# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL WRIT PETITION NO. 2459 OF 2013

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| Yusuf R. Dhanani and ors | .. | Petitioners |
| Versus | | |
| The Union of India and ors | .. | Respondents |

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Mr. Manoj Mohite, Sr. Advocate with Amit Jajoo, Mr.Nirav Parimar, Ms.Richa Bharti i/b Induslaw for the petitioners.
Mr.Ayush Kedia i/b H.S. Venegavkar for the CBI.
Mr.Y.M. Nakhwa, APP for the State.

**CORAM: BHARATI DANGRE, J.**
**DATED : 25th SEPTEMBER, 2023**

**P.C:-**

1 Criminal Writ Petition filed under Section 226 of the Constitution seek quashing of the FIR bearing RC 47/(A)2004 ACB/Mumbai dated 28/12/2004, which has invoked Section 120B, 420, 467, 468, 471 of the IPC and 13(2) r/w Section 3(1)(d) of the Prevention of Corruption Act, 1988 as well as the order dated 12/9/2012 framing charge.

2 In pursuance of the FIR filed, RC 47(A)/2007 Mumbai was registered by ACB, Mumbai on 28/12/2004 against one Shri S.P. Ghosh, Former Zonal Manager, Andhra Bank, Mr.Shastry, the Sr.Manager of Andhra Bank and Mr.J.P.S. Bhatia, Manager, Opera House, Andhra Bank. The C.R. also involved

Mr.Yusuf Dhanani, Mrs.Nasreen Dhanani, Sarfraj Dhanani, the partners of M/s. Sana International, Mumbai along with Mr.Pankaj Bubna, Partner of M/s. Universal Exports and it was alleged that during the period from 1999-2001, they entered into a criminal conspiracy with an object of cheating the Bank, and in furtherance of which the private parties were allowed to avail facilities of Letter of Credit (LoC), purchase of export bills fraudulently, during which fake and fictitious bills of lading were used by the private parties.

It was also alleged that the accused persons who were working in different capacities with the Banks being public servants, abused their official position and entered into criminal conspiracy with Yusuf Dhanani, who was effectively running M/s.Sana International and M/s.Universal Exports, trading in the dyes and Dye intermediates. M/s.Sana International had Smt.Nasreen Dhanani, his wife and son Sarfraj Dhanani as the partners, whereas M/s.Universal Exports was being run by Mr.K.R. Jhawar along with Mr.Pankaj Bubna and Shakeel Fakih.

The charge-sheet specifically allege that the conspiracy resulted in availment of credit facilities, which remain unpaid by M/s.Sana International, creating total liability of Rs.1,51,77,633.65 as on 25/12/2002 and following the DRT verdict in favour of the Bank, directing payment of the said amount by the borrower, Rs.150.00 lakhs were paid, on the basis of compromise formula arrived between the banker and the borrower. As far as M/s. Universal Exports is concerned, the credit facility which remained unpaid by it, was to the tune of Rs. 1,14,39,000/- as on 25/12/2002 and pursuant to the DRT verdict, a part payment of Rs. 115.00 lakhs is made over by the borrower on the basis of the compromise formula.

3 The accused working with Andhra Bank were alleged to have abused their official position and conspired to cause pecuniary advantage to the private persons and hence, they were charged for committing offence under the IPC as well as under the Prevention of Corruption Act. The competent authority granted sanction to prosecute the public servants.

4 It is the specific case of the petitioners that as on today, that the petitioners have repaid dues as per the Recovery Certificate/judgment passed by the DRT - II, Mumbai as per the settlement arrived between the Bank and the borrower firms/guarantors and they have made payment to the Bank, to its complete satisfaction.

Mr.Mohite, learned Senior counsel has placed on record the 'no due certificate' issued by the Andhra Bank in favour of M/s.Sana International and the said certificate exhibited at Exhibit-C under the signature of the Chief Manager proceed to record that the Bank received a sum of Rs. 152.00 lakhs in full and final statement towards the account of M/s.Sana International by way of compromise on 27/7/2006 and as such, there are no outstanding dues against it. Another certificate dated 15/1/2010 placed on record at Exhibit-D confirm receipt of Rs.One Crore Fifteen lakhs plus interest till date, total amounting to Rs.13,62,055.00 from Mr. Sajid Dhanani, in full and final settlement of the account of M/s. Universal Exports by way of compromise.

Both the certificates certify that there are no outstanding dues against M/s.Sana International and M/s. Universal Exports after the compromise

5 In the wake of the compromise, it is the submission of Mr.Mohite that since the petitioners did not face any charge under the Corruption Act, and it is only alleged that they had availed the credit facilities and the amount remained unpaid and outstanding, but since now the Banks have issued the 'no due certificate' and accepted the amount as one time settlement, their prosecution by the CBI case is unwarranted.

Since I find substance in the above submission, as far as the present petitioners are concerned, it is evident they had borrowed some amounts from the Bank and in the wake of the settlement arrived with the Bank, the amount is repaid and a 'no due certificate' has been issued. This fact is not in dispute and it is because of this settlement by Sana International as well as Universal Exports, in the year 2006 and 2008, the Bank i.e. respondent no.4 has not bothered to mark its appearance.

The subject case was registered against the present petitioners on the premise that they had obtained the loan but had failed to repay the same. The credit facility which was availed by way of loan now stand cleared in the wake of the original applications which were filed by the Bank against the two entities for recovery of the dues from the respective firm and the guarantors.

It is subsequent to this event the FIR was registered, but the DRT, the Court of Competent jurisdiction, having partly allowed the Original Applications filed by the bank directed the two entities to make payment to the Bank in the manner set out in the Recovery Certificate/decree issued by the Tribunal. A compromise was thereafter arrived between the petitioners and the Bank and hence, by way of one-time settlement, the amount was paid by the borrower to the Bank and a certificate of full and final settlement is also issued.

6 Mr.Mohite has relied upon a decision in the case of *Central Bureau of Investigation Vs. Sadhu Ram Singla and ors (2017)5 SCC 350*, where it is categorically held as under :-

> *"14 Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma Vs. State, (2008) 16 SCC 1, and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove,*

> *we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties."*

7 Since the continuation of the proceedings despite the amount due and payable to the Bank having been cleared to the satisfaction of the Bank, would be nothing but abuse of process of law, I deem it appropriate to invoke the power u/s.482 of Cr.P.C to quash and set aside such a case where the charge is framed.

I am also being informed that the Special Court has discharged the Officers of the Bank who was alleged to have committed offences under the Prevention of Corruption Act, 1988.

In the wake of the above, I see no reason why the prosecution case against the petitioner shall continue.

As a consequence, the charge-sheet along with the FIR bearing RC 47(A)2004/CBI ACB dated 28/12/2004 along with the charge framed against accused no.6, 7 and 8 in CBI Special Case No.6/2008 is quashed and set aside.

Writ Petition stand allowed in the aforesaid terms.

**( SMT. BHARATI DANGRE, J.)**

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