms. Diava Ghosh Dastidar,
: Mr. Arindam Banerjee.

For the CBI : Mr. Anirban Mitra,

Hearing concluded on: **16/02/2023**

Judgment on: 28/04/2023

Rai Chattopadhyay, J.

A) ***Order under challenge:***-

(1) Impugned in this revision is the order dated 19.10.2015, of the Ld. Additional Chief Judicial Magistrate, Sealdah in G.R Case No.1706 of

2010, under Section 120B, 420, 468, 471 of the IPC. Connected FIR is CBI/ACB/Kolkata 2009 RC0102009A0010 dated 13.03.2009, under the aforestated provisions of the Indian Penal Code, as well as Section 3 (1) (b) read with Section 3 (2) of the Prevention of Corruption Act, 1988. Charge sheet was submitted on 15.06.2010.

(2) The three petitioners of this case, filed an application before the Magistrate, under Section 239 of Cr.P.C, 1973 to pray for discharge from the case. The impugned order was to reject their prayer as above. The Magistrate recorded his findings regarding prima facie case against the present petitioners/accused persons to have already been brought on record, which would require a trial to be held, for proving the allegations against them. Thus, rejected petitioner's prayer for discharge.

B) <u>How the parties are represented in this revision</u>

(3) Mr. Naba Kumar Das appeared for the petitioners on several dates and argued on their behalf. Last date of appearance of Mr. Das for the petitioners, was 22.12.2022. Since thereafter, the petitioners have not been represented, though the matter was called on for sufficient number of times.

(4) Before Mr. Mitra, representing CBI, could open his arguments, Court had, therefore, sent administrative notice, to the petitioners, taking

note of prolonged absence of the Ld. Advocate, representing the petitioners. Such service is, however, not complete, as the petitioners were not found present or available at the address, disclosed in this case. Messenger's report as above is a part of this record.

(5) The Court is constrained to note that the present is an old case, pending since 2016. Before that, prosecution was started in the year 2009. The time span already elapsed in this case is a matter of concern and the same should not be ignored, only in view of non availability of the petitioners, either in person or through their counsel, more so, when arguments on behalf of the petitioners have substantially been concluded. Hence, Mr. Mitra was allowed to place his case, for CBI, in absence of the petitioners or their Ld. Advocate. He completes his arguments duly.

C) Petitioner's Case.

(6) Petitioners No. 1 & 2 are the Directors of 'Celebrity Management Group (Pvt.) Ltd' and petitioner no.3 is the Manager (Production) the said company.

(7) 'Celebrity Management' and the petitioners were involved in this case, as a part of the consortium of companies, formed for conducting event management of 33rd National Games 2007, held at Guwahati, Assam, from February 09, 2007 to February 18, 2007. It is worth noting that

'M/s. Ruby Enterprise', initially entered into a "sponsorship agreement", with the 'Event and Games Sponsorship Committee', on 12.12.2006, to be the sole official sponsorship agency for 33rd National Games, 2007. 'Ruby', thereafter formed the consortium with 'Celebrity Management' and the other company, namely, 'M/s. Outdoor'.

(8) Allegations, in a nut shell, against the petitioners have been of illegally and unauthorisedly withholding and retaining the amount of Rs. 1 Crore, sponsored by DVC, towards bronze medal expenses, for the 33rd National Games. According to the petitioners, the allegation as above, is only baseless, in so far as, vide cheque dated 03.02.2009, issued in favour of DVC, of an amount of Rs. 1 Crore, that is, the entire sponsorship money paid by DVC, has been duly returned. The petitioners have not missed to mention that the said amount has been duly credited to DVC.

(9) Petitioners have also made it a point that the case is civil in nature and no element of any culpability is involved in the same. To elaborate this, the petitioners have taken up instance that DVC has filed a suit for recovery of interest amount, in a civil Court.

(10) Be that as it may, in the present case, before the trial Court, the petitioners filed an application under Section 239 Cr.P.C, to pray for discharge. The Court decided on the same, though not in favour of the

petitioners, vide the order dated 19.10.2015, which is impugned in this revision. The petitioners have sought for setting aside the said impugned order as well as quashing of the entire proceedings, against them.

(11) While deciding, the trial Court has come to the finding that prima facie materials, as regards the alleged offence, are available in this case, against the petitioners. Thus, for this reason, petitioner's prayer was rejected and date was fixed for framing of charge.

D). Case made out by CBI

(12) To access as to what may be the prosecution's case, one may resort to the FIR dated 13.03.2009, as mentioned above.

(13) Prosecution's first allegation appear to be, that acceptance and receipt of the sponsorship money by the petitioners and their company, from DVC, to the tune of Rs. 1 Crore, is illegal and unauthorized, as the contract was entered into with only the one company, namely 'M/s. Ruby Enterprise', for event management and games sponsorship for 33rd National Games. According to the agreement, 'Ruby' was the sole "official sponsorship agency". It is also alleged that the purpose for which the money was said to have been collected, had also not been accomplished.

(14) Violation of terms of agreement, has also been alleged in so far as any sponsorship payment, would have to be issued in favour of "the Convenor, Events and Games Sponsorship Committee", who, in turn, would issue commission to the "sponsorship agency"- in this case, 'M/s. Ruby Enterprise'. However, as per the FIR, the agreement allowed the "sponsorship agency" to form partnership, for the purpose, in accordance with law. Upon completion, execution certificate would be issued by 'events and games sponsorship committee', to the 'sponsorship agency', i.e, 'M/s, Ruby Enterprise', in this case.

(15) A letter of 'Celebrity Management', dated 22.01.2007 has been mentioned, allegedly vide which letter the company has introduced itself as the 'exclusive marketing associate' of the 33rd National Games, 2007. The letter was issued to the then Chairmen, DVC. Also allegedly, the company, had mentioned in the said letter that all payments were to be made in favour of 'Celebrity Management', by A/c payee cheque or demand draft. Pursuant to such letter, a cheque of Rs. 1 Crore was issued by DVC vide cheque dated 09.03.2007, towards sponsorship of bronze medals, for the event. According to the prosecution, issuance of this sponsorship amount, to 'Celebrity Management' is beyond scope of the agreement, as mentioned above. Also that fraudulent and dishonest inducement, to procure the said

money, by misrepresenting and distorting the actual facts through its letter dated 22.01.2007, has been alleged against the petitioners.

(16) FIR further contends that there were found two letters purportedly written by the 'Convenor, Event and Games Sponsorship Committee, National Games Secretariat at Assam' and the 'Minister and Chairman, Organizing Committee of National Games' respectively, conveying thanks and gratitude to the then Chairman DVC for being the sponsor. However, the office files pertaining to issuance of the said letters were found to be non-existent. Allegedly, National Games Secretariat, at Guwahati, Assam, had no record showing DVC as a sponsor and collection of Rs. 1 Crore from it as sponsorship money. In the bills submitted by 'M/s. Ruby Enterprise' to the National Games Secretariat too, there was no mention about any sponsorship collected from DVC. Also, that in one of the letters found, as mentioned above, the person mentioned as 'Convenor' was not actually discharging such duties, at the relevant point of time. Hence, its authenticity has also been doubted. The way the letters were seen to have been forwarded, is also doubted as those official letters of the department of government, were sent through fax from private PCO. Allegedly, the letters and photographs, submitted by 'Celebrity Management' to DVC as a proof of mileage, were also fake, which were used as a proof of the fact that the sponsorship amount has been received by the National Games

Secretariat, whereas, there was no record available with the Secretariat, regarding DVC to be the sponsor of the event. As, stated earlier, the prosecution has alleged that no purchase was made, with the said amount of money, for the purpose of 33rd National Games.

(17) Thus, allegations were levelled against the petitioners of committing fraud etc.

(18) The following judgments have been relied on by Mr. Mitra while representing the prosecution:-

(i) ***Mushtaq Ahmad vs. Mohd. Habibur Rehman Faizi & Ors.*** reported in ***(1996) 7 SCC 440*** – The High Court considered respondent's prayer under Section 482 Cr.P.C, as to whether the complaint by the appellant under Section 406,409,420 and 467 IPC was to be quashed or not and ultimately quashed the complaint and the criminal proceeding. Being aggrieved the complainant moved the Hon'ble Supreme Court, when the Supreme Court was pleased to record its findings that the High Court proceeded to consider the version of the respondents/accused persons given out in their petition filed under Section 482 Cr.P.C, vis-à-vis that of the appellant/complainant and entered into a debatable area of deciding which of the versions was true, was a course wholly impermissible. The Supreme Court allowed the appeal and by setting aside the order of the High Court directed the Magistrate to proceed with the complaint in accordance with law.

(ii) ***State represented by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Tamil Nadu vs. J. Doraiswamy etc.*** reported in ***(2019) 4 SCC 149*** – The Hon'ble Supreme court has held that while considering the case of discharge sought immediately after the charge sheet is filed, the Court cannot become an Appellate Court and start appreciating the evidence by findings out inconsistencies in the statement of the witnesses. The Court held that there was no prima facie case made out for discharge of the respondents at that stage. Therefore the accused persons were found to be compulsorily to stand for trial on merit in the light of the documents and contents of charge sheet.

(iii) ***Central Bureau of Investigation vs. Maninder Singh*** reported in ***(2016) 1 SCC 389*** – this case was concerned with the alleged offence of bank fraud. The Hon'ble Supreme court held economic offences like that, to be public wrongs or crimes committed against society and also that the gravity and magnitude thereof was to affect public at large. It was further held that Courts must not be swayed by return of money to the bank which has been defrauded but impact of the act as such on the society at large was held to be most necessary to be considered. Court held such an offence to be a well planned one and committed with deliberate design with an eye on personal profit regardless of consequence to society at large. Findings such an economic offence against the society at large, the Supreme Court declined to quash the proceedings merely on ground of settlement with bank, on the basis of 'misplace sympathy'. The following paragraphs to be beneficially quoted from the said verdict:-

> ***"16.*** *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 and technology, etc. has 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 the public at large.*
>
> ***17.*** *The inherent power of the High Court under Section 482 CrPC 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, the Court would quash the proceedings. In economic offences the 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 was well planned and was committed with a deliberate design with an eye on 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 prosecutions against the economic offenders are not allowed to continue, the entire community is aggrieved."*

(iv) ***Md. Allauddin Khan vs. The State of Bihar & Ors.*** reported in ***(2019) 6 SCC 107***– in this case the Supreme Court held that in order to see whether any prima facie case against the accused is made out or not, the Court is only required to see the allegations made in the complaint. The Supreme Court declined to accept the findings in the impugned order of the High Court that, since there was a dispute pending between the parties in the Civil Court in relation to shop as being landlord and tenant, the dispute was essentially of civil nature. It was held to be not a point for consideration. It would be beneficial to quote the following paragraph from the same –

> *"**12.** The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable."*

E) <u>When discharge under Section 239 Cr.P.C can be allowed.</u>

(19) The provision of Section 239 Cr.P.C is envisaged in chapter XIX Cr.P.C, that is, 'trial of warrant cases by Magistrates', under the heading 'A-Cases instituted on a police report'. The provision enumerates as follows:-

> *"**239**. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."*

(20) Therefore, the law is that the Magistrate shall apply his mind and consider the police report and its annexed documents and if necessary

examine the accused. The Magistrate shall also give the prosecution/complainant and the accused persons, an opportunity of being heard. The Magistrate shall apply its mind to all the materials as above and shall come to a finding that the charge against accused is groundless. Only then he is empowered under the afore stated provision of law to discharge the accused by a reasoned order. It is imperative that the Magistrate examines before him in the form of report and the documents submitted, it is also necessary that if it thinks so fit, the accused shall be examined too. It is bounden duty of the Magistrate under law, to give opportunity of hearing to the prosecution as well as to the accused before any order of discharge is passed and also to lay down in his order the specific reasons on which he decides to discharge the accused person.

F) <u>Discussions.</u>

(21) In this case trial Court's order dated 19.10.2015 is challenged. The same was delivered to dispose of the petitioner's application under Section 239 of the Cr.P.C, to pray for discharge in the case. The Magistrate has recorded that both the prosecution as well as the accused persons were given opportunity to be heard. He has further recorded that after the parties being heard, he has considered the entire materials available to him on record. He has noted down his finding on those records as regards availability of the prima facie

materials against the petitioners/accused persons. Thus he has specifically enumerated reasons of his decision that the case is suitable for trial and discharge of the present petitioners was unwaranted. Prayer for discharge was turned down.

(22) Thus, the impugned order is found to be sufficiently reasoned. There is no iota of doubt regarding the basis for the Court to come to a finding that trial in the case is imperative. The impugned order itself has expounded sufficient reasons upon examination by the Court of the materials on record as was necessary to be done under the statutory provisions. Availability of strong prima facie materials against the petitioners, were recorded. There is found no palpable illegality or perversity in the said impugned order for which interference of this Court, in exercise of its extraordinary jurisdiction under section 482 of the CrPC, would have been required. In both the cases of ***Mushtaq Ahmad (supra)*** and ***J. Doraiswamy (supra)*** the Hon'ble Supreme Court has propounded that allegations, if prima facie constitutes cognizable offence, that would suffice to make the accused person stand for the trial, without weighing or assessing the evidentiary value of the materials on record. Ratio of those two judgments are attracted in this case too.

(23) Petitioners are aggrieved due to initiation of prosecution against them for the reason that the alleged amount of Rs. 1 Crore has already

been remitted back to the provider thereof by the petitioners. According to the petitioners, therefore, the present case is only redundant, as the prosecution has booked the petitioners for deceitfully obtaining and not paying back the said sum of money from the provider, i.e, Damodar Valley Corporation.

(24) However, upon consideration of the FIR thoroughly it appears that not only non-payment of the said amount of money, but also its misuse, not accounting for it, petitioners' withholding the same illegally and unauthorizedly and moreover petitioners procuring the said amount of money beyond scope of the agreement entered into between the parties and thus illegally and unauthorizedly, have comprised within the four corners of the prosecution's case. No doubt therefore that in one hand, the said allegations in the FIR and the other materials collected subsequently during investigation, have brought on record strong prima facie of those against the petitioners. Also on the other hand, the case involves various disputed questions of facts which are require to be decided on the basis of the evidence laid. Ratio of the judgment of ***Maninder Singh (supra)*** applies squarely here, where the Court has outlined that paying back the defrauded amount of money under a settlement shall not exonerate the accused person form his liability, particularly in view of the impact of the alleged crime to the society at large.

(25) In this case also the FIR shows existence of several forged documents which contribute to the possible larger conspiracy in the whole scheme of siphoning of public money. All these questions are assuming importance in view to the fact that the question of misusing and siphoning of public money being involved in this case. This prompts requirement of the trial to be held to unearth the truth in this case. It would not be out of place to mention here that the endeavour of the petitioners to categorise this case to be of civil nature on the ground that after receiving the money back, the DVC has initiated a civil case claiming interest thereupon and thus the dispute relates to civil jurisdiction, is also found out of place and unsustainable in view of the ratio of the decision of the Supreme Court in ***Md. Allauddin Khan's (supra)*** case. The Court was pleased to hold that not whether any civil case is pending but availability of prima facie material on the basis of the allegations made, so far as to make out a cognizable case against the accused person, would be the only criteria upon which the court shall dwell on, while considering and finding if or not the proceedings are abuse of the process of court. It is needless to mention that unless the proceedings are found to be a gross abuse of the process of Court, the scope or necessity for this Court to exercise its inherent jurisdiction and extra ordinary power under section 482 of the CrPC, does not arise. Needless to reiterate any further that in this case, the FIR and the other materials on record categorically are

making out a prosecutable case against the petitioners/accused persons and cognizable offence against them.

(26) The principle enunciated in the judgment of the Hon'ble Apex Court of ***R.K. Ramakrishna & Ors. vs. State of Bihar*** reported in ***(2000) 8 SCC 547***, may be mentioned in support of the reasons of this Court as above. The Hon'ble Court was pleased to hold that *"the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage."*

G) Conclusion.

(27) Considering all as above this Court is therefore in concurrence with the finding of the trial Court that the charges should be framed against the petitioners in this case. It is also found that the prayer of the present petitioners in the trial Court under Section 239 Cr.P.C has been rightly rejected on appropriate grounds and reasons, therefore warrants no interference by the Court in this case.

(28) Thus, the present revision being CRR 245 of 2016 fails and is dismissed.

(29) The order dated 19.10.2015, passed in G.R Case No.1706 of 2010, in the Court of the Additional Chief Judicial Magistrate, Sealdah, under Section 120B, 420, 468, 471 of the IPC, is affirmed. The trial Court is however requested to maintain utmost promptitude to proceed in this case, in view of the considerable period which have been elapsed from the date of initiation of the prosecution against the petitioners, till date.

(30) Connected applications being CRAN 1 of 2016 (Old No. CRAN 759 of 2016) with CRAN 2 of 2017 (Old No. CRAN 836 of 2017) are disposed of.

(31) Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)