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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 06.04.2023

Judgment pronounced on: 11.08.2023

+ W.P.(CRL) 762/2021, CRL.M.A. 5510/2021, CRL.M.A. 13820/2021 & CRL.M.A. 1348/2022

DEVENDER GOYAL & ORS.

..... Petitioners

Through: Mr Arun Khatri and Mr Sahil Khurana,
Adv.

versus

CBI & ANR.

..... Respondents

Through: Mr Mridul Jain, SPP for CBI with
Ms Ruby Sharma and Ms Vedika Rattan,
Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J**

1. The writ petition as filed initially, sought quashing of FIR No. RC-DAI-2019-A-0037 dated 06.11.2019 u/s 120B/409/420 IPC registered by the CBI (Respondent No.1) being the second FIR pertaining to the offences related to the same transaction for which investigation is already under way in FIR no. RC-DAI-2018-A-0035 dated 15.11.2018 u/s 120B/420/406/467/468/471 IPC.
2. As per the order sheet, on 21.10.2021, the learned counsel for the petitioner had stated that the petitioner has paid the entire amount to the respondent no.2 i.e., Bank Of India (hereinafter called 'Bank') and, therefore, nothing survived in the matter and the FIR be quashed. He also sought some time to amend the pleadings. The amended writ petition was filed and on 21.01.2022, notice was issued.



3. The prayers in the amended writ petition is as under:
 - a. *Call for records and issue, direction order or writ in the nature of certiorari or any other similar writ thereby, Quashing the FIR no.RC-DAI-2019-A-0037 dated 06.11.2019 u/s 120B/409/420 IPC registered by Respondent no. 1/CBI being the "second FIR" pertaining to the offences related to the same transaction for which investigation is already under way in FIR no. RC-DAI-2018- A-0035 dated 15.11.2018 u/s 120B/420/406/467/468/471 IPC;*
 - b. *Quash and set-aside the FIR in view of the settlement arrived between the Petitioners and the Respondent Bank vide OTS dated 13.04.2021.*
 - c.
4. On 13.10.2022, Mr. Khatri, learned counsel for the petitioner stated that he is only pressing prayer 'b' which is that the FIR should be quashed since the respondent no.2 bank has settled its disputes with the petitioner.

The facts of the case are:

5. Petitioner no. 1 and 2 are the promoter directors of Petitioner no. 3 (M/s Century Global Logistics Pvt. Ltd.) and M/s Careway Agro Procurement Pvt. Ltd./CAPPL. Both these companies are group companies and loans were obtained from Respondent no. 2 Bank. Petitioners herein, including the Petitioner no. 3 company stood as guarantors to the loan pertaining to CAPPL.
6. On 03.09.2018, Respondent No.2 Bank filed a complaint before the Respondent No.1, CBI seeking registration of FIR against CAPPL, Petitioner No.1,2, Nirmala Goyal and Pooja Goyal. On the basis of the said complaint, the first FIR was registered.
7. The allegations in brief in the First FIR are that CAPPL along with Petitioner no. 1 and 2 approached the Respondent no. 2/Bank for credit



facilities in the year 2012. These credit facilities were sanctioned by the Respondent no. 2/ Bank and secured by various securities including equitable mortgage of immovable properties and joint and several personal guaranties of Petitioner no. 1 and 2 along with other family members.

8. In early 2015, the account of the Petitioners became erratic and despite the continuous follow ups by the respondent no.2 bank, Petitioners were not able to service the loans. At this stage, apprehending irregularities and to find out the root cause of deterioration of the account. Respondent no. 2 / Bank appointed M/s PVRN and Company for forensic audit on 01.03.2017.
9. It is the further alleged that Petitioners no. 1 and 2 diverted the funds and manipulated the financial account of CAPPL in violation of the accounting standards. The petitioners misrepresented and misguided the respondent no.2 bank with sole motive of getting finances based on manipulated/ “cooked” data.
10. Respondent No.2 Bank filed another complaint allegedly on 27.11.2018 before the Respondent No.1 CBI seeking registration of FIR against Petitioner No.1,2,3, Nirmala Goyal and Pooja Goyal. Pursuant to the complaint, on 06.11.2019, second FIR being FIR no.RC-DAI-2019-A-0037 dated 06.11.2019 u/s 120B/409/420 IPC was registered. The allegations in brief in Second FIR are that Petitioner no. 3 company along with Petitioner no. 1 and 2 approached the Respondent no. 2/Bank for credit facilities in the year 2011. These credit facilities were sanctioned by the Respondent no. 2/Bank and secured by various securities including equitable mortgage of immovable properties and joint and several personal guaranties of Petitioner no. I and 2 along with other family members. These facilities were renewed from time to time and lastly in the year 2015. It is categorically mentioned in the complaint that credit facilities were satisfactorily serviced by the Petitioner no. 1, 2 and 3 for initial years and in early 2015, the account of the Petitioners deteriorated and despite the



continuous follow ups by the Respondent No.2 bank, Petitioners were not able to service the loans. At this stage, apprehending irregularities and to find out the root cause of deterioration of the account, Respondent no. 2 / Bank appointed M/s PVRN and Company for forensic audit on 01.03.2017. It was stated that the petitioners manipulated the book of accounts resulting in under/over reporting figures with ulterior motives. It was further stated that the petitioners along with Nirmala Goyal and Pooja Goyal violated the sanction terms of credit facilities and misappropriated public funds by diverting the funds.

11. During the pendency of the investigation in the second FIR, the matter has been settled between the Petitioner and Respondent No.2 Bank.
12. Pursuant to the settlement, Respondent No. 2 Bank has already issued one time settlement letter dated 13.04.2021 and the Petitioners have furnished irrevocable undertaking cum indemnity dated 13.04.2021.
13. In view of the settlement, all the actions initiated by the Respondent No.2 Bank against the petitioners for the purposes of recovery of various monies advanced, before the NCLT and DRT were withdrawn by the Respondent No.2 Bank.

Submissions:-

14. It is submitted by Mr. Arun Khatri, learned counsel for the petitioner that the allegations in the FIR are under section 120B, 409 and 420 IPC arising out of commercial dispute between the parties, and the same having been settled between complainant and Respondent No.2 bank. The FIR should be quashed. Since prayer 'a' is not pressed, the learned counsel has limited his arguments to prayer 'b'. It is submitted that the present case pertains to commercial disputes between the parties and the same has been settled.
15. The respondent -CBI has submitted that compromise of civil liability has no effect upon the criminal liability. It is also stated that the allegations are



also of misappropriation of public funds. The respondent has relied on the following judgments:

- Rumi Dhar v. State of W.B., (2009) 6 SCC 364
- Daya Engineering Works (Sleeper) Ltd. &Anr. Vs. CBI, CrI. M.C 4261/ 2019
- State of Maharashtra v. Vikram Anantraï Doshi, (2014) 15 SCC 29
- State of Karnataka v. Pastor P. Raju, (2006) 6 SCC 728

Analysis:

16. In *Nikhil Merchant v. CBI*, (2008) 9 SCC 677, the Supreme Court observed:

“30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?”

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and the compromise arrived at between the Company and the Bank as also Clause 11 of the



consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

17. In the above case, the Hon'ble Supreme court laid the following factors when deciding whether to quash the criminal proceedings:
- The nature of the dispute between the parties
 - The terms of the compromise
 - Whether the continuance of the criminal proceedings would be a futile exercise
18. Once there is an One time Settlement (hereinafter called OTS), it clear that the dispute between the Respondent No. 2 Bank and the petitioners was set at rest on the basis of compromise arrived at by them where under the dues of the respondent No. 2 Bank have been cleared and the Respondent No.2 Bank does have any further claim against the petitioner. The dispute involved in this matter too has overtones of a civil dispute with certain criminal facets.
19. The Respondent No.2 bank is the custodian of public funds and in its wisdom has settled the financial dispute. The respondent No. 2 Bank has taken commercial call, and reached a settlement. The complaint of the Respondent No. 2 Bank was to the effect that the petitioners have manipulated their account books which resulted in over/under reporting of figures with a sole motive of getting finances. The Petitioners were accused of violating the sanctioned terms of the credit facilities and indulged in misappropriating the public funds. The Respondent No.2 Bank having



settled the matter has received the amount which in its wisdom was considered just and appropriate.

20. The respondent no.1 CBI is not to sit in the armchair of the respondent No.2 bank and decide if the commercial decision of the respondent No. 2 bank is prudent or not. The Respondent no.2 bank may have different parameters/ yardsticks which prompted it to settle the disputes. The respondent No. 2 bank may have wanted to avoid protracted litigation/ cut its losses and recover lesser amount with a view to end the litigation. The intent is to recover the public funds which the respondent No. 2 bank has done to the effect of 2.35 crores, which in the Respondent No. 2 banks prudent commercial wisdom may be better than incurring an expensive litigation.
21. The petitioners have also made a prudent commercial decision and have agreed to the OTS. Rather than continuing with protracted litigation, they have decided to make payment and put quietus to the matter.
22. Not quashing the FIR would be curbing initiative, as well as prudent commercial decisions taken by the respondent No.2 bank and petitioner. No doubt that there are allegations of misappropriating public funds but permitting the Respondent No.1 CBI to continue the investigation would be an abuse of the criminal justice system. The FIR was registered on 06.11.2019 and till now, as per the written submission (filed on 09.05.2023), the respondent No.1 CBI has stated that they are still investigating the involvement of public servants. It has been almost 4 years since the registration of FIR.
23. The facts of *Nikhil Merchant (supra)* are squarely applicable to the facts of the present case. On the other hand, the judgments cited by respondent are distinguishable.
24. As regards the *Rumi Dhar (Supra)* relied upon by the Respondent No. 1 CBI is concerned, the Hon'ble Supreme Court had considered the fact that



the FIR was registered under section 13(1) (d) of PC Act apart from IPC sections. In addition, in that case the chargesheet was filed and charges were also framed while in the present case investigation is pending for almost past four years.

25. In *Daya Engineering (Supra)*, the investigation was not pending for almost 4 years. The compromise was effected within one year of the registering of the FIR. On the other hand, in the present case, despite more than 4 years of registration of the FIR, the respondent No.1 CBI is still investigating and has failed to chargesheet.
26. In *Vikram Anantrai Doshi (supra)*, again the chargesheet was filed as well as fictitious companies were created by the petitioner and monies were siphoned off.
27. In *Pastor P. Raju (supra)*, the quashing petition was filed within 12 days and as result the Hon'ble Supreme Court was of the view that High Court ought not to have interfered when the matter was still at the investigation stage. In the present case FIR was registered in 06.11.2019 while quashing has been preferred in 2021. Even till 09.05.2023 i.e., the date of filing Written submission, the respondent no.1 CBI still hasn't concluded investigation.
28. For the reasons mentioned above, the second FIR being FIR No. RC-DAI-2019-A-0037 dated 06.11.2019 u/s 120B/409/420 IPC registered by respondent no.1 CBI is hereby quashed.

JASMEET SINGH, J

AUGUST 11th, 2023/sk [Click here to check corrigendum, if any](#)