

C.B.I vs Maninder Singh on 28 August, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3657

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Bench: R. Banumathi, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1496 OF 2009

CENTRAL BUREAU OF INVESTIGATION

...Appellant

Versus

MANINDER
...Respondent

SINGH

J U D G M E N T

R. BANUMATHI, J.

This appeal is preferred challenging the order of the High Court of Delhi in Crl. M.C. No.2083 of 2006 dated 10.02.2009, in and by which, the High Court exercising its inherent power under Section 482 Cr.P.C. quashed the criminal proceedings in RC No.3 of 1987 under Sections 420, 467, 468 and 471 IPC read with Section 120-B IPC and all proceedings consequent thereto qua the respondent.

2. Brief facts which led to the filing of this criminal appeal are as under:- The complainant-Chief Vigilance Officer of the New Bank of India (presently 'Punjab National Bank' for short 'PNB') lodged the complaint alleging that two persons namely Suresh Kumar Puri and Maninder Singh introduced themselves as proprietors of M/s Fashion India and M/s Ronney Exports respectively and opened their current accounts with their branch at Miller Ganj in Ludhiana on 08.11.1986. One Manager namely A.K. Satija of IBD Cell of the New Bank of India at Ludhiana allowed advance amount worth Rs.5.31 lakhs each to these two firms on production of Bill of Lading, GR form and other bills and those foreign bills purchased by the Bank on 27.11.1986 returned unpaid. During the enquiry made by the bank, Bill of Lading presented by the proprietors of the abovesaid two firms were found forged. Manager-A.K. Satija helped Maninder Singh to avail advance upto Rs.10.62 lakhs by opening

two different accounts just to ensure that the pecuniary limits allowed may fall under his power; however according to prosecution nature of transactions reveal that parties were one and the same. Respondent and other co-accused thus entered into a criminal conspiracy during the period November-December 1986, with intention to cheat New Bank of India (PNB) to the tune of Rs.10.62 lakhs. On the basis of the above complaint, case was registered under Section 120-B IPC read with Section 420 IPC and Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947 and further substantive offences under Sections 420, 467, 468 and 471 IPC & Section 5 (2) read with Section 5 (1) of Prevention of Corruption Act, 1947 in Crime No.RC.3/87-SIU(X)/CBI/SPE dated 28.08.1987. After completion of the investigation, a chargesheet was filed on 22.12.1990 in the Court of Chief Metropolitan Magistrate, Tis Hazari Court, Delhi against the accused persons collectively for the offences under Section 120-B IPC read with Section 420 IPC and substantive offences under Sections 420, 467, 468 and 471 IPC.

3. Noticeably, on 01.02.1995 i.e. after four years the accused- respondent Maninder Singh was arrested by CBI from IGI Airport and the CMM vide order dated 16.09.1995 framed charges against accused respondent Maninder Singh and other accused. In the trial, thirty nine prosecution witnesses were examined. However on 29.01.2005, Maninder Singh arrived at a settlement with the New Bank of India, Ludhiana and on 29.11.2005, the respondent-accused filed an application before the CMM for pleading guilty for the offences alleged, but on the date of hearing i.e. 08.12.2005, the accused respondent Maninder Singh did not appear in the court and his advocate withdrew the aforesaid application. Respondent herein moved a Crl. Misc. Petition bearing No.2083 of 2006 under Section 482 Cr. P.C. for quashing of the FIR against him on the ground that a settlement is arrived between the parties and amounts are repaid to bank. The High Court placing reliance on *Nikhil Merchant vs. CBI & Anr.*, (2008) 9 SCC 677, vide impugned order dated 10.02.2009 allowed the petition and thereby directed that criminal proceedings in RC No.3 of 1987 and all consequential proceedings thereto against the respondent shall stand quashed. The appellant-CBI herein assails the correctness of the order passed by the High Court.

4. Ms. Pinki Anand, learned Additional Solicitor General contended that *Nikhil Merchant* case is not an authority on the question involved and in *Rumi Dhar (Smt.) vs. State of West Bengal & Anr.*, (2009) 6 SCC 364, this Court raised doubts as to the correctness of the judgment passed in *Nikhil Merchant's* case. It was submitted that the facts of the present case are totally different and in this case thirty nine prosecution witnesses were already examined and substantial progress has been made in the criminal case and while so, High Court was not right in quashing the criminal proceedings qua the respondent. Learned Additional Solicitor General has drawn our attention to State of Maharashtra through *CBI vs. Vikram Anantrai Doshi and Ors.*, 2014 (10) SCALE 690 and submitted that this Court has distinguished *Nikhil Merchant's* case and held that availing loan from the bank by producing forged documents has immense societal impact and the High Court ignoring the facts and circumstances of the present case was not justified in quashing the criminal proceedings qua the respondent.

5. Learned Senior Counsel for the respondent Mr. K.K. Menon submitted that availing facilities from the bank is purely of civil dispute which are personal in nature and therefore High Court was totally justified in quashing the proceedings in view of the judgment rendered in *Nikhil Merchant's* case. It

was further submitted that the judgment rendered in Nikhil Merchant's case was upheld in Gian Singh vs. State of Punjab And Anr., (2012) 10 SCC 303; Shiji @ Pappu & Ors. vs. Radhika & Anr., (2011) 10 SCC 705 and other judgments.

6. We have carefully considered the rival contentions advanced by the parties and perused the material on record.

7. In the case at hand, respondent and one Suresh Kumar Puri introducing themselves as proprietors of M/s Ronney Exports and M/s Fashion India opened current accounts Nos.4443 & 4441 on 08.11.1986 with New Bank of India (PNB) and by forged documents they had availed various facilities viz.:- (i) Anticipated case incentive advance Rs.50,000/- to each of the firms; (ii) F.B.P. against order documents (the bills of ladings now turned out to be forged) Rs.3,05,000/- each; (iii) F.B.P. against order documents (the bills of ladings now turned out to be forged) additional funds released Rs.22,000/- each; (iv) P.C.L. against orders (Packing Credit Loans) Rs.1,50,000/- each and interest Rs.4,000/- to each of the firms. In the charges, it is further alleged that A.K. Satija, the then Manager, IBD Cell, New Bank of India, Ludhiana has sanctioned various credit facilities to respondent and Suresh Kumar Puri viz.: (i) Packing Credit against confirmed orders; (ii) Advance against anticipated cash incentive/duty draw back; (iii) Advance against cash incentive and duty draw back and (iv) Advance against foreign bill purchase. Chargesheet refers to various transactions by which bank amounts were credited to the accounts of the said firms based on forged documents.

8. Accused-respondent Maninder Singh and his brother Arvinder Singh did not cooperate with the investigating agency and were absconding and declared proclaimed offenders by CMM, Tis Hazari, Delhi vide order dated 03.10.1989. In the trial, thirty nine witnesses were examined and thus substantial progress was made. In fact, on 29.11.2005, respondent- accused filed an application before the trial court for pleading guilty; but the accused did not appear in the court and his advocate withdrew the aforesaid application.

9. Placing reliance upon Nikhil Merchant's case, the High Court quashed the criminal proceedings qua the respondent on the ground that the respondent has settled the matter with the bank. In Nikhil Merchant's case the dispute between the company and the bank which was set at rest on the basis of compromise arrived at by them and dues of the bank have been cleared. In Nikhil Merchant's case certain documents were alleged to have been forged by the respondent thereon in order to avail credit facilities beyond the limit to which the company was entitled. The case at hand is clearly distinguishable on facts. The chargesheet referred to number of transactions based on such forged documents bank money was credited to the accounts of firms of the respondent. For instance, respondent Maninder Singh and Suresh Kumar Puri are said to have submitted the forged documents of shipment for bill purchased on 27.11.1986. These documents included Bill of Lading and invoices which were found forged and according to the prosecution no consignment was sent by the respondent to foreign companies. It is further alleged that the Bill of Lading and G.R. Form and Shipping Bill also contained forged signatures of customs officers.

10. 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 & technology etc. have 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 public at large.

11. The inherent power of the High Court under Section 482 Cr.P.C. 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, Court would quash the proceedings. In economic offences 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 is a well planned and was committed with a deliberate design with an eye of 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 prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

12. In recent decision in Vikram Anantrai Doshi (supra), this Court distinguished Nikhil Merchant's case and Narendra Lal Jain's case where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case laws under subject in Vikram Anantrai Doshi's case, this Court observed that cheating by bank exposit fiscal impurity and such financial fraud is an offence against society at large in para (23), this Court held as under:-

"23. ...Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposit fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that nothing more remains to be done. The

collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible”.

13. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi's case, the order of the High Court cannot be sustained.

14. The appeal is allowed and the order passed by the High Court is set aside and the trial court is directed to proceed with the matter expeditiously in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

.....J. (DIPAK MISRA)J. (R. BANUMATHI) New Delhi;

August 28, 2015
