

(2012) 03 SC CK 0051

In the Supreme Court Of India

Case No : Writ Petition (Criminal) No. 26 of 2011 (Under Article 32 of the Constitution of India)

Ashok Sadarangani and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Evidence Act, 1872 — Section 43
Penal Code, 1860 (IPC) — Section 120B, 465, 467, 468, 471

Citation : (2012) ACR 1211 : AIR 2012 SC 1563 : (2012) AIRSCW 1899 : (2013) 2 AJR 192 : (2012) 3 ALT(Cri) 73 : (2012) BomCR(Cri) 141 : (2012) CriLJ 1850 : (2012) 2 JCC 1140 : (2012) 3 SCALE 404 : (2012) 11 SCC 321 : (2012) 1 UC 759

Hon'ble Judges : J. Chelameswar, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Mohan Jain, ASG, Mukul Rohatgi, Indu Malhotra, Sr, Saurabh Kirpal, Sanjay Agarwal, Sujay N. Kantawala, K.L. Janjani, P.K. Dey, D.K. Thakur, Alok Kumar, Arvind Kumar Sharma, Shubham Aggarwal, Shankar Chillarge, Asha Gopalan Nair, Rachana Joshi Issar, Nidhi Tewari, Ambeeran Rasool, Alok Prakash and O.P. Gaggar, for the Appellant;

Final Decision : Allowed

Judgement

Altamas Kabir, J.—The issue which has been raised in this writ petition is whether an offence which is not compoundable under the provisions of the Code of Criminal Procedure, 1973, hereinafter referred to as the "Code of Criminal Procedure.", can be quashed in the facts and circumstances of the case.

2. The writ Petitioner No. 1, Ashok Sadarangani, opened a Current Account No. 314 in the name of his proprietary concern, M/s. Internat Impex, Mumbai, with the Bank of Maharashtra, Overseas Branch, Mumbai. The said account was subsequently converted by the Bank into Cash Credit Account No. 3 and Cash Credit facility of Rs. 125 lacs, Import Letter of Credit facility of Rs. 100 lacs, Bank

Guarantee facility of Rs. 20 lacs and Forward Contracts upto a limit of Rs. 300 lacs, were sanctioned and such decision was conveyed to the Petitioner No. 1 by the Bank by its letter dated 7th July, 1999. On 16th October, 1999, the Bank sought additional collateral security of Rs. 56 lacs from the Petitioner No. 1, who, on 29th December, 1999, submitted a Lease Deed dated 29th December, 1999, in respect of an immovable property leased to M/s. Nitesh Amusements Pvt. Ltd. by Shri Homi D. Sanjana and his family members, through their Constituted Attorney, Shri Kersi V. Mehta. The Petitioners herein were Directors of the aforesaid company.

3. In December, 2000, six irrevocable Import Letters of Credit for a total sum of Rs. 188.01 lacs were opened by the Bank of Maharashtra on behalf of M/s. Internat Impex, Mumbai, for import of "house ware items & rechargeable lanterns" and "velvet four-way and upholstery materials". The documents relating to the said Letters of Credit, including Bills of Lading, Invoice and Bills of Exchange, were accepted and collected by the Petitioner No. 1 on behalf of the firm from the Bank and he undertook to make payment on the due date. However, the Petitioners defaulted in payment of their liability of about 188 lacs towards the Bank. On 10th April, 2003, R.C. No. 3/E/2003/CBI/EOW/MUM in Case No. 3/CPW/2004, was registered at the behest of the Bank of Maharashtra. On 30th June, 2003, on the complaint of the Union Bank of India, Special Case No. 3 of 2004, in CBI Case R.C. No. 8/E.2003/MUM, was registered by the Central Bureau of Investigation, hereinafter referred to as "CBI", against the Petitioners alleging that they had secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening Letters of Credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the Bank to negotiate the Letters of Credit in favor of foreign suppliers and also by misusing the Cash Credit facility.

4. Charge-sheet was filed in the said Special Case No. 3 of 2004 on 14th January, 2004. At about the same time, a criminal case, being No. 236 of 2001, was registered against Shri Kersi Mehta and Ors. u/s 120-B, r/w 465, 467, 468 and 471 of the Indian Penal Code, hereinafter referred to as the "Indian Penal Code". The said case was registered primarily on the accusation that Shri Kersi Mehta, in connivance with the Petitioner No. 1, had sought to sell or dispose of the property belonging to Shri Homi D. Sanjana, situated at Kandivli and Aksha and that the Powers of Attorney dated 11.1.1996 and 24.1.1999, which had been used by Shri Kersi Mehta in the transactions, were not genuine.

5. In 2000 a Civil Suit, being S.C. Suit No. 4849 of 2000, was filed by Shri Homi D. Sanjana, in the City Civil Court at Bombay, against Shri Kersi Mehta and various Government authorities, in which the relief sought for was for a direction upon Shri Kersi Mehta to deliver up to the Court the said two Powers of Attorney for cancellation of the same.

6. It is a matter of record that, although, the Petitioner No. 1 has surrendered

and is on bail and facing trial, the Petitioner No. 2 is yet to be arrested in connection with the case.

7. While the criminal case against the Petitioners was proceeding, the Union Bank of India wrote to the Petitioner No. 1 on 27th September, 2010, offering a One-Time Settlement of the disputes relating to the transactions in question. Subsequently, on 27th September, 2010, a compromise proposal relating to the transaction between the Petitioners and the Bank was also mooted by the Asset Recovery Branch at Mumbai of the Bank of Maharashtra and a communication was addressed to the Petitioner No. 1, which, however, made it clear that such compromise should not be construed as settlement of criminal complaints/ investigations/ proceedings pending in the court against the borrowers/ guarantors. As has been submitted during the course of hearing of the writ petition, pursuant to such offer of One-Time Settlement, dues of both the Banks have been cleared by the Petitioners and they have, therefore, entered into a compromise with the Petitioners indicating that they had no further claim against the Petitioners.

8. It is in this background that a separate application was made in the writ petition, being Criminal Misc. Petition No. 1110 of 2012, for stay of further proceedings in R.C. No. 3/E/2003/CBI/EOW/ MUM filed by the CBI and pending before the Additional Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, and also Special Case No. 3 of 2004 in CBI Case RC No. 8/E/2003/MUM filed by the CBI before the Special Judge at Mumbai, together with Criminal Case No. 236 of 2001, registered with Kherwadi Police Station, Bandra (East), Mumbai. The same has also been taken up for consideration along with the writ petition for final disposal.

9. Appearing in support of the writ petition, Shri Mukul Rohatgi, learned Senior Advocate, submitted that the issue, which has fallen for consideration in the writ petition, has been considered in great detail in several decisions of this Court. Learned Counsel submitted that in some cases this Court had exercised its powers under Article 142 of the Constitution of India to quash proceedings which were not compoundable, but the common thread which runs through almost all the judgments is that the power to interfere with even non-compoundable cases was not doubted, but the same was required to be used very sparingly and only in special circumstances.

10. Shri Rohatgi submitted that the facts of this case are almost identical to the facts of the case in Nikhil Merchant Vs. Central Bureau of Investigation and Another, , which was decided on 20th August, 2008. Shri Rohatgi submitted that as far back as in 1996, a similar issue had come for consideration before this Court in Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, in which the provisions of Section 320 Code of Criminal Procedure. were considered in regard to offences which constituted both civil and criminal wrong, including the offence of cheating. In the said case, this Court while considering the aforesaid issue held that compromise in a civil suit

for all intents and purposes amounted to compounding of the offence of cheating. Furthermore, in the said case, the investigations had not been completed even till 1991, even though there was no impediment to complete the same. Having further regard to the fact that the claim of the Bank had been satisfied and the suit instituted by the Banks had been compromised on receiving their dues, this Court was of the view that the complaint and the criminal action initiated thereupon, should not be pursued any further.

11. Shri Rohatgi then referred to the decision of this Court in Nikhil Merchant's case (*supra*), to which one of us (Kabir, J.) was a party. In the said case, what was urged was that though an offence may not be compoundable, it did not take away the powers of this Court to quash such proceedings in exercise of its inherent jurisdiction under Article 142 of the Constitution, and even Section 320 Code of Criminal Procedure. could not fetter such powers, as had been earlier held in *B.S. Joshi and Others Vs. State of Haryana and Another*, . It had also been contended on behalf of the Union of India that the power under Article 142 of the Constitution was to be exercised sparingly and only in rare cases and not otherwise. The fact that such a power vested in the Supreme Court under Article 142 of the Constitution or the High Court u/s 482 Code of Criminal Procedure. was never in doubt, only the manner of its application was in issue and it was held that such power was to be used sparingly in order to prevent any obstruction to the spring of justice. Taking an over all view of the facts in the said case and keeping in mind the decision in *B.S. Joshi's case* and the compromise arrived at between the company and the Bank and the consent terms, this Court took the view that technicality should not be allowed to stand in the way of quashing of the criminal proceedings, since the continuance of the same after the compromise had been arrived at between the parties, would be a futile exercise. Reference was also made to another decision of this Court in *Manoj Sharma v. State and Ors.* (2008) 16 SCC 1, where following the decisions rendered in *B.S. Joshi's case* and in *Nikhil Merchant's case* (*supra*) and after referring to various other decisions, this Court ultimately came to the conclusion that continuance of the criminal proceedings before the trial court would be an exercise in futility and, accordingly, quashed the same.

12. To buttress his aforesaid submissions, Mr. Rohatgi then referred to and relied upon the decision in *Shiji @ Pappu and Ors. v. Radhika and Anr.* (2011) 10 SCC 705, where also the question of quashing of proceedings relating to non-compoundable offences after a compromise had been arrived at between the rival parties, was under consideration. After examining the powers of the High Court u/s 482 Code of Criminal Procedure., the learned Judges came to the conclusion that in the facts and circumstances of the case, the continuance of proceedings would be nothing but an empty formality and that Section 482 Code of Criminal Procedure. in such circumstances could be justifiably invoked by the High Court to prevent the abuse of the process of law. The learned judges, who decided the said case, took into consideration the decisions rendered by this Court in *B.S. Joshi's case*, *Nikhil Merchant's case* and also *Manoj Sharma's case*

(supra) in arriving at the aforesaid decision.

13. Mr. Rohatgi submitted that application of the law as laid down in the Duncans Agro Industries's case, and, thereafter, in B.S. Joshi's case, followed in Nikhil Merchant's case, as also in Manoj Sharma's case (supra), gave sufficient indication that the powers under Article 142 of the Constitution, as far as the Supreme Court is concerned, and Section 482 Code of Criminal Procedure., as far as the High Courts are concerned, could not be fettered by reason of the fact that an offence might not be compoundable but in its own facts was capable of being quashed.

14. On the other hand, learned Additional Solicitor General, Shri Mohan Jain, urged that even if the Banks and the Petitioners had settled their disputes and had also entered into a compromise settlement, that did not absolve the Petitioners of the offence, which they had already committed under the criminal laws, which was explicitly indicated in the settlement itself. Shri Jain submitted that the gravity of the offence would be revealed from the various transactions which were effected by the writ Petitioners in order to camouflage their intention of offering as security a property in respect of which they had no title. As innocent as it may seem to be, it is more than a coincidence that the Petitioners offered as security a leasehold property which had been acquired from one Shri Kersi Mehta, who had used a Power of Attorney alleged to have been executed by Shri Homi D. Sanjana and his family members and in respect whereof a criminal case had been filed by Shri Homi against the said Kersi Mehta and the writ Petitioners. Shri Jain contended that the entire transaction was based on a fraud perpetrated on Shri Homi D. Sanjana and his family members and, in fact, no title to the property in question had ever passed to the Petitioners.

15. Shri Jain submitted that in Smt. Rumi Dhar Vs. State of West Bengal and Another, a Bench of two Judges while considering the maintainability of criminal action where the liability was both civil and criminal, had occasion to consider the effect of a judgment in civil proceedings in respect of a loan obtained by fraud. As an off-shoot of the aforesaid question, another question raised was regarding the continuance of the criminal proceedings after settlement and repayment of a loan, wherein it was held that where settlement is arrived at by and between the creditor bank and debtor, the offence committed as such, does not come to an end. The judgment of a tribunal in civil proceedings and, that too, when it is rendered on the basis of the settlement entered into between the parties, would not be of much relevance in a criminal proceeding in view of the provisions of Section 43 of the Indian Evidence Act, 1872, which provides that judgments in civil proceedings will be admissible in evidence only for limited purposes. However, in deciding the said matter, the Bench took note of the decision in Nikhil Merchant's case (supra), as also the judgment rendered in Duncans Agro Industries case (supra). While considering the said judgments, the learned Judges ultimately observed that the jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute, but that exercise of such power would

depend on the facts and circumstances of each case. After referring to the decision in Nikhil Merchant's case (supra), this Court also held that the High Court, in exercise of its jurisdiction u/s 482 Code of Criminal Procedure. and the Supreme Court in terms of Article 142 of the Constitution, would ordinarily direct the quashing of a charge involving a crime against society, particularly, when both quashing of a case, continuance whereof after the settlement is arrived at between the parties, would be a futile exercise. Reference was then made to another decision of this Court in Sushil Suri Vs. C.B.I. and Another, , in which the Bench was called upon to deliberate upon the very same issue, as has been raised in the present writ petition. In the said case, after discussing earlier decisions, including those rendered in B.S. Joshi's case (supra) and in Nikhil Merchant's case (supra), the Court, while placing reliance on the decision in Rumi Dhar's case (supra), observed that while the jurisdiction of the Court under Article 142 of the Constitution was not in dispute, the exercise of such power would, however, depend on the facts and circumstances of each case.

16. The learned Additional Solicitor General contended that having regard to the divergent views expressed by different Benches of this Court, when the same issue surfaced in Gian Singh v. State of Punjab and Anr. SLP (Crl.) No. 8989 of 2010, wherein the decisions in B.S. Joshi's case, Nikhil Merchant's case and Manoj Sharma's case (supra) came to be considered, the Bench comprised of two Judges, was of the view that the said decisions required reconsideration and directed that the matter be placed before a larger Bench to consider the correctness of the said three decisions. Shri Jain urged that as the same issue which was involved in the present case was also the subject matter of the reference to a larger Bench, this Court should abstain from pronouncing judgment on the issue which was the subject matter in the said reference. Shri Jain urged that in the circumstances mentioned hereinabove, no relief could be given to the Petitioners on the writ petition and the same was liable to be dismissed.

17. Having carefully considered the facts and circumstances of the case, as also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the views that had been taken in Nikhil Merchant's case or Manoj Sharma's case (supra) or the several decisions that have come thereafter. It is, however, no coincidence that the golden thread which runs through all the decisions cited, indicates that continuance of a criminal proceeding after a compromise has been arrived at between the complainant and the accused, would amount to abuse of the process of court and an exercise in futility, since the trial could be prolonged and ultimately, may conclude in a decision which may be of any consequence to any of the other parties. Even in Sushil Suri's case on which the learned Additional Solicitor General had relied, the learned Judges who decided the said case, took note of the decisions in various other cases, where it had been reiterated that the exercise of inherent powers would depend entirely on the facts and

circumstances of each case. In other words, not that there is any restriction on the power or authority vested in the Supreme Court in exercising powers under Article 142 of the Constitution, but that in exercising such powers the Court has to be circumspect, and has to exercise such power sparingly in the facts of each case. Furthermore, the issue, which has been referred to a larger Bench in Gian Singh's case (supra) in relation to the decisions of this Court in B.S. Joshi's case, Nikhil Merchant's case, as also Manoj Sharma's case, deal with a situation which is different from that of the present case. While in the cases referred to hereinabove, the main question was whether offences which were not compoundable, u/s 320 Code of Criminal Procedure. could be quashed u/s 482 Code of Criminal Procedure., in Gian Singh's case the Court was of the view that a noncompoundable offence could not be compounded and that the Courts should not try to take over the function of the Parliament or executive. In fact, in none of the cases referred to in Gian Singh's case, did this Court permit compounding of non-compoundable offences. On the other hand, upon taking various factors into consideration, including the futility of continuing with the criminal proceedings, this Court ultimately quashed the same.

18. In addition to the above, even with regard to the decision of this Court in Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others, this Court observed that the High Court can exercise power u/s 482 Code of Criminal Procedure. to do real and substantial justice and to prevent abuse of the process of Court when exceptional circumstances warranted the exercise of such power. Once the circumstances in a given case were held to be such as to attract the provisions of Article 142 or Articles 32 and 226 of the Constitution, it would be open to the Supreme Court to exercise its extraordinary powers under Article 142 of the Constitution to quash the proceedings, the continuance whereof would only amount to abuse of the process of Court. In the instant case the dispute between the Petitioners and the Banks having been compromised, we have to examine whether the continuance of the criminal proceeding could turn out to be an exercise in futility without anything positive being ultimately achieved.

19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.

20. In the present case, the fact situation is different from that in Nikhil Merchant's case (supra). While in Nikhil Merchant's case the accused had misrepresented the financial status of the company in question in order to avail of credit facilities to an extent to which the company was not entitled, in the instant case, the allegation is that as part of a larger conspiracy, property acquired on lease from a person who had no title to the leased properties, was offered as collateral security for loans obtained. Apart from the above, the actual

owner of the property has filed a criminal complaint against Shri Kersi V. Mehta who had held himself out as the Attorney of the owner and his family members. The ratio of the decisions in B.S. Joshi's case and in Nikhil Merchant's case or for that matter, even in Manoj Sharma's case, does not help the case of the writ Petitioners. In Nikhil Merchant's case, this Court had in the facts of the case observed that the dispute involved had overtures of a civil dispute with criminal facets. This is not so in the instant case, where the emphasis is more on the criminal intent of the Petitioners than on the civil aspect involving the dues of the Bank in respect of which a compromise was worked out.

21. In the different fact situation of this case and those in B.S. Joshi's case or in Nikhil Merchant's case (*supra*), we are not inclined to grant the reliefs prayed for in the writ petition and the same is accordingly dismissed.

22. There will, however, be no order as to costs.