

(2008) 04 MAD CK 0185

In the Madras High Court

Case No : Criminal O.P. No. 4764 of 2008

A. Ravishankar Prasad and A. Manohar Prasad

APPELLANT

Vs

State by Superintendent of Police, C.B.I., Banking Securities
and Fraud Cell, Bangalore

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0185

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : K. Asokan, for M/s. Gita Asokan, for the Appellant; N.
Chandrasekaran, Special Public Prosecutor for CBI, for the Respondent

Judgement

M. Jeyapaul, J.—Criminal Original Petition No. 4764 of 2008 is filed by A10 A. Ravishankar Prasad, All A. Manohar Prasad and A12 M/s. Ravishankar Films Private Limited represented by A10 and All in C.C No. 71 of 2001;

Criminal Original Petition No. 4765 of 2008 is filed by the very same two accused figuring as A5 and A6 and A8-M/s.Gemini Arts (P) Limited represented by A5, A6 and A7 in C.C No. 80 of 2001;

Criminal Original Petition No. 4766 of 2008 is filed by the very same two accused figuring as A5 and A6 and A7-M/s.Gemini Pictures Circuits (P) Limited represented by A. Ravishankar Prasad in C.CNo. 81 of 2001; and

Criminal Original Petition No. 4767 of 2008 is filed by the very same two accused figuring as A4 and A5 and A6-M/s.Prasad Properties & Investments (P) Limited represented by A4 and A5 in C.C No. 82 of 2001 seeking quashment of the aforesaid criminal proceedings initiated against them.

2. The petitioners in Criminal Original Petition No. 4764 of 2008 have been charged under sections 120B read with 420, 467, 468 and 471 of the Indian Penal Code and sections 13(2) read with 13(I)(d) of the Prevention of Corruption

Act, 1988. The petitioners in Criminal Original Petition No. 4765 of 2008 have been charged under sections 120B read with 420 of the Indian Penal Code and sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioners in Criminal Original Petition No. 4766 of 2008 have been charged under sections 120B read with 420,467,468 and 471 of the Indian Penal Code and sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioners in Criminal Original Petition No. 4767 of 2008 have been charged under sections 120B read with 420,468 and 471 of the Indian Penal Code and under sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

3. As the parties are same and the charges similar, all the four cases are taken up for common disposal.

4. The sum and substance of the plea of the petitioners found in all these petitions seeking quashment is as follows:-

i) Some of the witnesses have been examined in all the cases, but, they have not spoken anything against the petitioners during the course of trial. The Indian Bank had several non performing assets during the year 1990. The petitioners were invited to take over the sinking Gemini Group and turn around its business. Petitioners 1 and 2 availed loan and credit facilities from Indian Bank and have now successfully turned around the business inspite of the fact that the Bank has been putting spokes at every stage of the development of the Company.

ii) The Indian Bank released advertisements in the newspapers putting the general public on warning about the purchase of office space from the Gemini Group. As the claim of the Bank in the warning notice was wrong, petitioners 1 and 2 approached the City Civil Court at Chennai and filed O.S No. 8922 of 1996 on 9.7.1996. When petitioners 1 and 2 offered the properties to be sold by the Bank, the Bank had taken a stand that they were not in the real estate business. The Bank neither took up the property for sale nor permitted petitioners 1 and 2 to go in for sale of the properties. The golden opportunity of sale of the property and settlement of all the loans was sabotaged by release of the aforesaid advertisement by the Indian Bank.

iii) The Bank, thereafter, laid recovery applications before the Debt Recovery Tribunal (DRT) and obtained several interim orders. The DRT suggested a settlement by which the Bank would recover its dues without crushing the industry and its business. It also directed the parties to work out their remedies before the DRT itself. Petitioners 1 and 2 offered to agree for a settlement and accordingly, a compromise memo dated 21.11.2000 was filed before the DRT. As per the terms of the compromise, petitioners 1 and 2 paid rupees ten Crores in two instalments in time by sale of one of the properties. But, unfortunately, the Bank refused to release the title deeds to enable petitioners 1 and 2 to hand it over to the buyer.

iv) Then, petitioners 1 and 2 rushed to the DRT and sought for return of the title

deeds of the property. DRT directed the Bank to return the title deeds. Thereafter, petitioners 1 and 2 received order of attachment on 12.2.2002 from the Tribunal on the application made by the Indian Bank attaching items 2,18 and 19 of the annexure to the compromise memo. Interim debt recovery certificate dated 11.12.2001 for recovery of Rs. 113 Crores together with interest at 13% per annum was passed by the DRT.

v) Petitioners 1 and 2 at all times were ready and willing to comply with the terms of compromise. But, they were prevented from complying with the terms. Now, petitioners 1 and 2 have settled their entire outstanding dues and legal charges to the Bank on the recovery certificate issued to the DRT, Chennai. The Bank also filed a memo recording the full satisfaction of the decree passed by the DRT. The Tribunal also passed an order on 9.4.2007 based on the memo filed by the parties. Thereafter, the respondent registered the first information report against the bank officials and the petitioners.

vi) The main allegations against the petitioners found in the FIR are that they received facilities from the Indian Bank without proper sanction, they diverted funds to the Group Companies by floating four benami Partnership Firms and they also offered intangible securities as collateral. None of the witnesses examined has spoken to the possible involvement of the petitioners in the offences alleged. The petitioners have already spent as many as seven years in the Trial Court. It may take about another five or six years for the Trial Court to conclude the trial of the case and pass a verdict. The prosecution can never be successful in its case with the materials available on record. The entire matter is basically civil in nature. Borrowing money and paying it back is nothing but a part of commercial venture. The delay in payment of outstanding dues has occasioned the launching of prosecution. Therefore, the petitioners have sought for quashment of the criminal proceedings in C.C. Nos. 71, 80, 81 and 82 of 2001.

5. The stand of the respondent-CBI taken in the counter filed by them in Criminal Original Petitions 4764 to 4767 of 2008 is as follows:-

i) The cases were registered on 27.6.1998 on the basis of a written complaint given by the General Manager, Vigilance Department, Indian Bank, Chennai. The active trial in the case is in progress and many of the witnesses have been examined. Even before formal sanction was accorded to the third petitioner Company, the former Chairman and Managing Director of Indian Bank sanctioned loan and released the loan. He had also sanctioned and permitted other advances at T. Nagar Branch, Chennai and the Board had ratified all interim sanctions accorded by the former Chairman and Managing Director and approved the limits sanctioned. Several letter of credits and Bank guarantees were issued by K.R. Muralidharan, the then Branch Manager, T. Nagar Branch with the permission of the former Chairman and Managing Director. The Board had ratified all such sanctions permitted by the Chairman and Managing Director.

ii) After a gap of four years, petitioners 1 and 2 have floated benami partnership firms for the purpose of availing facilities from Indian Bank and diverted the same to other group concerns. All the accounts of the petitioners were become bad by January 1996 and the accounts were classified as non performing assets as on 31.3.1996.

iii) The Bank filed a suit in May/June 1997 before the DRT, Chennai for recovery of its dues. The four bogus partnership firms have utilised the credit facilities for their sister concerns. Substantial loss had been caused to the Bank on account of the facilities enjoyed by the petitioners and the bogus partnership firms. Investigation would reveal that the petitioners were parties to the criminal conspiracy to cheat the Indian Bank, T. Nagar Branch, Chennai.

iv) With the misrepresentation, they also inducted the bank to part with huge funds in the form of Open Cash Credit, Working Capital Demand Loan, Overdraft against Book Debts, Inland Bills, Letter of Credit and Deferred Payment Guarantee. The evidence let in and the documents exhibited so far would prove the conspiracy of the Bank officials in the matter of recommending, sanctioning and disbursing of various facilities to the petitioners. False and fabricated documents were submitted by the petitioners for release of the funds from the Bank.

v) Civil liability is a different one from criminal liability. Settlement of dues by the petitioners to the Bank would not absolve the petitioners from the criminal liability. All the facilities sanctioned by the Bank are for specific genuine trade activities, but, the petitioners have submitted bogus information, false and fabricated documents and induced the Bank to release the facilities and later diverted the funds to the Group Concerns and utilised for their personal needs and for the purpose not known to the Bank. Therefore, the petitions seeking quashment are liable to be dismissed.

6. Learned Senior Counsel appearing for the petitioners in Criminal Original Petition Nos. 4764 to 4767 of 2008 would submit that there was no diversion outside the sister concerns of the petitioners. A settlement was arrived at between the petitioners and the Indian Bank before the DRT and the entire amount was already paid with interest and legal charges. There was no intention to cheat the Bank at the inception of the loan transaction. Even before launching the prosecution, the Indian Bank had already approached the DRT seeking to recover the amount due from the petitioners. No witness has attributed anything against these petitioners during the course of evidence. The transaction between the petitioners and the Bank is essentially civil in nature. Therefore, continuance of the criminal proceedings as against the petitioners is only an exercise in futility.

7. Learned Special Public Prosecutor for Central Bureau of Investigation would vehemently contend that it is unfair to plea for quashing the entire criminal proceedings when the trial is at a crucial stage. Settlement of the loan transaction between the parties will not absolve the petitioners from other

criminal liabilities. When the trial is in progress, in all fairness, the superior court should permit the Trial Court to continue the trial proceedings and pass necessary verdict. The petitions have been filed seeking quashment late in point of time. Therefore, he would submit that quashing of the proceedings will not be in the interest of justice.

8. The main charges framed as against the petitioners are that they received pecuniary advantage as loans and advances causing heavy loss to the Indian Bank. They also induced the co-accused to press into service certain documents for availing loan facilities. They also did not made the payments on due dates. In C.C No. 71 of 2001, there are 30 accused. 53 charges have been framed as against the aforesaid 30 accused. The trial has begun about seven years ago and 21 witnesses have so far been examined out of 93 witnesses cited. In C.C No. 80 of 2001, there are totally eight accused, who face 12 charges. So far 42 witnesses have been examined. In C.C No. 81 of 2001, 14 charges have been framed against eight accused. 18 witnesses have so far been examined. In C.C No. 82 of 2001, so far 11 witnesses have been examined. All the witnesses so far examined have spoken to about the banking procedure in sanctioning the loan and the lapse committed by the "Bank officials in extending loan facilities sought for by the petitioners. They have not deposed to the charges of conspiracy, cheating and forgery of documents.

9. The Supreme Court, in *State of Delhi v. Gyan Devi* (2000 SCC (Cri) 1486) has held that the High Court should not exercise the inherent jurisdiction u/s 482 of the Code of Criminal Procedure except for strong reasons to hold that in the interest of justice and in order to avoid the abuse of the process of court the charge needed to be quashed. Further, the aforesaid exercise of the power should be confined to exceptional cases and rare occasions. The High Court should have sifted the available medical evidence in exercise of its jurisdiction u/s 482, and quashed the charge on the ground that in view of the said evidence, the charge in question could not have been framed by the Trial Court.

10. The ratio laid down by the Supreme Court is that the inherent jurisdiction u/s 482 of the Code of Criminal Procedure cannot be exercised in a very crucial manner when materials are available for prosecuting the accused. Only in rare cases where there had been the abuse of the process of the courts, the court can interfere to quash the criminal proceedings.

11. In *State Of Orissa v. Saraj Kumar Sahoo* ((2006) 2 SCC (Cri) 272), the Supreme Court has laid down that section 482 of the Code of Criminal Procedure can be invoked to do real and substantial justice and not to stifle the legitimate progress. True that no hard and fast rule can be laid down as regards the case where such a power can be exercised, but, the High Court, being the Highest Court of State, should normally refrain from giving decision in a case where the entire facts are incomplete and hazy. The High Court should not ordinarily embark upon an enquiry as to the reliability of the evidence to sustain the allegations which is primarily the function of the Trial Judge.

12. In the instant case, the where Indian Bank had approached the DRT way-back in the year 1997 for the recovery of the outstanding dues from the petitioners who availed loan from them. But, it is found that criminal prosecution by the Bank has been initiated only in the year 1998. The non-payment of the dues to the Bank by the petitioners inspite of the civil litigation launched by the Indian Bank has basically provoked the Indian Bank to launch the criminal prosecution as against the petitioners. In commercial ventures, borrowal, repayment and failure to make due payments on account of certain fiscal exigencies are quite common. Had the entire dues outstanding been paid by the petitioners, the Bank would not have thought of launching prosecution as against these petitioners. In other words, if the petitioners had settled the entire dues before the DRT before launching the prosecution by the Indian Bank, probably the petitioners would not have faced the ordeal of the trial presently launched as against them.

13. The dispute between the Indian Bank and the petitioners herein was essentially civil in nature. The entire case of the prosecution reflects prominently civil profile. The petitioners have availed totally a sum of about 121 Crores from the Indian Bank. The petitioners had not run away from the civil liability. In fact, they had come out with the alternative proposal for settlement of the dues long prior to the prosecution launched by the Indian Bank. The petitioners having admitted their liability have clinched amicable settlement before the DRT and as a result of which a sum of Rs. 157 Crores including interest and legal charges were paid as one time settlement with penal interest on 28.3.2007. The Indian Bank also had filed full satisfaction memo before the DRT, Chennai on 5.4.2007. In fact, the DRT, Chennai passed an order on 9.4.2007 approving the one time settlement and closed the applications filed by the Indian Bank as withdrawn. The DRT, Chennai also ordered release of the original documents pertaining to various properties mortgaged with the Bank by the petitioners. As such, there was no loss to the Bank or to the public.

14. It has been observed by the Supreme Court in Central Bureau of Investigation v. Duncans Agro Industries Ltd. (1996 SCC (Cri) 1045) as follows:-

In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. The Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intense and purposes, amount to compounding of the offence of cheating. It is also to be noted that a 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 officials 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 satisfied and the suits instituted by 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 that 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.

15. The aforesaid observation squarely applies to the facts and circumstances of the case. That was also a case where there was a suit for recovery of the dues of the Banks from the accused. A compromise was arrived at and as a consequence of which, a compromise decree was also passed in the suits instituted by the Banks. The Supreme Court has laid down that for all intent and purpose, repayment of the amount as a result of the compromise decree between the parties would amount to compounding the offence of cheating.

16. The learned Special Public Prosecutor for Central Bureau of Investigation would submit that only in a case where the investigation was pending, the Supreme Court was pleased to quash the entire criminal proceedings on the ground that dues were already settled by the accused to the bank. But, in the considered opinion of this court, the aforesaid ratio would squarely apply even in a case where the trial is pending.

17. The learned Special Public Prosecutor for Central Bureau of Investigation would refer to an authority reported in Inspector of Police, Central Bureau of Investigation v. B. Raja Gopal and others (2002 (3) Supreme 207) wherein the Supreme Court has held that when a trial was in progress and reached almost the penultimate stage, the criminal proceedings as against the accused for offences under sections 420, 468 and 471 of the Indian Penal Code should not be quashed on the ground that there was a compromise between the Bank officials and the accused and the disputed amount found due from the accused was paid later. The Supreme Court has further observed that such a development may be a ground for pleading mitigation of sentence at the final stage of trial of the case.

18. Firstly, it is found that the aforesaid proceedings seeking quashment was embarked upon by the High Court when almost all the witnesses were examined. Secondly, it is found that the ratio laid down in Duncans Agro Industries case was not referred to in the aforesaid authority pronounced later by the Supreme Court. In the case on hand, it is found that many of the witnesses will have to be examined yet. The petitioners have already faced trial for about seven long years. It will definitely take another two or three years for completion of the trial of the case before the Trial Court. Therefore, this court heavily relies upon the decision rendered by the Supreme Court in Duncans Agro Industries case.

19. It was not attributed that there was intention on the part of the petitioners to

cheat the Bank at the very inception of the loan transaction. If there had been such an evil intention on the part of the petitioners in clinching the loan transaction with the Bank, the Bank would have first laid the criminal complaint and thereafter plunged into action for recovery of the dues. The Bank would not have first approached the civil court seeking recovery of the dues from the petitioners. It is found that the criminal complaint has been lodged by the Bank after a lapse of one year from the date of laying the civil suit only out of frustration that they could not recover whopping dues from the petitioners even after the civil litigation was laid as against them.

20. It is also not a case of diversion of funds raised from the Bank to a non-existent Company or to a Company totally unconnected with the third petitioner Company. The materials collected would unerringly show that some of the funds had been used for the growth of the sister concerns of the third petitioner company. Sufficient security also has been furnished by the petitioners in the form of immovable property for the loan transaction they had clinched with the Indian Bank.

21. In *State of Orissa v. Debendra Nath Padhi* (2005 SCC (Cri) 415), it has been held that the Trial Court shall consider only the materials produced by the prosecution and not the materials produced by the accused at the time of framing the charges.

22. The present case is in the midway of trial. The admitted position is that the petitioners have settled their dues as per the settlement arrived at between them by the DRT. Firstly, no document is required for establishing an admitted fact. Secondly, the present case is not at the stage of framing of the charges. Therefore, the aforesaid authority does not apply to the facts and circumstances of the case.

23. The Supreme Court in *Amar Chand Agarwalla Vs. Shanti Bose and Another*, etc., has held as follows:-

If the case of the accused was that the allegations in the complaint do not constitute the offence complained of or that the complaint has to be quashed for any ground available in law, they should have approached the High Court, at any rate, immediately after the charges were framed. The records disclose that it was the fourth accused, who moved the High Court to quash the proceeding on March 17, 1969, earlier than the other accused. Even by that date, several prosecution witnesses had been examined and they had also been cross-examined by the accused. Several items of documentary evidence had already been let in during the trial. Only two prosecution witnesses and a court witness remained to be examined. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, on way or the other, and decline to interfere with those proceedings.

24. That was a case where a termination of the trial was short of only two witnesses on the side of the prosecution. Almost all the oral and documentary

evidence had already been let in. In such circumstances, the Supreme Court observed that the High Court should have allowed the proceedings to reach its logical end without interfering therewith.

25. But, in this case, it is found that though the petitioners have so far faced the trial for about seven long years, they will have to face the ordeal of trial for another two or three years for conclusion of the trial of the case. Therefore, it is not a case where the petitioners have come before this court at the fag end of the trial of the case. When the witnesses have not spoken any thing about the role of these petitioners and the materials exhibited also do not indicate the involvement of these petitioners in any of the cases and the petitioners have already settled the dues to the Indian Bank and the Indian Bank has also withdrawn the applications, the continuance of the trial which is only an exercise in futility will be a harassment to the petitioners.

26. It is relevant to refer to the observation made in *Inder Mohan Goswami v. State of Uttaranchal* (2008) 1 SCC (Cri) 259 : 2008 1 L.W. 346) as under:-

The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of 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. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

27. If the court comes to the decision that continuance of the prosecution would be a harassment to the accused, then the court will have to go to the rescue of the accused at any stage of the proceedings.

28. In the above facts and circumstances, to secure the ends of justice, the entire criminal proceedings in C.C. Nos. 71, 80, 81 and 82 of 2001 as against these petitioners are quashed and consequently, Criminal Original Petition Nos. 4764 to 4767 of 2008 are allowed.

The memo is filed by the Special Public Prosecutor for CBI, Chennai seeking stay of the operation of the order passed by this court in CrI.O.P. Nos. 4764 to 4767 of 2008 for twelve weeks.

It has been contended in the memo that the quashment of the criminal proceedings of these matters will have wider ramifications and cascading effect on the progress of the trial of similar nature of pending cases.

Firstly, it has been found that the petitioners have discharged the debt due to the

de facto complainant as per the understanding reached between them. Secondly, the material witnesses so far examined have not directly implicated these petitioners for the various offences charged as against them.

Therefore, on merits, the memo filed seeking for stay of operation of the order passed by this court for twelve weeks does not survive for consideration. Hence, the memo is rejected.