

M/S SUVARNA COOPERATIVE BANK LTD.

A

v.

STATE OF KARNATAKA AND ANR.

(Criminal Appeal No. 1535 of 2021)

DECEMBER 09, 2021

B

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Code of Criminal Procedure, 1973 – ss.482 and 319 – Quashing of criminal proceedings – Held: Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation – During the trial if it is found that other accused persons who committed the offence are not charge-sheeted, the Court may array those persons as accused in exercise of powers u/s.319 CrPC.

C

Allowing the appeal, the Court

HELD: The impugned judgment and order passed by the High Court quashing the criminal proceedings against the private respondent– original accused no.1 is unsustainable, both, in law and on facts. The High Court observed that in absence of the officers of the drawee bank informing the payee's banker with reference to dishonour of one of the cheques well within the time stipulated in the Clearing House Rules which amounts to offence under Sections 408 and 409 of IPC, without the presence of accused nos. 2 and 3 in the PCR, the charge-sheet could not have been filed only against accused no.1. The aforesaid cannot be a ground to quash the criminal proceedings against the accused who was charge-sheeted by the Investigating Officer after thorough investigation. Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation. During the trial if it is found that other accused persons who committed the offence are not charge-sheeted, the Court may array those persons as accused in exercise of powers under Section 319 Cr.P.C. Nothing has been

D

E

F

G

H

- A **further observed by the High Court on merits and/or on the allegations against the private respondent– original accused no.1. Under the circumstances, the impugned judgment and order passed by the High Court quashing the criminal proceedings against the respondent no.2– original accused no.1 deserves to be quashed and set aside. [Para 4, 4.1 and 4.2][391-D-F; 392-C-F]**
- B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1535 of 2021.

- C From the Judgment and Order dated 17.07.2014 of the High Court of Karnataka at Bangalore in Criminal Petition No.5763 of 2013.

Amith Sharma, A. Karthik, Advs. for the Appellant.

H. V. Nagaraja Rao, Hemant Kumar Sagar, E. C. Vidya Sagar, Advs. for the Respondents.

- D The Judgment of the Court was delivered by
- M. R. SHAH, J.

- 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.07.2014 passed by the High Court of Karnataka passed in Criminal Petition No.5763 of 2013 by which the High Court
- E has quashed the criminal proceedings against the private respondent herein for the offences under Sections 120B, 408, 409, 420 and 149 of IPC, the original complainant has preferred the present appeal.

- 2. That criminal proceedings were initiated against the private respondent herein and others. The complainant – bank filed the complaint
- F under Section 200 Cr.P.C. before the Court of learned Addl. Chief Metropolitan Magistrate, Bangalore being PCR 15250 of 2009 (re-numbered as CC 22308 of 2012). Thereafter an FIR (Crime No.127 of 2010) was registered before the Chickpet Police Station under Sections 120B, 408, 409, 420 and 149 of IPC. That on completing the investigation a charge-sheet was filed against the private respondent herein. The private respondent herein – original accused no.1 approached the High Court by way of Criminal Petition No.5763 of 2013 to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C.
- G
- H 2.1 By the impugned judgment and order the High Court has quashed the criminal proceedings against the private respondent – original

accused no.1 mainly on the ground that in absence of the original accused nos. 2 and 3 in the PCR and in absence of the officers of the drawee bank informing the payee's banker with reference to dishonour of one of the cheques well within the time stipulated in the Clearing House Rules, they can be said to have committed the offences under Sections 408 and 409 of IPC, the charge-sheet could not have been filed only against accused no.1. By observing so the High Court has quashed the criminal proceedings against the original accused no.1.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court quashing the criminal proceedings against the original accused no.1, the original complainant has preferred the present appeal.

3. We have heard Shri Amith Kumar, learned counsel appearing for the appellant and Shri H.V. Nagaraja Rao, learned counsel appearing for the respondent.

4. We have perused and considered the impugned judgment and order passed by the High Court and the reasoning given by the High Court mentioned in paragraphs 7 and 8 while quashing the criminal proceedings against the original accused no.1. Having gone through and considered the reasoning given by the High Court while quashing the criminal proceedings against original accused no.1, we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings against the private respondent herein – original accused no.1 is unsustainable, both, in law and on facts. The High Court has observed that in absence of the officers of the drawee bank informing the payee's banker with reference to dishonour of one of the cheques well within the time stipulated in the Clearing House Rules which amounts to offence under Sections 408 and 409 of IPC, without the presence of accused nos. 2 and 3 in the PCR, the charge-sheet could not have been filed only against accused no.1. While quashing the criminal proceedings the High Court has observed in para 8 as under:

“8. In the light of the complainant keeping quite in not taking any action against incomplete charge sheet, which is filed by the first respondent police in arraigning only accused nos. 1 and 6 as accused in CC.No.22308/2012, the prosecution against two of them without the presence of other persons, who are said to have

A

B

C

D

E

F

G

H

- A involved in the same, would not be complete charge sheet and the alleged offence would not be complete against two of them without there being the accomplice to the said act also being arraigned as the accused. In that view of the matter, this Court feel that prosecuting accused nos. 1 and 6 in the instant case, in the absence of accused 2 and 3, would be of no avail and would not take this matter to the logical end. Hence, the same is required to be quashed.”

- B 4.1 The aforesaid cannot be a ground to quash the criminal proceedings against the accused who was charge-sheeted by the Investigating Officer after thorough investigation. Merely because some other persons who might have committed the offences, but were not arrayed as accused and were not charge-sheeted cannot be a ground to quash the criminal proceedings against the accused who is charge-sheeted after a thorough investigation. During the trial if it is found that other accused persons who committed the offence are not charge-sheeted,
- C D the Court may array those persons as accused in exercise of powers under Section 319 Cr.P.C. Merely because some of the persons who might have committed the offences are not charge-sheeted, cannot be a ground to quash the proceedings against the accused charge-sheeted after having found *prima facie* case against him after investigation.
- E F Nothing has been further observed by the High Court on merits and/or on the allegations against the private respondent herein – original accused no.1.

- G 4.2 Under the circumstances the impugned judgment and order passed by the High Court quashing the criminal proceedings against the respondent no.2 herein – original accused no.1 deserves to be quashed and set aside.

- H 5. In view of the above and for the reason stated above present appeal succeeds. Impugned common judgment and order passed by the High Court quashing the criminal proceedings against the private respondent no.2 – original accused no.1 initiated pursuant to private complaint filed in PCR 15250 of 2009 filed before learned Addl. Chief Metropolitan Magistrate, Bangalore which were subsequently registered as FIR No.127 of 2010 on the file of Chickpet Police Station and thereby registered as CC No.22308 of 2012 is hereby quashed and set aside. Present appeal is allowed accordingly.

Now, on quashing and setting aside the impugned judgment and order, the respondent no.2 herein – original accused no.1 be further prosecuted for the offences for which he was charge-sheeted and shall face trial which shall be dealt with and considered in accordance with law and on its own merits. A

Bibhuti Bhushan Bose

Appeal allowed.