

Satish Mehra vs State Of N.C.T. Of Delhi And Anr on 22 November, 2012

Author: Ranjan Gogoi

Bench: Ranjan Gogoi, P. Sathasivam

| Reportable |

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPEAL No.1834 of 2012
(Arising out of SLP (Crl.) No.569 of 2012)

Satish Mehra ... Appellant

Versus

State of N.C.T. of Delhi & Anr. ...Respondents

WITH

CRIMINAL APPEAL No.1836 of 2012
(Arising out of SLP (Crl.)No.3546 of 2012)

WITH

CRIMINAL APPEAL No.1835 of 2012
(Arising out of SLP (Crl.)No.910 of 2012)

J U D G M E N T

RANJAN GOGOI, J

Leave granted.

2. In a proceeding registered as FIR case No. 110/94 (P.S. Connaught Place) charges under different provisions of the Indian Penal Code were framed by the learned Trial Court, inter-alia, against the accused appellants G.K. Bhatt and R.K. Arora. In the revision petition filed before the High Court (Crl. Rev. P. No. 304/2003) for quashing of the charges framed, relief has been denied to the two appellants. However, part relief had been granted to two other accused i.e. Anita Mehra (petitioner in Crl. M.C. No. 2255/2003) and S.K. Khosla (Petitioner in Crl. Rev.P. No.299/2003). While denial of relief by the High Court by the impugned order dated 13th October, 2011 has been challenged in the appeals filed by the accused R.K. Arora and G.K. Bhatt, the grant of partial relief to one of the two co-

accused i.e. S.K. Khosla has been challenged in the appeal filed by the complainant/ first respondent, Satish Mehra.

3. The facts giving rise to the present appeals may now be noted in some detail.

The appellant Satish Mehra and accused Anita Mehra were married some time in the year 1980. At the relevant point of time they were living in the USA. From about October, 1992, the relations between husband and wife became strained and both were locked in a series of litigations including litigations pertaining to custody of the children born out of the marriage.

4. On 06.01.1994, the appellant Satish Mehra lodged a complaint before the Additional Deputy Commissioner of Police New Delhi that he along with his wife Anita Mehra had opened five Foreign Currency Non-Resident Fixed Deposits (FCNR FD) of the total value of about Rs.20,00,000/- in their joint names. According to the complainant, accused S.K. Khosla who is his father-in-law had forged his signatures on the F.D receipts and got the same renewed in the sole name of Anita Mehra who, thereafter, encashed the value thereof and unauthorisedly received the payments due. The details of the FCNR FD, according to the complainant, are as follows:

- "i) FCNR FD Nos.9/92 and 22/91 with Canara Bank;
- ii) FCNR FD Nos.103402 and 103403 with Punjab and Sind Bank and ;
- iii) FCNR FD No. 0756223 with Vyasa Bank."

5. On receipt of the aforesaid complaint, FIR No.110/94 was registered, on investigation whereof the following facts appear to have come to light:

- I) S.K. Khosla had made an endorsement on the reverse of the receipt pertaining to FCNR FD Nos.22/91 to the effect that the said FDR be renewed in the sole name of Anita Mehra;
- II) On 23.11.1992 and 12.03.1993 Canara Bank renewed FCNR FD Nos.22/91 and 9/92 respectively on the basis of the letters dated 09.10.1992 written by Anita Mehra to the Bank requesting for the said renewals. Pursuant to the said renewals made by the Bank, Anita Mehra encashed FD No. 22/91;
- III) Before FD No.9/92 could be encashed by Anita Mehra the Bank cancelled the renewal of the said FD in the sole name of Anita Mehra and re-renewed the same in the joint names of Anita Mehra and Satish Mehra;
- IV) On 09.11.1992 Punjab and Sind Bank renewed FDs Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis of an endorsement made by S.K. Khosla on the reverse of the receipt of each of the said FDs to the effect that the said FDs be renewed in the sole name of Anita Mehra;
- V) Punjab and Sind Bank claimed to have renewed the FD Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis

of a letter dated 09.10.1992 written by Anita Mehra to the Bank requesting for such renewal but the said letter seems to be a manipulated document as it was received by the Bank on 09.11.1993 which was much after the renewal of the said FDs; and VI) On 22.03.1993 Vyasa Bank renewed FCNR FD No. 0756223 on the basis of a Investment Renewal Form dated 22.03.1993 signed by both Satish Mehra and Anita Mehra; however Satish Mehra claimed that he had made no such request to Vyasa bank and that he had misplaced a blank Investment Renewal Form of Vyasa Bank which contained his signature.

VII) There was an endorsement of the accused S.K. Khosla in the Investment Renewal Form to the effect that FD No. 0756223 of Vyasa Bank be renewed in the sole name of accused Anita Mehra as against the joint names of Anita Mehra and Satish Mehra. The signatures of Anita Mehra and Satish Mehra in the Investment Renewal Form appear to be old and faded whereas the endorsement made by S.K.Khosla on the said form is a fresh one. The passport number of Satish Mehra entered in the said Form is the old/surrendered passport of the said person.

6. In the light of the aforesaid facts revealed in the course of investigation of FIR No. 110/94, a cancellation report was filed before the learned trial court. The appellant Satish Mehra filed his objections to the said cancellation report. Thereafter, on a due consideration, the learned trial court directed further investigation in the matter in the course of which the FD receipts in question; the letters dated 09.10.1992 purportedly of accused Anita Mehra to the Canara and Punjab and Sind Bank; the Investment Renewal Form dated 22.03.1993 submitted to Vyasa Bank and the admitted signatures of accused Anita Mehra, S.K. Khosla and the complainant Satish Mehra were sent to the Central Forensic Laboratory. On receipt of the report of the laboratory, charge sheet dated 28.08.1997 was filed by the investigating agency against the accused S.K. Khosla alone.

7. The learned trial court, however, directed summons to be issued to the two appellants G.K. Bhat, Chief Manager of the concerned Branch of Canara Bank and R.K. Arora, Senior Manager of the said Branch as well to one A.P. Singhna, Manager of Punjab and Sind Bank and also to the accused Anita Mehra (wife of the complainant) for trial for offences punishable under Sections 420, 468, 471 read with Section 120 B of the Indian Penal Code.

8. Against the aforesaid order of the learned trial court, the High Court of Delhi was moved by the accused for setting aside the order issuing summons and for quashing the proceeding as a whole. By order dated 23.10.2002, the High Court took the view that as all issues and contentions raised can be so raised before the learned trial court at the time of framing of charge, interference would not be justified. Thereafter, by order dated 21.12.2002 and 08.01.2003, the learned trial court framed charges against the accused appellants, G.K. Bhat and R.K. Arora under Sections 120B and 420 of the Indian Penal Code (in respect of FD Nos. 22/91 and 9/92 of Canara Bank). Charges were also framed against accused S.K. Khosla and Anita Mehra under Sections

120 B, 420, 467, 468, 471 IPC in respect of all five FDs.

9. Aggrieved by the aforesaid orders of the learned trial court, all the accused moved the High Court of Delhi for quashing of the charges framed against them and also for interference with the Criminal proceedings pending against the accused before the learned trial court.

10. The High Court, by the impugned order dated 13.10.2011, while declining any relief to the appellants G.K. Bhat and R.K. Arora, set aside the charges framed against accused S.K. Khosla under Sections 120 B and 420 IPC in respect of FD Nos. 22/91 and 9/92 as well as the charges framed against the said accused under Sections 467, 468 and 471 IPC read with Section 120 B IPC. In so far as the accused Anita Mehra is concerned, the High Court interfered with the charges framed against the aforesaid accused under Sections 467, 468 and 471 read with Section 120 B. The rest of the charges in so far as the aforesaid two accused S.K. Khosla and Anita Mehra is concerned were maintained by the High Court.

11. Aggrieved, the present appeals have been filed by accused G.K. Bhat and R.K. Arora in so far as FD Nos. 22/91 and 9/92 are concerned. While the other accused have not challenged the order of the High Court declining full and complete reliefs as prayed for by them, it is the complainant/first informant, Satish Mehra, who has instituted the connected appeal in so far as the part relief granted to accused S.K. Khosla is concerned.

12. We have heard S/Shri M.N. Krishnamani, Brijender Chhahr, P.V.Shetty and Mukul Gupta, learned senior counsel for the respective parties.

13. Learned counsel for the appellants G.K.Bhat and R.K. Arora has argued that no material whatsoever has been brought on record to, even prima facie, show the involvement of either of the accused – appellants with any of the offences alleged. Mere holding of the office of Chief Manager and Senior Manager of the concerned Branch of the Canara Bank, by itself, will not make the accused – appellants liable unless the positive role of either of the appellants in the renewal of the FDs in the sole name of accused Anita Mehra or in the encashment of one of the FDs (FD No.22/91) by the aforesaid accused is disclosed. Learned counsel has also relied on the provisions of the Regulations/Guidelines, relating to Fixed Deposit, as in force in the Bank to contend that the action of accused – appellants has been in conformity with the mandate of the Banking Norms even if it is to be assumed that they had any role to play in the matter of renewal of the FDs in the sole name of the accused Anita Mehra and the subsequent encashment of FD No.22/91. On the other hand, learned counsel for the first informant /appellant, Satish Mehra has contended that the connivance of the Bank officials in the fraudulent renewal of the FDs is ex facie apparent and further that the endorsements made by accused S.K. Khosla on the reverse of the FDs and in the Investment Renewal Form of Vyasa Bank clearly attract the ingredients of the offence of ‘forgery’ as defined under Section 464 of the IPC. It is, therefore,

submitted that the interference made by the High Court with the charges framed under Sections 467, 468, 471 and 120B IPC against accused S.K. Khosla is not tenable in law.

14. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this court in R.P. Kapur vs. State of Punjab[1] wherein the parameters of exercise of the inherent power vested by Section 561A of the repealed Code of Criminal Procedure, 1898, (corresponding of Section 482 Cr.P.C., 1973) had been laid down in the following terms :

“ (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.”

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available

for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

16. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this court in *State of Karnataka vs. L. Muniswamy and others*[2] which may be usefully extracted below :

“ 7. The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

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This section is contained in Chapter XVIII called “Trial Before a Court of Session”. It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

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In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of

mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

It would also be worthwhile to recapitulate an earlier decision of this court in Century Spinning & Manufacturing Co. vs. State of Maharashtra[3] noticed in L. Muniswamy's case (Supra) holding that the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the materials warrant the framing of the charge. It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial.

17. While dealing with contours of the inherent power under Section 482 Cr.P.C. to quash a criminal proceeding, another decision of this court in Padal Venkata Rama Reddy alias Ramu vs. Kovvuri Satyanaryana Reddy and others reported in (2011) 12 SCC 437 to which one of us (Justice P.Sathasivam) was a party may be usefully noticed. In the said decision after an exhaustive consideration of the principles governing the exercise of the said power as laid down in several earlier decisions this court held that:

31. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in Bhajan Lal[4]. The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution."

18. In an earlier part of this order the allegations made in the FIR and the facts disclosed upon investigation of the same have already been noticed. The conclusions of the High Court in the petitions filed by the accused for quashing of the charges framed against them have also been taken note of along with the fact that in the present appeals only a part of said conclusions of the High Court is under challenge and therefore, would be required to be gone into.

19. The view expressed by this Court in Century Spinning's case (supra) and in L. Muniswamy's case (supra) to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a

criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in *Century Spinning and Muniswamy (supra)*. It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants, i.e., G.K. Bhat and R.K. Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No. 21/91 to Anita Mehra or in cancelling the FD No.9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge sheet filed before the court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused – appellant G.K. Bhat and R.K. Arora.

20. The next question that has to be addressed is whether the criminal charges against accused S.K. Khosla under Sections 120B and 420 IPC in so far as FD Nos. 22/91 and 9/92 are concerned along with the charges under Sections 467, 468 and 471 read with Section 120B of the IPC had been rightly quashed by the High Court. From the

materials on record it appears that in so far as FD No. 22/91 is concerned an endorsement on the reverse of the FD was made by accused S.K. Khosla that the said F.D. may be renewed in the name of Anita Mehra. However, renewal of the said FD was made by the Bank on the basis of a letter dated 09.10.1992 written by Anita Mehra to the Bank.

If the above fact has been revealed in the course of investigation of the FIR no liability in respect of the FD bearing No.22/91 can be fastened on the accused S.K. Khosla. Neither is there any allegation against S.K. Khosla with regard to receipt of the money against the aforesaid FD by Anita Mehra. Similarly in respect of FD bearing No.9/92 there is no allegation that renewal of the said FD was made on the basis of any endorsement or request made by S.K. Khosla. In the light of above facts it cannot be held that the High Court had committed any error in quashing the charges under Sections 120B and 420 IPC against the accused S.K. Khosla in so far as the aforesaid two FDs, i.e. FD Nos.22/91 and 9/92, are concerned.

21. Coming to the charges under Sections 467, 468, 471 read with Section 120B IPC framed against accused S.K. Khosla, we do not find that FD Nos.22/91 and 9/92 of Canara Bank and FDS Nos.103402 and 103403 of Punjab and Sind Bank were renewed in the sole name of Anita Mehra on the basis of the endorsement made on the reverse of the FD receipts by accused SK Khosla to the above effect. In fact, the said FDs were renewed on the basis of the letters addressed to the Bank by accused – Anita Mehra. However, in respect of FD No.0756223 of Vyasa Bank it appears that renewal of the aforesaid FD in the sole name of Anita Mehra was made on the basis of the Investment Renewal Form dated 22.03.1993 which was signed by both Satish Mehra and Anita Mehra. The said form also contained an endorsement made under the signature of accused SK Khosla to the effect that the FD be renewed in the sole name of Anita Mehra. It has been found upon investigation of the FIR and it has also been recorded by the learned trial court as well as by the High Court that the signatures of Anita Mehra and Satish Mehra on the aforesaid Investment Renewal Form were old signatures and that the Investment Renewal Form had been misplaced by Satish Mehra. The particulars of Satish Mehra entered in the said Investment Renewal Form, i.e., Passport number etc. being of the expired Passport can be understood to be facts supporting the allegations made in the FIR and the conclusion of the investigating agency that the accused S.K. Khosla had used an Investment Renewal Form signed by Satish Mehra which was misplaced by him. The signature and the endorsement made by S.K. Khosla on the said form had also been found, upon investigation, to be relatively fresh in comparison to the signatures of Anita Mehra and Satish Mehra on the said form. This is an additional fact that has to receive due consideration in the process of determination of the prima facie liability of the accused S.K. Khosla under Sections 467, 468 and 471 read with Section 120B of the Indian Penal Code.

22. Section 464 of Indian Penal Code which defines the offence of “forgery” encompasses a dishonest or fraudulent act of a person in making a document with the intention of causing it to be believed that such document was made, signed, sealed etc. by or by the authority of a person by whom or by whose authority he knows that it was not made,

signed, sealed, executed etc. If such an act of a person is covered by the definition of "forgery" contained in Section 464 of the Penal Code we do not see as to why the action of the accused S.K. Khosla in making the endorsement in the Investment Renewal Form dated 22.03.1993 of Vyasa Bank, in the light of the surrounding facts and circumstances already noted, cannot, prima facie, amount to making of a document with an intention of causing it to be believed that the same was made by or by the authority of the joint account holder Satish Mehra. The said document having contained an endorsement that the FD be altered/renewed in the single name of accused Anita Mehra and the Bank having so acted, prima facie, the commission of offences under Sections 467, 468 and 471 read with Section 120B IPC, in our considered view, is disclosed against the accused S.K. Khosla. The order of the High Court quashing the charges framed against S.K. Khosla under Sections 467, 468 and 471 IPC read with Section 120B IPC in so far as the Investment Renewal Form dated 22.03.1993 and FD No.0756223 with Vyasa Bank, therefore, is clearly unsustainable. We therefore interfere with the aforesaid part of the order of the High Court in so far as the accused S.K. Khosla is concerned.

23. Consequently and in the light of the foregoing discussions we allow the Criminal Appeals arising out of Special Leave Petition (Crl) Nos. 3546 and 910 of 2012 and allow the Criminal appeal arising out of Special Leave petition (Crl) No. 569 of 2012 in part and to the extent indicated above.

.....J.
[P. SATHASIVAM]

.....J.
[RANJAN GOGOI]

New Delhi,
November 22, 2012

[1] AIR 1960 SC 866 [2] AIR 1977 SC 1489 [3] AIR 1972 SC 545 [4] 1992 Supp. (1) SCC 335
