

## **Central Bureau Of Investigation, ... vs Duncans Agro Industries Ltd.,Calcutta on 9 July, 1996**

**Equivalent citations: JT 1996 (6), 227 1996 SCALE (5)99, AIR 1996 SUPREME COURT 2452, 1996 (5) SCC 591, 1996 AIR SCW 3019, 1996 SCC(CRI) 1045, 1996 CALCRILR 240, 1996 (2) BLJR 1410, 1996 BLJR 2 1410, (1996) 2 APLJ 81.2, 1996 CRILR(SC&MP) 534, 1996 APLJ(CRI) 33.1, (1996) 6 JT 227 (SC), 2000 (5) COM LJ 76 SC, (1996) MAD LJ(CRI) 710, (1996) 2 EASTCRIC 633, (1996) 3 RECCRIR 60, (1996) 2 BANKLJ 225, (1997) BANKJ 278, (1996) 3 CHANDCRIC 106, (1996) 3 ALLCRILR 117, (1996) 87 COMCAS 849, (1996) 3 CRIMES 60, (1997) SC CR R 37, 1996 CRILR(SC MAH GUJ) 534**

**Author: G.N. Ray**

**Bench: G.N. Ray**

PETITIONER:

CENTRAL BUREAU OF INVESTIGATION, SPE,SIU (X), NEW DELHI

Vs.

RESPONDENT:

DUNCANS AGRO INDUSTRIES LTD.,CALCUTTA

DATE OF JUDGMENT: 09/07/1996

BENCH:

RAY, G.N. (J)

BENCH:

RAY, G.N. (J)

G.B. PATTANAIK (J)

CITATION:

JT 1996 (6) 227 1996 SCALE (5)99

ACT:

HEADNOTE:

JUDGMENT:

The 9th Day of July, 1996 Present:

Hon'ble Mr. Justice G.N Ray Hon'ble Mr. Justice G.B.Pattanaik K.T.S.Tulsi, Additional Solicitor General, Vikas Pahwa, A.S.Bhasme, P.Parmeswaran, and A.Bhattacharya, Advs. with him for the appellant Shanti Bhushan and Rajinder Singh, Sr. Advs., and P.N.Misra, Advs. with them for the Respondent J U D G M E N T The following judgment of the Court was delivered:

Central Bureau of Investigation, V. Duncans Agro Industries Ltd., Calcutta J U D G M E N T G.N RAY, J.

The appeals are directed against a common Judgment dated December 23, 1992 Passed by the Calcutta High Court in Crl.R.No. 859 of 1991 and Crl. R. No. 1203 of 1991. By the impugned judgment, the High Court allowed the said criminal revisions and quashed the impugned FIR Nos, RC-4/87-SIU(X) dated August 14, 1987 and RC-I(8)/89-SIU(x) dated June 12, 1989. The respondent, Duncans Agro Industries Ltd., moved the Calcutta High Court for quashing the said FIRs lodged by the Central Bureau of Investigation.

It was inter alia alleged in the FIR dated August 14, 1987 that reliable information was received by the complainant, the Superintendent of Police, CBI, SIU(x), New Delhi, that M/S National Tobacco Company which was a division of M/s Duncans Agro Industries Ltd, had cash credit facilities on hypothacation of stocks etc, with United Bank of India, Royal Exchange Branch, Calcutta. The ultimate credit facilities limit sanctioned to m/s Duncans Agro Industries Ltd., in the account of M/s National Tobacco Company as on January 12, 1984 was to the tune of Rs. 17.50 crores subject to the drawing power according to hypothecation of raw materials/stocks etc. M/s Duncans Agro Industries Ltd, was submitting the monthly statements of raw materials held by its division, M/s National Tobacco Company and such hypothecated raw materials were liable to Physical inspection and verification by Bank authorities. In 1984, M/s Duncans Agro Industries Ltd, mode an application before the Calcutta High Court and obtained an order from the High Court on August 10, 1984 that National Tobacco Company, a Tobacco Division of Duncans Agro Industries Ltd, would henceforth function under the name and style of new Tobacco Company Limited which would be fully downed subsidiary of M/s Duncans Agro Industries Ltd and the management of the said newly constituted company would be carried as per the Scheme of Arrangement approved by the High Court. It was further alleged in the said FIR that after the approval of the aforesaid Scheme of Arrangement, M/s Duncans Agro Industries Limited approached the United Bank on December 3, 1984, to transfer the credit limits standing in their name to M/s New Tobacco Company Limited and Shri S.K.Ghosh, Chief Officer (Legal) of the United Bank of India gave opinion on January 22, 1985 that the order of the Calcutta High Court was binding on the Bank and consequently the Bank would either continue the advances with transferee Company or to sue transferee Company i.e. M/s New

Tobacco Company Limited, for recovery of its dues. The said Chief Officer of the Bank advised the Bank that the Bank would not be in a position to enforce its right in respect of doubts and immovable assets of the transferor company. The Board of Directors of United Bank of India resolved that the credit limits of the Bank in respect of National Tobacco Company would be allowed to be transferred in the new account of New Tobacco Company limited with retrospective effect from April 1, 1984 subject to the condition that the company would furnish an undertaking to create mortgage on all their assets and properties in favour of the Bank and without written consent of the Bank, holding level of percentage share of M/s Duncans Agro Industries Limited in the National Tobacco Company would not undergo any change. Such resolution was drafted in the meeting of the Board of Directors held on May 30, 1985. The note of Shri S.K. Ghosh, Chief Officer (Legal) along with a Board Note dated May 30, 1985 prepared by Shri S.N. Ghoshal, General Manager of the Bank were placed before the Board of Directors, while recommending transfer limits in favour of New Tobacco Company, the Bank officials did not specify whether stocks had been inspected and how the Bank would remain a secured creditor of M/s Duncans Agro Industries Limited for National Tobacco Company. It was also not mentioned by the officials of the Bank as to whether stocks had been inspected and verified and whether registration of hypothecation charged under Section 125 of the Companies Act was valid and effective or whether the bank was holding certificate of registration from the Registrar of Companies as provided for by the Companies Act. It was further alleged in the FIR that the Board of Directors of United Bank of India were misled because of the omissions and commissions of the officials of the Bank and the said Board of Directors acted on legal opinion of Shri Ghosh although such opinion was detrimental to the interest of the Bank. In the FIR, it was also alleged that credit limits were got transferred to the New Tobacco Company and M/S DUNCANS Agro Industries Limited had managed with the executive and Directors of the Bank to transfer the debts of the said Duncans Agro Industries Limited to Nil without any payment. It was alleged that M/s Duncans Agro Industries Limited instead of filing a memorandum of complete satisfaction of charge with the Registrar of Companies, itself managed with Shri D.K. Sengupta, Asstt. Manager (Advances) to issue a memorandum of complete satisfaction of charge when there had been no repayment whatsoever. It was also Shri G.N. Ghoshal General Manager, Shri N. Ganguli, Chief Manager, Shri S.K. Ghosh, Chief Officer (Legal), Shri S.K. Hajra, Law Officer, Shri D.K. Sengupta, Assistant Manager (Advances) of United Bank of India and other persons had conspired with a criminal design to defraud the Bank and to deliberately misappropriate the huge stock lying at different places. It was alleged that the said facts had disclosed commission of offences under Section 1208 read with Sections 409, 420, 467, 468 and 471 Indian Penal Code.

In the second FIR dated 12.6.1989 filed by the Superintendent of Police, CBI, SPE, STU (X), New Delhi against (i) Sri Gauri Prasad Goenka, Director Duncans Agro Industries Limited, (2) Sri B. Mukherjee Manager, Tobacco Accounts and Authorised Signatory, Duncans Agro Industries Ltd and (3) M/s Duncans Agro Industries Ltd. It

was alleged that during the course of investigation of RC-4/37-SIU

(x), CBI, SPE, New Delhi it transferred that Tobacco Division of M/s Duncans Agro Industries Limited had been enjoying credit facilities against hypothecation of stocks and shares of tobacco in the name of M/s National Tobacco Company Limited from the United Bank of India, Royal Exchange Branch, Calcutta and Andhra Bank, Kakinada Branch (A.P) to the tune of 15.25 crores till 1935. The credit limits were enhanced by Reserve Bank of India from 15.25 crores to 17.50 crores on the request of the Company and recommended by United Bank of India. Out of enhanced alleged in the FIR that the Directors of the New Tobacco Company in their letter dated June 26, 1985 addressed to chief Manager, United Bank of India, Royal Exchange Branch, Calcutta, assured that the Board's resolution would be furnished to the Bank to the effect that without the Bank's written consent, the holding level of percentage of shares in the New Tobacco Company by Duncans Agro Industries Limited would not undergo any change. It was also alleged in the FIR that in order to defraud the Bank and to nullify the assurance given to the Bank, M/s Duncans Agro Industries Limited entered into a memorandum of understanding with M/s New Tobacco Company on March 6, 1986 in order to render the very basis of the scheme approved by the High Court infructuous and to complete the delinking of Duncans Agro Industries Limited and New Tobacco Company so that the assets of Duncans Agro Industries Limited would remain out of reach of its creditors. By such process, the United Bank of India was defrauded. It was alleged in the FIR that the stock worth about Rs.12 crores were either fraudulantly or dishonestly removed or disposed of without any payment to the Bank although the same were hypothecated with the Bank. In the FIR, it was alleged that Shri G.P. Goenka, Chairman of M/s Duncans Agro Industries Limited, Shri N.K. Jain, Director, New Tobacco Company Limited and Shri Bhasker Banerjee, Director, National Tobacco Company along with some Bank Officers, namely credit facilities, a sum of Rs. 1.58 crores was to be financed by the Canara Bank, Lake Road Branch, Calcutta with the concurrence of United Bank of India and Andhra Bank. Sri G.P. Goenka was one of the Directors of Duncans Agro Industries Ltd and was having the control over the affairs of the said company. Sri B. Mukherjee was manager (Accounts) and responsible for preparation of accounts of Tobacco Division and both the said G.P. Goenka and B. Mukherjee were also amongst the authorised signatories for operating current account.

It was alleged in the FIR that after getting the sanction of enhanced credit facilities. Sri G.P. Goenka, Sri B. Mukherjee and other officials of Tobacco Division of Duncans Agro Industries Limited entered into a criminal conspiracy to cheat Canara Bank, Lake Road Branch and to obtain credit in their account by falsely and dishonestly declaring that tobacco stocks and stores were available at Guntur for hypothecation to Canara Bank, Lake Road Branch over and above the stocks hypothecated to United Bank of India and Andhra Bank. Pursuant to the authorities given by the Board of Directors Sri G.P. Goenka executed documents with Canara Bank creating a floating charge of stocks and stores at Guntur valuing 158 Lakhs and B. mukherjee declared to Canara Bank that tobacco stocks worth Rs.1,44,40,122/- were lying at Guntur as on 28.3.84 over and above the stocks

hypothecated to United Bank and Andhra Bank. A balance sheet of Tobacco Division of Duncans Industries Limited was prepared under the overall charges of B. Mukherjee and audited by M/s Price water House and Company, Calcutta, showing total value of stocks and stores of tobacco at Rs.12,39,27,002.19 p. In the said Balance Sheet, advance against hypothecation in the stocks and stores have been shown Rs,13,78,82,585.17 from United Bank and Rs,2,27,12,86,350 from Andhra Bank making a total of Rs. 16,05,95,408.17 No. available stocks were indicated free from any hypothecation. Sri B. Mukherjee in the stock statement submitted to United Bank of India declared that value of Tobacco stocks and stores as on 31.3.1984 was Rs.16,92,75,446/-. On the same date, the value of stocks and stores worth more than Rs.3 crores was declared to Andhra Bank. Thus although no stocks and stores of Tobacco beyond the hypothecated stocks and stores to the said two Banks were available, the officials of the Canara Bank acting upon the documents executed by G.P.Goenka and declaration given by B. Mukherjee were induced to sanction and release interim loan of Rs. 1 crore in April 1984 and balance of Rs. 58 lakhs in June 1984. It was alleged in the FIR that above facts disclose commission of offence under Section 120B read with 420 IPC and substantive offences under Section 420 IPC against G.P.Goenka, B. Mukherjee and others.

Mr Tulsi, learned Additional Solicitor General appearing for the appellants, has submitted that both the FIRs contain allegations of facts which constitute essential ingredients of the offence referred to in the respective FIR. Mr. Tulsi has submitted that the essential ingredients for the offence of criminal breach of trust defined in Section 405 and punishable under Sections 406 and 409 IPC are:

- a) Entrustment of property in any manner or creation of dominion over property; b) Dishonest misappropriation, conversion to his own use or disposal of the said property; (c) Misappropriation etc. In violation of any legal contract touching the discharge of such trust; d) Misappropriation either by the Person entrusted with property or through any other person.

He has submitted that allegations in FIR No. RC-4/1987 satisfy each of the essential ingredients of the offences under Section 403. It has been submitted by Mr. Tulsi that the ultimate credit facility limit sanctioned to M/s Duncans Agro Industries Limited (hereinafter referred to as DAIL) in the account of National Tobacco Company as on January 12, 1984 was to the tune of Rs.17.50 crores subject to drawing power. In view of hypothecation of raw materials stocks etc., DAIL was submitting the monthly statement of raw materials held by its division. National Tobacco Company and the same was liable to physical inspection and verification by Bank officials. Such facts clearly constitute entrustment as envisaged under Section 405 IPC. The allegations in the FIR about the request made by DAIL to the United Bank of India for transfer of credit facilities in their name to M/s New Tobacco Company on December 3, 1984 and as a result of conspiracy a wrong opinion was given by the Chief Officer (Legal) and the Board of Directors of the Bank was misled so that the transfer limit in favour of New Tobacco Company was allowed by the Board without inspection and verification of the stocks and by deliberately withholding of relevant material from the Board by the officials of the Bank and the allegations that later on, a memorandum of understanding was entered between DAIL and New Tobacco Company by which the shareholding of DAIL as per the scheme of arrangement approved by the High Court was altered, clearly constitute an offence of misappropriation of the property entrusted to the Bank. Mr. Tulsi has also submitted that the

allegations that stock worth about Rs. 12 crores were fraudulently or dishonestly removed or disposed of without any payment to the Bank with whom the same were hypothecated with the connivance of the concerned Bank official prima facie make out the offence of misappropriation of the entrusted property in clear breach of trust. Mr. Tulsi has also submitted that essential ingredients of the offence of forgery Punishable under Section 468 and 471 IPC as contained in Section 464 IPC have also been made out in the FIR . Mr. Tulsi has submitted that the essential ingredients for creating false document as contained in Section 464 are:

a) Dishonest or fraudulently making of the document; b) Intention to create a belief that it was made by or by the authority of a person; c) Knowledge that it was not made with the authority of that person.

Mr. Tulsi has also submitted that the allegations to the following effect that: "Shri D.K. Sengupta signed the memorandum as Chief Manager, which post was not being occupied by him not he had any authority to sign as such. Shri S.K. Hajra, Law Officer has willfully and unauthorisedly filled up the body portion of the said memorandum of satisfaction." - Prima facie make out an offence under Section 468 and 471 IPC.

Mr. Tulsi has also submitted that the essential ingredients of the offence of cheating as contained in Section 415 IPC are:-

a) Dishonest inducement; b) Delivery of any property as a result of inducement; c) Damage or harm to the person induced.

Mr. Tulsi has submitted that each of such ingredients of the said offence is satisfied on the face of the allegations made in the FIR. There is specific allegation that the representation was made by the officers of the Bank with regard to the existence of stock worth Rs. 17.50 crores for hypothecation to the Bank and credit facility was granted to the tune of Rs. 17.50 crores on the belief of due hypothecation of stock. There is also allegation in FIR that stock worth Rs.12 crores had been fraudulently or dishonestly used or disposed of without any payment to the Bank. Such allegations constitute ingredients of cheating, causing damage to the Bank which was induced because of false statement made by DAIL and its officials. Mr. Tulsi has submitted that entrustment of physical possession of the property is not essential for the offence defined in Section 405 IPC. The expression "whoever being in any manner entrusted with property or with any dominion over property", clearly negatives the contention that since physical possession was not exclusively transferred to the Bank, there can not be a case of entrustment. If the offence under Section 405 IPC is interpreted in the aforesaid manner, it will open the flood gate for Bank frauds, corruption amongst public servants and will endanger the smooth flow of trade and commerce. In support of this contention, Mr. Tulsi has relied in the decision of this court in *The Superintendent and Remembrance of Legal Affairs, West Bengal Vs. S.K.Roy* (1971 (4) SCC 230) It has been held in the said decision that:

There are, however, two distinct parts involved in the commission of the offence of criminal breach of trust. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The

second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

In the case of an offence by a public servant punishable under Section 409, I.P.C. the acquisition of dominion or control over the property must also be in the capacity of a public servant. This is not the same thing as having the authority, as a public servant to get the control or dominion over property annexed with an obligation. The gravamen of the offence is the dishonest misappropriation of the money or property which comes into the possession or under the control of a public servant who has the ostensible authority to receive it even though, technically speaking, from the point of view of view of the distribution of departmental duties under internal rules of an offence, it may not be within the scope of his authority or duty to accept the money. The fact that a public servant acts fraudulently in the exercise of his duties as a public servant to get dominion or control over some property will be an aggravating and not an exculpating circumstance. The "entrustment" results from what the person handing over money or property to a public servant, servant, and believe about the purpose for which he which he hands over money or property is made to think, understand and believe about the purpose for which he hands over money or property to a public servant. It this place because of and due to the exercise of the official authority the requirements of Section 409, IPC, are satisfied.

Ordinarily, it is the ostensible or apparent scope of a public servant's authority when receiving property and not its technical limitations, under some internal rules of the department or office concerned, and the use made by the servant of his actual official capacity which determine whether there is a sufficient nexus or connection between the acts complained of and the official capacity so to bring it within the ambit of Section 409 IPC.

To constitute an offence under Section 409, IPC it is not required that mis-appropriation must necessarily take place after the creation of a legally correct entrustment of dominion over property. The entrustment may arise in "any manner whatsoever", That manner whatsoever", That manner may or may not involve fraudulent conduct of the accused. Section 409, IPC covers dishonest misappropriation in both types of cases; that is itself fraudulent or improper and those where the public servant misappropriation what may have been quite properly and innocently received. All that is required is what may be described as "entrustment" or acquisition of dominion over property in the capacity of a public servant servant who, as a result of it, becomes charged with a duty to act in a particular way, or, at least honestly.

The obligation to act in a certain manner with regard to or to deal honestly with property, over which a public servant obtains dominion or control the use of his official capacity may arise either expressly or impliedly.

Mr. Tulsi has also submitted that the investigations had not been completed in respect of the allegations made in the FIR. At that stage, the High Court must accept each of the allegations made in the FIR as correct on its face value for the purpose of determining as to whether the ingredients of the offences alleged in the FIR are contained therein or not. Mr. Tulsi has submitted that the High Court has grossly erred in quashing the complaints. Mr. Tulsi has also submitted that the High Court is not justified in quashing the FIRs so as to strangle the investigations at the inception. What value to be attached to the allegations made in the FIR is to be examined at trial when on the basis of FIR charge sheet will be framed. It is not the duty of the High Court to embark upon appreciation of evidence in quashing the proceedings. In support of this contention, Mr. Tulsi has relied in the decisions of this Court in *State of Haryana Vs. Bhajan Lal* (1992) (1) SCC 335, *State of Bihar Vs. P.P. Sharma* (1992 (Supp.) (1) SCC 222), *Janata Dal Vs. H.S Choudhary* (1992 (4) SCC 305).

Mr. Tulsi has also submitted that it is not alleged that the FIRs were made with an oblique or mala fide purpose. Hence, the same are not liable to be quashed even before completing the investigations.

Mr. Tulsi has also submitted that a particular act may constitute both civil wrong as well as criminal wrong but merely because civil action is also pursued, such course of action does not render criminal action impermissible. It has been contended by Mr. Tulsi that since the very definition of offence of criminal breach of trust is founded on legal contract touching upon the discharge of trust, almost every case of criminal breach of trust is bound to have an element of civil liability. Policy of the legislature in enacting the offence under Section 405 IPC, therefore, is to treat the breach of contract in the matter of property which is entrusted as an aggravated civil wrong and thereby constituting a criminal offence. That being the policy, to quash a FIR on the ground that a civil remedy has already been invoked would be destructive of the object of the legislation. In this connection, Mr. Tulsi has relied on the decision of this Court in *Collector of Customs and Central Excise, Bhubneshwar, District Puri Vs. Paradip Port Trust and Another* (1990 (4) SCC 205). It has been held in the said decision that:-

Where the same act or event constitutes an offence under Chapter XVI and at the same time constitutes a contravention or abetment of contravention of any of the provisions of the Customs Act or failure to perform any duty prescribed under the Act or amounts to non-compliance with any of the provisions of the Act, there will be possibility of prosecutions and punishment under Chapter XVI of the Act and any other provision of law and at the same time confiscation and penalty under Chapter XVI of the Act.

Mr. Tulsi has also submitted that in cases where civil and criminal remedies are sought to be pursued, the criminal case has to be given preference over civil cases. In support



of this submission, Mr. Tulsi has referred to a decision of this Court in *M. S. Sheriff Vs. The State of Madras and Others* (1954 SCR 1144). It has been held in the said decision that :

Simultaneous prosecution of civil and criminal proceedings regarding the same matter is likely to embarrass the accused and so ordinarily, and in the absence of special circumstances, the criminal proceedings should be given precedence and the civil proceedings should be stayed pending the termination of the criminal.

Mr. Tulsi has also submitted that in a case of gross misappropriation of huge amounts of public funds, delay caused by the accused was not a valid ground for quashing the criminal proceedings. In this connection, Mr. Tulsi has relied on the decision of this Court in *Union of India Vs. B. R. Bajaj* (1994 (2) SCC 277). In the said case, the FIR of 1984 was quashed by the Court in 1986 but nine years, the decision of the High Court was set aside and it was directed that the investigation should recommence. Mr. Tulsi has submitted that FIRs disclose the offences of cheating the nationalised Banks of huge sum of money by the accused in calculated manner. In such circumstances, it will be only proper that the CBI should be permitted to continue with further investigations and on the face of the allegations in the FIRs which clearly constitute offences against the accused, there was no reason to quash the FIRs and thereby stopping the investigation at the threshold. He has, therefore, submitted that the appeal should be allowed and the CBI should be permitted to proceed with the investigation for the purpose of framing the chargesheet.

Mr. Shanti Bhushan, learned Senior Counsel appearing for the respondents, has disputed the contentions made by Mr. Tulsi. He has submitted that the two FIRs did not made out any offence of criminal breach of trust, forgery or cheating and, therefore, the High Court was justified in quashing the said FIRs. Referring to the allegations made in the FIR No. RC-4/87 dated September 14, 1987 that inspite of the Scheme of Arrangement approved by the High Court of Calcutta separating the Tobacco Division of DAIL into a new company i.e. new Tobacco Company Limited M/s DAIL would remain liable for all assets and liabilities of the newly formed subsidiary Company, Mr. Shanti Bhushan has submitted that pursuant to the Scheme of Arrangement duly sanctioned by the Calcutta High Court on or about July 31, 1984, the Tobacco Division of DAIL was transferred to and vested along with all its assets and liabilities in New Tobacco Company Limited with effect from April 1, 1984. DAIL was the transferor Company and New Tobacco Company Limited was the transferee Company. The order of the High Court was to the effect that all the assets and liabilities and duties of the said transferor Company relating to its Tobacco Division be transferred from the said date without further act or deed to the said transferee Company. Accordingly and also pursuant to Section 394 (2) of the Companies Act, 1965 all the assets and liabilities of the Tobacco Division stood transferred to the New Tobacco Company Limited and such assets and liabilities became assets and liabilities of the said transferee Company. The liability of DAIL to

the United Bank of India as on APRIL 1, 1984 stood transferred to New Tobacco Company Limited. The order of the High Court clearly provided that no further act or deed was necessary to give effect to the Scheme of Arrangement. In view of such Scheme of Arrangement, the Board of Directors of the United Bank of India approved the transfer of credit facilities from M/s DAIL to the New Tobacco Company Limited. There was no question of the Board being misinformed of the material facts in the matter. Further in June/July 1985 fresh hypothecation documents were executed by the New Tobacco Company Limited and a memorandum of satisfaction of charge was filed by the Bank in respect of DAIL to the Registrar of Companies. The necessary documents were also filed by the Bank with the Registrar evidencing the charge created in favour of New Tobacco Company Limited.

Mr. Shanti Bhushan has also submitted that the allegation in the FIR that the opinion of Shri S.K.Ghosh, Chief Officer (Legal) of the United Bank of India to the effect that the bank would not be in a position to enforce its right in respect of the transferor Company was erroneous and designedly made, is also incorrect and without any basis. Mr. Shanti Bhushan has submitted that as a matter of fact, the said opinion of Shri S.K.Ghosh in accordance with the Scheme of Arrangement since all the assets and liabilities of the Tobacco Division of DAIL stood transferred to New Tobacco Company from April 1, 1984, Mr. Shanti Bhushan has further submitted that even if it is assumed that such legal opinion was not correct, no ill motive can be assigned to the said Officer because the opinion itself was placed for consideration by the highest administrative body of the Bank, namely, the Board of Directors. Mr. Shanti Bhushan has also referred to the allegation in the FIR that;

"On March 6, 1996 M/s New Tobacco Company Limited submitted a statement to United Bank of India wherein the aggregate value of stocks etc. was to the tune of Rs.5.13 crores only as against Rs.16.55 crores on November 30, 1985. It is alleged that the stocks worth about Rs.12 crores were either fraudulently and dishonestly removed or disposed of without any payment to the bank with whom the same were hypothecated, with the connivance of the concerned bank officials."

Mr. Shanti Bhushan has submitted that it is not alleged that the statement of stocks was incorrect either on March 6, 1985. In fact, two statements correctly pointed out that while the value of the stocks on November 30, 1985 was Rs.16.58 crores, the value of stocks on March 6, 1986 had gone down to Rs.5.13 crores. There was, therefore, no false statement in the declaration of stocks. Mr. Shanti Bhushan has submitted that since the stocks were hypothecated and not pledge with the bank the possession over the stocks was with the Company and not with the bank. The difference between a pledge and a hypothecation is that while in the case of pledge the stocks are given in the custody in the bank and are kept under their key and any removal of any part of those stocks by the debtor, without the consent of the Bank would be an offence, it would not be so in the case of hypothecation. In a case of hypothecation, there is only a floating charge on various assets. The possession over

those assets continues to be with the debtor and debtor was always entitled to remove any part of those stocks and sell them from time to time. Mr. Shanti Bhushan has submitted that if there is a contractual term that the value of the hypothecated stocks should not be allowed to go down below a particular amount, there may be a breach of contract the Bank to take civil proceeding for damages against the debtor. However, it has not been alleged that there has been breach of any such contract particularly when documents which are being relied upon by the Bank themselves show that the value of the hypothecated property continued to be much more than the amount of loan at any point of time, much more than the amount of loan at any point of time. If a reference is made to the said balance sheet, it would show that the advances under the cash credit facility granted by the United Bank of India were secured not only the hypothecation of stocks but also by the hypothecation of book debts and plant and machinery of the Company's Tobacco Division. Mr. Shanti Bhushan has submitted that while the loans due to the United Bank of India amounted to Rs.13,78,82,685.17, the value of the hypothecated property on the same date was nearly double of that amount. Reference to the balance sheet would show that the book debts comprised goods worth Rs. 15,34,82,521.12 and machinery as on March 31, 1984 worth Rs.1,14,71,499 and the stocks and spares were of the value of Rs.12,39,27,002.19 as on March 31, 1984.

Mr. Shanti Bhushan has further submitted that even in the case of the FIR relating to the Canara Bank, it is apparent that the balance sheet of Tobacco Division of DAIL as on March 31, 1984 which was filed by the CBI, showed that the value of the property hypothecated to united Bank of India exceeded the amount of the loan as on that date by more than Rs.15 crores and thus some part of the stocks worth more than Rs.2 crores were available for being hypothecated to Canara Bank. Mr. Shanti Bhushan has submitted that the CBI had misread the balance sheet and erroneously proceeded on the footing that it was only the stocks which were alone hypothecated to the United Bank of India. Balance Sheet itself indicated that book debts of more than Rs. 15 crores and the machinery worth more than Rs. 2 crores were also hypothecated to the United Bank of India and thus stocks worth more than Rs.2 crores were clearly available for hypothecation to the Canara Bank.

Mr. Shanti Bhushan has referred to the allegations in the FIR that:

"The Ultimate credit facility limit sanctioned to M/s DAIL in the account of M/s New Tobacco Company as on 12.1.1984 was to the tune of Rs.17.50 crores subject to drawing power agreeing to hypothecation of raw materials, stocks etc, M/s DAIL was submitting the statements of raw materials held by its division M/s New Tobacco Company and the same was liable for physical inspection and verification by Bank officials."

Mr. Shanti Bhushan has submitted that the above allegations did not make out any offence of criminal breach of trust. According to Mr. Shanti Bhushan, the essential

ingredients of criminal breach of trust is entrustment of property or entrustment of dominion over property. The grant of credit facility giving of a loan in pursuance of that credit facility cannot possibly amount to entrustment of property. A loan is quite different form entrustment of money. Similarly, when the debtor hypothecates his goods to Bank by way of security, there is no entrustment of those goods to the bank by the debtor. Even if there is any contravention of the terms of the contract under which credit facilities are given, it will be merely a breach of contract for which the Bank may made debtor liable for damages under the civil law. There will be no occasion for committing any offence of criminal breach of trust. In support of this contention, Mr Shanti Bhushan has relied on the decision of this Court in *Velji Raghavji Patel Vs. State of Maharashtra* (1965 (2) SCR 429). It has been held in the said decision that in order to establish entrustment of dominion over property to an accused person, the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result must be further shown that his dominion was the result of entrustment.

Mr. Shanti Bhushan has also referred to a decision of this Court in *State of Gujarat Vs. Jaswantlal Natha lal* (1968 (2) SCR 408). In the said decision it has been indicated that the term 'entrusted' found in Section 405 IPC Governs not only the words with the property immediately following it but also the words with the property immediately following it but also the words or 'with any dominion over the property' occurring thereafter. Before there can be any entrustment, the entrustment carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. A mere transaction of sale cannot amount to an entrustment. It has been observed in the said decision that although the government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier, that circumstance does not make the transaction in question anything other than a sale, After delivery of the cement, the government has neither any right not dominion over it, It the purchaser had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same, But the court was unable to hold that there was any breach of trust.

Coming to the question of offences under Sections 467, 468 and 471 IPC Mr. Shanti Bhushan has also submitted that no offence under the aforesaid Sections even prima facie, has been committed even on the face value of the Allegations in the FIR. Mr. Shanti Bhushan has submitted that it is the case of the CBI claims of both the Banks have been satisfied and the disputes have been compromised in the civil suits filed by the Banks. Accordingly, it will no longer be a fit case for carrying out further investigation in respect of the offences alleged.

referring to a recent decision of this Court in *Feroze Dinshaw Lam Vs. Union of India* (Judgment Today (3) SC

131). MR. Shanti Bhushan has submitted that in that case although a clear offence of fabrication of evidence had been established against Godrej Company and its Directors and officials, the Supreme Court set aside the order of the High Court directing a complaint to be filed holding that in view of all the circumstances including the payment of the Excise Duty, it would not be expedient to proceed against the accused persons, Mr. Shanti Bhushan has submitted that any further investigation in the matter of offences alleged in the FIRs after such a long lapse of time and after the claims of the Banks have been satisfied in Civil Suits instituted by the Banks, is not at all expedient and on that score also no interference by this Court under the discretionary jurisdiction under Article 136 of the Constitution against the impugned decision of the High Court is not called for.

Mr. Shanti Bhushan has also submitted that the first FIR was registered in 1987 and the second one was registered in 1989. The challenge to the FIRs were made in the Calcutta High Court only in 1991. The CBI therefore, had more than four years time to complete the investigations without any interruption. But admittedly the investigations have not yet been completed. Mr. Shanti Bhushan has submitted that FIRs have been filed in order to resort to art twisting tactics by the CBI and for launching a fishing and roving enquiry without any reasonable basis. In any event, When the interest of the Banks have been safeguarded in the civil suits instituted by the Banks having ended in compromise, no useful purpose will be served in proceeding with further investigation after such a long lapse of time. Such course of action, in the facts of the case, will be an abuse of the process of law and impugned order of quashing the FIRs being reasonable no interference by this Court is warranted. The appeals, therefore, should be dismissed.

After giving our careful consideration to the facts and circumstances of the case and the submission made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint. therefore, had more than four years time to complete the investigation without any interruption. But admittedly the investigations have not yet been completed. Mr. Shanti Bhushan has submitted that FIRs. have been filed in order to resort to art twisting tactics by the CBI and for launching a fishing and roving enquiry without any reasonable basis. In any event, when the interest of the Banks have been safeguarded in the civil suits instituted by the Banks having ended in compromise, no useful purpose will be served in proceeding with further investigation after such a long lapse of time. Such course of action, in the facts of the case, will be an abuse of the process of law and impugned order of quashing the FIRs being reasonable no interference by this Court is warranted. The appeals, therefore, should be dismissed.

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action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold. It is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, the case of Bhajan Lal (supra), since relied on by Mr. Tulsi, the guiding principles in quashing a criminal case have been indicated.

In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in wide sense in Section 405 I.P.C. Such expression includes all case in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 I.P.C. is not necessarily a term of law. It has wide and different implication in different context. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'Trust' in Section 405 I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailer and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person or for his benefit. In a case of Pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the Respondents moved the High Court only in 1991 although the first Fir was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the purpose of framing the charge.

Although Mr. Tulsi, the learned Additional Solicitor General, is justified in his submission that a particular act may constitute both civil wrong as well as criminal wrong and merely because a civil action is also pursued, it does not render the criminal action impermissible, in the facts of the case, it appears to us that long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility which was given to DAIL for its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, cannot be held to be per se mala fide or illegal in view of the provisions of Section 394 of the Companies Act. That apart, the legal opinion of the said Senior Manager (Legal) was placed for consideration by the

highest administrative body of the bank i.e. the Board that the credit liability which stood in favour of DAIL should be transferred in favour of the New Tobacco Company Limited. In the aforesaid circumstances, it appears to use that even if the Senior Manager (Legal) or any other officer of the bank had not acted properly, in view of the fact that the ultimate decision was taken by the Board of Directors, it cannot be reasonably held that some of the Officers of the Bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board.

In the facts of the case, it appears to use that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. It Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and said suits have been compromised on receiving the payments from the concerned Companies. Even if an offence of cheating is prima facie constituted, such offence is compoundable offence and compromise decrees passed in the suits instituted by the banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring official despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further, In our view proceeding further with the complaints will not be expedient. In the special facts of the case, it appears to us the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals.