

Tarina Sen vs Union Of India on 3 October, 2024

Author: B.R. Gavai

Bench: B.R. Gavai, Prashant Kumar Mishra

2024 INSC 752

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
[Arising out of Special Leave Petition (Criminal) No.1415 of
2024]

TARINA SEN

...APPELLANT(S)

VERSUS

UNION OF INDIA & ANR.

...RESPONDENT(S)

WITH
CRIMINAL APPEAL NO. _____ OF 2024
[Arising out of Special Leave Petition (Criminal) No.1416 of
2024]

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. The present appeals challenge the final orders dated 4th July 2023 passed by the High Court of Orissa at Cuttack in CRLMC No. 34 of 2022 and in CRLMC No. 33 of 2022, vide which the petition filed by the present appellants for quashing of criminal proceedings came to be disposed of by permitting the appellants to urge all the pleas raised in the said petition before the trial Court at the appropriate stage. The appellants had approached the High Court under Section 482 of the Code of Criminal Procedure, 1973 ("CrPC" for short) praying for quashing of the criminal proceedings in T.R. No. 28 of 2002 pending in the Court of Special Judge (CBI) Bhubaneswar ("trial Court" for short).

3. Shorn of details, the case of the prosecution is as given below.

3.1 On 14th October 2000, on the basis of information received from a reliable source, the Inspector of Police CBI/SPE Bhubaneswar registered a regular case under Section 154 of CrPC being Crime No. RCBHU 2000A0021 ("FIR" for short) against five persons namely, Ajay Kumar Behera (Accused No. 1), Surjit Sen (Accused No. 2), Kaushik Nath Ojha (Accused No.3), Tarini Sen (Accused No. 4), Shaileshree Sen (Accused No. 5) alleging commission of offences punishable under Sections 120-B, 420, 468 and 471 of Indian Penal Code 1860 ("IPC" for short) & Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 ("PC Act" for short). The present appellants are Accused No. 4 and 5.

3.2 It was alleged in the F.I.R. that Ajay Kumar Behera while being posted as the Branch Manager in Allahabad Bank, Temple Marg Branch, Bhubaneswar ("the Bank" for short) during the year 1998-1999 entered into a criminal conspiracy with the other accused persons. At that time, Surjit Sen and Kaushik Nath Ojha were the Directors of M/s Indo Global Projects Ltd., Bhubaneswar ("IGPL" for short) and the appellants herein were Partners in M/s Clarion Travels, Bhubaneswar ("Clarion Travels" for short). 3.3 It was also alleged in the F.I.R. that on 20th November 1998, a loan application was submitted on behalf of Clarion Travels for the purpose of securing funds to purchase new cars. The loan application was signed by the present appellants on behalf of Clarion Travels. Against the said loan application, on 17th December 1998, Ajay Kumar Behera sanctioned a loan of Rs. 8,40,000/- without keeping any security or post-dated cheques. No repayment was ever made, and Ajay Kumar Behera did not pursue the same. 3.4 It was also alleged in the F.I.R. that earlier in time, on 22nd August 1998, a similar loan application was submitted on behalf of IGPL for the same purpose of securing funds to purchase new cars at a cost of Rs. 11,84,600/-. Against the said loan application, on 24th August 1998, Ajay Kumar Behera sanctioned the loan for the said amount. The money was received by Accused No. 3 and 4, who were Directors of IGPL. In furtherance of the loan application, the Accused No. 3 and 4 had also deposited 36 post-dated cheques, which when they were sent for clearing, at a later stage, by the successor of Ajay Kumar Behera bounced. 3.5 It was also alleged in the F.I.R. that, the office address disclosed by both IGPL and Clarion Travels was one and the same, i.e., 168/169-A, Bapuji Nagar, Bhubaneswar. In case of IGPL, it was also alleged that the firm Indo Global Motor from where the cars were purportedly purchased by IGPL is in fact shown as a unit of IGPL and that both of them share one and the same address being 56-A, Mancheswar Industrial Estate, Bhubaneswar. Similarly, in the case of Clarion Travels, it was also alleged that the firm M/s Kalinga Auto Centre Ltd. from where the cars were purportedly purchased by Clarion Travels also has the same address 56-A, Mancheswar Industrial Estate, Bhubaneswar.

3.6 In such facts, the matter was taken up for investigation by the Central Bureau of Investigation ("CBI" for short) and the case was registered as T.R. No. 28 of 2002 in the Court of Special Judge (CBI), Bhubaneswar.

3.7 On 27th August 2002, the CBI filed the charge-sheet in the trial Court against all the accused persons, including the present appellants, for offences punishable under Sections 120B, 420, 468, 471 of IPC and Sections 13(2) read with 13(1)(d) of PC Act.

3.8 Vide order dated 2nd September 2002, the trial Court took cognizance and issued summons to the accused persons. 3.9 The Bank also filed two Original Applications being O.A. No. 53 and 57 of

2004 before the Debt Recovery Tribunal, Cuttack (“DRT” for short) for recovery of dues in respect of the loans advanced to IGPL and Clarion Travels. In the proceedings before the DRT, IGPL and Clarion Travels reached a One-Time-Settlement (“OTS” for short) with the Bank, which was accepted, and the loan account was declared as being closed vide letter dated 31st January 2011. In view of the OTS, the recovery proceedings pending before the DRT were disposed of as a full and final payment of the dues of the Bank vide orders dated 3rd May 2011. 3.10 Having settled the matter thus, the present appellants filed separate applications under Section 482 of Cr.P.C. before the High Court of Orissa seeking quashing of all the proceedings pending before the trial Court in the case registered as T.R. No. 28 of 2002. The High Court, vide the orders impugned in the present appeals disposed of the applications under Section 482 of Cr.P.C. by permitting the appellants herein to urge all the pleas raised in their application before the trial Court at the appropriate stage. Being aggrieved thereby, the present appeal arises.

4. We have heard Shri Dama Seshadri Naidu, learned Senior Counsel for the appellants and Shri Vikramjeet Banerjee learned Additional Solicitor General (“ASG” for short) appearing for the common respondent No.1-Union of India and Mr. Brijesh Kumar Tamber, learned counsel for common respondent No.2.

5. Shri Naidu submits that the appellants before this Court had no active role to play. It is submitted that the Appellant in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 1415 of 2024 (Accused No.4) and the Appellant in Criminal Appeal arising out of Special Leave Petition (Criminal) No. 1416 of 2024 (Accused No.5) are women. Accused No. 4 is the wife of Surojit Sen, who was Accused No.2. Accused No. 5 is the wife of the brother of the Accused No. 2. Both the appellants had no active role to play and have been roped in as they are related to the Accused No.2.

6. Shri Naidu further submits that in the proceedings before the DRT, the firm run by the appellants reached to an amicable settlement with the Bank, which was accepted, and the entire debt was discharged on 31st January 2011. An amount of Rs.7,50,000/- was deposited with the Bank as a full and final settlement of the Bank’s dues.

7. It is further submitted that OA before the DRT was disposed of on 3rd May 2011 in light of the settlement and, therefore, the continuance of the proceedings against the appellants would be an exercise in futility.

8. Shri Naidu in support of his submissions relied on the following judgments of this Court in the cases of:

(i) Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta¹;

(ii) Nikhil Merchant v. Central Bureau of Investigation and another²;

(iii) Gian Singh v. State of Punjab and another³;

(iv) Central Bureau of Investigation, ACB, Mumbai v. (1996) 5 SCC 591 (2008) 9 SCC 677 (2012) 10 SCC 303 Narendra Lal Jain and others⁴;

(v) Narinder Singh and others v. State of Punjab and another⁵;

(vi) Gold Quest International Private Limited v. State of Tamil Nadu and others⁶;
and

(vii) Central Bureau of Investigation v. Sadhu Ram Singla and others⁷.

9. Mr. Brijesh Kumar Tamber, learned counsel for the respondent No.2 Bank confirms the fact regarding the settlement entered into between the Bank and the borrowers.

10. Shri Vikramjeet Banerjee, learned ASG, appearing on behalf of the CBI, however, submits that merely because the matter is settled between the Bank and the borrowers, it does not absolve the accused persons of their criminal liability. It is submitted that the learned Chief Justice of the High Court has rightly, upon consideration of the legal position, dismissed the petition under Section 482 of the CrPC. The learned ASG, therefore, prays for (2014) 5 SCC 364 (2014) 6 SCC 466 (2014) 15 SCC 235 (2017) 5 SCC 350 dismissal of the present appeals.

11. The facts in the present case are not in dispute. It is not disputed that the matter has been compromised between the borrowers and the Bank. It has also not been in dispute that, upon payment of the amount under the OTS, the loan account of the borrower has been closed.

12. Therefore, the only question would be, as to whether the continuation of the criminal proceedings against the present appellants would be justified or not.

13. At the outset, we may state that we are only considering the cases of two women i.e. Accused Nos. 4 and 5, wherein Accused No.4 is the wife of Accused No.2. It is also not in dispute that the original Accused Nos. 2 and 3 have since died.

14. By a separate judgment of the even date in Criminal Appeal arising out of Special Leave Petition (Criminal) No.4353 of 2018 wherein similar facts arose for consideration, we have held that when the matter has been compromised between the borrower and Bank, the continuation of the criminal proceedings would not be justifiable.

15. Relying on the earlier judgments of this Court, we have held that in the matters arising out of commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court should exercise its powers under Section 482 CrPC for giving an end to the criminal proceedings. We have held that the possibility of conviction in such cases is remote and bleak and as such, the continuation of the criminal proceedings would put the accused to great oppression and prejudice.

16. We find that for the aforesaid reasons the present appeals also deserve to be allowed.

17. In the result, we pass the following order.

(i) Criminal Appeal arising out of Special Leave Petition (Criminal) No.1415 of 2024 is allowed.

(ii) The impugned order dated 4th July 2023 passed by the High Court of Orissa at Cuttack in CRLMC No.34 of 2022 is quashed and set aside.

(iii) Criminal Appeal arising out of Special Leave Petition (Criminal) No.1416 of 2024 is allowed.

(iv) The impugned order dated 4th July 2023 passed by the High Court of Orissa at Cuttack in CRLMC No.33 of 2022 is quashed and set aside

(v) The criminal proceedings against the appellants in T.R. No. 28 of 2002 pending in the Court of Special Judge (CBI) Bhubaneswar is also quashed and set aside.

.....J (B.R. GAVAI)J (K.V. VISWANATHAN) NEW
DELHI;

OCTOBER 03, 2024.