

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No.1626 of 2023

**VISHAMBHAR SARAN
VS
PUNJAB NATIONAL BANK AND ANR**

For the petitioner	:	Mr. Sabyasachi Choudhury, Adv. Mr. Rajarshi Dutta, Adv. Mr. V.V. V. Sastry, Adv. Mr. Debjyoti Saha, Adv. Mr. Aniruddha Goyal, Adv.
For the respondent	:	Mr. Samrat Sen, Sr. Adv. Ms. Parna Roy Choudhury, Adv
Hearing concluded on	:	16.10.2023
Judgment on	:	17.11.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner has challenged a complaint dated June 18, 2021 made against him by the respondent no.1-Punjab National Bank (PNB). The Central Bureau of Investigation (CBI) registered a First Information Report (FIR) on August 18, 2023 on the basis of the said complaint. It is contended by learned counsel for the petitioner that the premise of the complaint was the Master Circular on Wilful Defaulters issued by the Reserve Bank of India (RBI) on July 1, 2015 which contemplates, as a consequence of declaration of a person/unit as wilful defaulter, that the Bank/financial institution lodges a complaint against the borrower-entity. Learned counsel for the petitioner, by placing

reliance on the allegations made in the impugned complaint, argues that the genesis of the same was entirely the declaration of the petitioner as wilful defaulter under the RBI Master Circular and not general criminal law, that is, the Criminal Procedure Code (CrPC) or the Indian Penal Code (IPC).

2. However, it is contended that subsequent to the lodging of the complaint, the declaration of wilful defaulter was challenged by way of a writ petition bearing WPO No. 291 of 2021 which was disposed of by granting liberty to the petitioner to approach the Review Committee (RC) under the Master Circular.
3. However, the Wilful Defaulter Identification Committee (IC) *suo motu* recalled its order dated May 29, 2021, whereby the petitioner was declared as a wilful defaulter, *vide* order dated November 9, 2022. In the said order, the IC noted the Transaction Audit Report (TAR) dated August 24, 2018 was the basis on which a complaint had been lodged against the petitioner for alleged preferential and undervalued transactions. On July 25, 2019, the National Company Law Tribunal (NCLT) rejected the plea of the liquidator against the petitioner in respect of the said transactions. The National Company Law Appellate Tribunal (NCLAT) affirmed the order of the NCLT on September 30, 2019. Thus, it was noted by the IC that in view of the said orders the wilful defaulter proceedings was dropped against the borrower company, the petitioner and another with liberty to the PNB Zonal Sastra to re-examine the wilful default aspect on the basis of

independent documentary evidence (apart from the TAR), if any, which proves wilful default as per the RBI Master Circular.

4. The petitioner's account was declared to be a fraudulent account under another Master Direction of the RBI on frauds dated July 1, 2016 (updated as on July 3, 2017). The Master Direction was challenged before the Delhi High Court which, while taking up a cluster of similar petitions, disposed of the same in terms of an order of the Supreme Court which had come in the meantime, holding that the principle of *Audi Alteram Partem* had to be read into the said Master Direction and, *inter alia*, setting aside the declaration of the petitioner's account as fraud.
5. Learned counsel for the petitioner further argues that a Look Out Circular (LOC) issued against the petitioner on the premise of such default was also set aside by this Court. Hence, it is contended that since the very premise of the complaint has spent force, the complaint itself ought to be set aside.
6. It is further argued that the CBI acted without authority in registering an FIR more than two years after the complaint, since at the relevant juncture of registering such FIR, the allegations made in the complaint had all been obliterated.
7. In this context, learned counsel for the petitioner places reliance on the Delhi High Court judgment and the orders referred to in his arguments.
8. Learned counsel also cites *Lalita Kumari Vs. Government of Uttar Pradesh and others*, reported at (2014) 2 SCC 1, where the Supreme

Court observed that in the case of commercial offences, a preliminary enquiry is to be conducted, which was not done in the present case before registering the FIR.

9. Learned senior counsel appearing for the respondent no.1-Bank contends that no legal right of the petitioner has been infringed by lodging the complaint impugned herein. The said complaint, in any event, was relevant at the juncture when the same was lodged and, as such, ought not to be set aside. Subsequent events, it is argued, did not take away the basis of the complaint.
10. Insofar as the IC decision to drop the wilful defaulter proceeding is concerned, it is pointed out that leave was granted to the Bank to undertake a similar exercise afresh on the basis of independent documents, if any. Thus, the petitioner was not absolved altogether.
11. It is argued that under Section 154 of the Code of Criminal Procedure, a complaint by any party is an information for initiating an investigation. The respondent no.1-Bank, under the general law, was at liberty to make such a complaint and there is no occasion to set aside the complaint as such.
12. Learned senior counsel appearing for the Bank further argues that upon registration of the FIR by the CBI, the complaint has merged into the same and has lost significance. Due to non-impleadment of the CBI, the petitioner cannot challenge the registration of the FIR as such.
13. In any event, it is argued that the petitioner has adequate remedy under the general criminal law to challenge the FIR and/or to argue

on the merits of the charge-sheet, as and when filed upon completion of the investigation.

14. It is submitted that the well-settled position of law is that an FIR is not an encyclopaedia of all the offences committed by the accused but is only an initiation of the proceedings. Hence, the writ court ought not to quash the FIR and/or the complaint at this inchoate stage, since investigation has been taken up by the CBI and is continuing.
15. Learned senior counsel appearing for the respondent contends that in *Lalita Kumari (supra)*, the Supreme Court observed that the Code of Criminal Procedure gives the power to the police to close a matter both before and after investigation. The Section itself, it was observed, states that a police officer can start investigation when he has a reason to suspect the commission of an offence. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code.
16. It is argued that in the present case, the CBI has already initiated investigation on the higher footing of Section 157. As such, the mere requirement of giving information under Section 154 of the Code, which comprised of the impugned complaint, cannot now be challenged at all.
17. Learned senior counsel argues that the petitioner is seeking to challenge the FIR in an oblique manner since he cannot do it directly.
18. Learned senior counsel appearing for the Bank places reliance on *State of Haryana and others v. Bhajanlal and others*, reported at 1992 Supp (1) SCC 335, where the Supreme Court observed that the power

of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

- 19.** It is submitted that the complaint lodged by the bank and the FIR registered on the basis of the same are valid even beyond the Master Circular of the RBI, since the Sections clubbed against the petitioner are under the Indian Penal Code. It is pointed out that there are also ingredients of allegations under the Prevention of Corruption Act, since certain officials of the Bank were also allegedly involved in the offence, being hand-in-glove with the petitioner.
- 20.** Upon hearing learned counsel for the parties, it is found that although the writ petition has challenged the complaint as well as all consequential actions, arguments have primarily been advanced in respect of the complaint. Learned counsel for the petitioner, in fact, clarified during arguments that subject to the outcome of the present writ petition, the petitioner would take appropriate steps in respect of the FIR. As such, since the challenge is limited to the complaint, it cannot be said that the non-impleadment of the CBI, that is, the Investigating Agency, renders the writ petition bad for misjoinder of necessary party.

21. A perusal of the complaint dated June 18, 2021 clearly betrays the intention of the Bank to rely solely on the declaration of the petitioner as wilful defaulter as the basis of such complaint, contrary to the submissions of learned senior counsel appearing for the Bank. In the very first paragraph of the complaint, the Bank indicates that the request for lodging an FIR is for the offence of fraud “by siphoning and diversion of funds, criminal misappropriation, criminal breach of trust, cheating etc., for causing loss to public money to the tune of more than Rs. 1964 Cr.”. The expressions ‘siphoning and diversion of funds’ and ‘loss to public money’ point to grounds of the RBI Master Circular on Wilful Defaulter dated July 1, 2015. In the second paragraph of the complaint, it is clarified that the FIR was being lodged by the PNB on behalf of itself and other consortium member-Banks for the offences indicated above.
22. Notably, ‘diversion of funds’ and ‘siphoning of funds’ are the two plinths of declaration of wilful defaulter under the Master Circular.
23. Clause 4 of the Master Circular contemplates criminal action against wilful defaulters.
24. Clause 4.1 contains the JPC (Joint Parliamentary Committee) recommendations which also mention that it is essential that offences of ‘breach of trust’ or ‘cheating’ construed to have been committed in the case of loans should be clearly defined under the ‘existing statutes’ governing the Banks, providing for criminal action in all cases where the borrowers divert the funds with *mala fide* intentions.

- 25.** Clause 4.2(ii) provides that it is essential to recognize that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon facts and circumstances of the case under the provisions of Sections 403 and 415 of the IPC and that Banks are advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with the instructions of the JPC.
- 26.** In the impugned complaint, the Bank also mentions the insolvency proceeding before the NCLT initiated subsequent to classification of the account of the borrower-company as NPA (Non-Performing Asset). The CIRP against the borrower-company was also mentioned, along with the liquidation proceeding. The Bank mentioned in the complaint that a Forensic Auditor was appointed during the CIRP process and the findings of the Auditor comprised of the allegations of fraudulent transactions which collectively formed the basis of the complaint.
- 27.** The Bank mentions in the last paragraph of internal page no.8 of the complaint that in view of the facts and circumstances, it is clear that the accused persons have jointly hatched conspiracy against Public Sector Banks with intent to cheat the bank by diverting/siphoning of money and committed various offences under relevant provisions of IPC including criminal breach of trust, criminal misappropriation and cheating on the Bank.

- 28.** The Bank went on further to mention the issuance of an LOC at the behest of the Bank.
- 29.** The entire allegation of fraud, cheating and criminal misappropriation was attributed to diversion and siphoning of funds allegedly done by the petitioner and the borrower-company. Importantly, in the penultimate page of the complaint, the bank states that since the amount involved in the alleged offences is more than Rs.1964 Cr., the FIR was being lodged before the “competent authority of CBI”.
- 30.** The importance of the said statement can be found within the four corners of the RBI Master Direction on Frauds dated July 1, 2016 (updated on July 3, 2017) itself. Chapter VI of the same deals with guidelines for reporting frauds to police/CBI and delineates in a chart as to which complaint should go to which of the Investigating Agencies, alternatively the State Police, SBIO (Ministry of Corporate Affairs), State CID, Economic Offences Wing of the State or the CBI. In case of offences in respect of Public Sector Banks for alleged frauds of Rs. 30 million and above, the competent investigating agency before which the complaint should be lodged as per the said Master Direction is the CBI.
- 31.** The TAR and the fraud classification of the account were relevant criteria considered by the IC for classifying the petitioner as a wilful defaulter. Thus, the very language of the complaint clearly reveals that the same was initiated in terms of the Master Circular for Wilful Defaulters dated July 1, 2015, following from the fraud classification under the Master Direction on Frauds dated July 1, 2016.

- 32.** The arguments made by the Bank to the effect that the Bank also had the legal right as an informant to lodge a complaint under the general criminal law is belied by the very averments of the complaint, which entirely revolve around the grounds made out by the Bank in the wilful defaulter proceeding. The very basis of the complaint was the Wilful Defaulter declaration which in turn was based on the NCLT proceedings and the Fraud Classification of the company's account.
- 33.** A further clear pointer in that regard is the complaint being lodged before the CBI and not before the State Police or any other authority, on the specific assertion in the complaint that the offences being more than Rs. 1964 Cr., the complaint was being lodged before the "competent authority of CBI".
- 34.** The different components of the alleged offences averred against the petitioner in the impugned complaint had and have already lost their efficacy and spent their force when the FIR against the petitioner was registered two years after (solely on the basis of such complaint). The reasons for so finding are as follows:
- 35.** The wilful defaulter declaration, which was the very premise of the complaint, was recalled by the IC itself. It is noteworthy that although liberty was given to the bank by the IC to proceed afresh in a similar proceeding on the basis of independent documents, if any, no such proceeding has been initiated against by the Bank, despite about one year having passed after the said observation of the IC dated November 9, 2022.

- 36.** In its observations, the IC itself took note of the fact that the allegations of preferential and undervalued transactions of shares against the borrower-company and the petitioner were turned down by the NCLT, which was affirmed by the NCLAT as far back as on July 25, 2019 and September 30, 2019 respectively. While doing so, the TAR, which was the very basis of the allegations, dated August 24, 2018, was categorically disbelieved by the NCLT and NCLAT.
- 37.** Thus, by necessary implication, the recall of the wilful defaulter declaration also further endorsed the fact that TAR was an invalid basis of making the allegations against the petitioner.
- 38.** Thirdly, even the fraud classification under the Master Direction dated July 1, 2016 was set aside by the Delhi High Court.
- 39.** Interestingly, in the FIR dated August 18, 2023, which followed the Delhi High Judgment dated May 12, 2023, under the column “Reasons for delay in reporting by the complainant/informant” the CBI attributed the delay to the pendency of the matter before the Delhi High Court. Thus, the CBI/Investigating Agency clearly admits that the classification of fraud of the account by the PNB was the premise of the complaint lodged. In the present case, however, the wilful defaulter declaration has been *suo motu* recalled by the IC, the fraud classification has been set aside by the Delhi High Court and all the forums, including the NCLT and the NCLAT have disbelieved the TAR, which was the only premise of all the allegations against the petitioner. Thus, on the date of registration of the FIR, that is, August

18, 2023 none of the bank's allegations in the complaint survived to justify registration of the FIR on such premise.

40. In any event, the allegations of offences under the Prevention of Corruption Act, 1988 were primarily against the officials of the bank and not against the petitioner on a standalone footing.
41. It is palpable from the observations in the FIR under the heading "reasons for delay" that the very premise on which the FIR was lodged was erroneous. It was specifically stipulated therein that the First Information Report which has been lodged and the proceedings thereunder remained unaffected in terms of the Delhi High Court order, which is palpably wrong.
42. In paragraph 6 of its judgment, the Delhi High Court observed that any First Information Report which *has been* lodged, and proceedings pursuant thereto, remain unaffected by the order. The order of the Delhi High Court is dated May 12, 2023 whereas the FIR was registered on August 18, 2023, that is subsequently. Hence, neither the FIR nor the proceedings pursuant thereto, if any, fell within the exception contemplated in the Delhi High Court order.
43. However, since the petitioner has not categorically challenged the FIR in the present case while arguing, the veracity of the FIR need not be gone into further.
44. In view of the above discussions, the arguments of the Bank that the complaint was mere information under Section 154 of the Code of Criminal Procedure cannot be accepted, since the complaint came categorically within the contemplation of the RBI Master Direction

dated July 1, 2016 and Master Circular dated July 1, 2015 and was lodged solely in terms of those Circulars/Directions.

45. Thus, the support sought to be drawn by the Bank from *Lalita Kumari*'s case is misplaced.
46. Insofar as *Bhajanlal (supra)* is concerned, the Supreme Court reiterated that the test to be applied for quashing a prosecution is whether the uncontroverted allegations as made *prima facie* established the offence.
47. In paragraph 103 of *Bhajanlal (supra)*, relied on by the Bank itself, the parameters of interference by the Court were laid down. It was observed that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR.
48. In the present case, no fact-finding enquiry into the genuineness or reliability of the allegations need be entered into at all in view of the admitted position that none of the grounds made out in the complaint subsist today or subsisted on the date of registration of the FIR. Moreover, the complaint being made clearly within the contemplation of Clause 4.2(ii) of the Master Circular dated July 1, 2015, read with Chapter VI of the RBI Master Direction dated July 1, 2016, has been rendered infructuous in view of the declarations of wilful defaulter and fraud having been recalled/set aside before even the registration of the FIR.
49. The argument of the Bank that no legal right of the petitioner has been infringed cannot be accepted either. The right to live with dignity

is an integral part of any human being, enshrined and guaranteed by Article 21 of the Constitution of India. Equality before the law is another important aspect, guaranteed under Article 14 of the Constitution. The moment arbitrariness and/or *mala fides* is exhibited against a citizen of India, a contravention of Article 14 occurs as in the present case. The impugned complaint against the petitioner dated June 18, 2021, thus, being palpably vitiated as on today as well as on the date of filing of the writ petition and the registration of the FIR, cannot be sustained as against the petitioner.

- 50.** In view of the above observations, WPO No.1626 of 2023 is allowed on contest, thereby setting aside the impugned complaint lodged by the PNB requesting the CBI to register FIR dated June 18, 2021 insofar as the writ petitioner is concerned. Liberty is granted to the petitioner to approach the appropriate forum seeking quashing of the consequential FIR only so far as the petitioner is concerned and any ancillary action or investigation, which has been commenced against the petitioner on the basis of such FIR.
- 51.** There will be no order as to costs.
- 52.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)