
(2009) 05 SC CK 0058

In the Supreme Court Of India

Case No : Criminal Appeal No's. 1080-1085 of 2009 (Arising out of SLP
(Criminal) No's. 8854-57 of 2008)

Central Bureau of Investigation

APPELLANT

Vs

A. Ravishankar Prasad and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section

Citation : (2009) 3 ACR 2716 : (2010) 1 ALT(Cri) 61 : (2009) 57 BLJR 1779 :
(2009) CriLJ 3437 : (2009) 6 JT 589 : (2009) 7 SCALE 747 : (2009) 6 SCC 351 :
(2009) 9 SCR 1025 : (2009) 5 UJ 2213

Hon'ble Judges : H. S. Bedi, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : B. Dutta, ASG, Rajni Ohri Lal, Binu Tamta and B. Krishna Prasad, for
the Appellant; V.J. Francis, A. Radhakrishnan and Anupam Mishra, for the
Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—Leave granted.

2. The Central Bureau of Investigation is seriously aggrieved by the judgment of the High Court of judicature at Madras dated 30.4.2008 by which the High Court has quashed the entire criminal proceedings and CC Nos. 80, 81 and 82 of 2001 against the respondents herein namely, A. Ravishankar Prasad and A. Manohar Prasad.

3. According to the appellant, the respondents herein have committed serious offences, such as forgery, fabrication of documents and using the said documents as genuine. The respondents, A. Ravishankar Prasad and A. Manohar Prasad also entered into conspiracy with the Chairman and Managing Director and other officials of the Indian Bank, Chennai with the object of cheating the Indian Bank

in the matter of recommending/sanctioning/disbursing huge credit facilities in the form of:

- (1) Letter of Credit (LC);
- (2) Open Cash Credit (OCC)
- (3) Secured- Temporary Overdrafts (SOD/TOO)
- (4) Bank Guarantee (BG)
- (5) Blocked Loan; and

(6) Taking over of liabilities from other banks and other branches of Indian Bank without proper appraisal, without following banking norms, beyond the delegated powers and without ensuring the end use of the funds in the name of M/s Ravishankar Films Pvt.Ltd., M/s Gemini Arts Pvt.Ltd., M/s Gemini Pictures Circuit Pvt.Ltd. and M/s Prasad Properties and Investments Pvt.Ltd. represented by respondent No. 1 A. Ravishankar Prasad and respondent No. 2 A. Manohar Prasad who fraudulently produced false documents through their employees and used the same as genuine and defrauded the Indian Bank huge amounts running into hundreds of crores and obtained pecuniary advantage for themselves and others.

4. On completion of investigation charge-sheets were filed and four cases were registered against M. Gopalakrishnan, formerly CMD, Indian Bank, Chennai and other public servants, bank officials and A. Ravishankar Prasad and A. Manohar Prasad and their group concerns u/s 120B read with Section 420 and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

5. On 28.3.2007 the respondents herein have settled the entire outstanding dues by paying an amount of Rs. 157 crores during March 2007 and the petitions before the Debt Recovery Tribunal, Chennai have been dismissed as settled out of court.

6. Respondent Nos. 1 and 2 had preferred application u/s 482 of the Cr.P.C. before the High Court of Madras, to quash the proceedings against them contending inter alia that the witnesses so far examined by the prosecution have not stated anything against the respondents. It is also urged that the respondents had entered into a compromise with the Indian Bank and have settled the entire outstanding dues and legal charges to the bank on the recovery certificate issued to the DRT, Chennai. In this view of the matter, proceedings against the respondents need to be quashed.

7. In pursuance of the show cause notice issued by the High Court, the CBI contended that the cases were registered on the basis of written complaint filed by the General Manager, Indian Bank, Chennai. It was submitted that the active trial in the case was in progress and 92 witnesses have already been examined. The CBI also urged that the settlement of the loan transactions between the parties would not absolve the respondents herein from the criminal liability.

According to the CBI, the Madras High Court without properly scrutinizing the materials produced by the prosecution quashed the proceedings against the respondents.

8. The High Court has given undue weightage to the settlement entered between the bank and the respondents. The settlement has absolved the respondents at the most from the civil liability but as far as criminal liability u/s 120B read with Section 420 IPC is concerned, the respondents share the charges with the Chairman and the Managing Director and other officials of the Bank. Therefore, quashing of the complaint against the respondents was wholly unwarranted and against the settled position of law. The High Court did not comprehend the ratio of the series of judgments of this Court and erroneously quashed the proceedings.

9. The High Court ought to have appreciated that quashing of the criminal proceedings against the respondents herein would also have grave impact and repercussion on the criminal proceedings pending against the Chairman and the Managing Director and other officials of the Bank u/s 120B read with Section 420 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

10. Before we examine the legal position, it has become imperative to recapitulate some averments and material incorporated in the charge-sheet filed against the respondents. The charges incorporated that during the course of investigation the complicity of some public servants and private persons have come to notice and their names have been included in the list of accused persons. In the charge- sheet it is incorporated that the senior bank officials in order to favour respondents A. Ravishanker Prasad and A. Manohar Prasad representing various companies have defrauded the bank.

11. The respondents obtained pecuniary advantage for themselves and for the accused persons mentioned above, causing huge wrongful loss to the Indian Bank T. Nagar (BOT) Branch to an extent of Rs. 5935.65 Lakhs as on 16.6.1997 by M/s Ravishankar Films Pvt. Ltd. (A-12) (now M/s Ravishankar Industries Pvt. Ltd.) and to an extent of Rs. 750 Lakhs (excluding interest) to the Indian Bank Kotturpuram Branch, Chennai in the account of M/s Tamil Nadu Video Corporation to the tune of Rs. 675 Lakhs (excluding interest) to Indian Bank, Alwarpt Branch, Chennai in the account of M/s Media Communication Services to the tune of Rs. 725 Lakhs (excluding interest) to Indian Bank, Abhiramapuram Branch, Chennai in the account of M/s Sri Balaji Finance and Investments to the tune of Rs. 700 Lakhs (excluding interest) to Indian Bank, Peters Road Branch, Chennai in the account of M/s Kalyani Audio Enterprises (as on 29.5.1997) and thereby A-1 to A-31 have committed offences punishable under Sections 120B read with Section 420, 467, 468, 471 Indian Penal Code and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

12. In furtherance of aforesaid criminal conspiracy in the course of the same

transactions, A. Ravishankar Prasad (A-10) vide letter dated 20.8.90 addressed to the Branch Manager, Indian Bank, T. Nagar (BOT) Branch, Chennai requested for the following credit limits viz., Open Cash Credit (OCC) facility of Rs. 390 Lakhs, Medium Term Loan (MTL) of Rs. 60 lakhs and Letter of Credit (LC) of Rs. 100 lakhs in favour of M/s Ravishankar Films Pvt.Ltd. (A-12) (now changed its name as M/s Ravishankar Industries Pvt.Ltd).

13. In furtherance of aforesaid criminal conspiracy based on the letter of A-10, S. Ravindran (A-13) the then Branch Manager, without undertaking any pre-sanction verifications about the credit worthiness of the company has recommended for an Open Cash Credit (OCC) facility of Rs. 390 lakhs, Medium Term Loan (MTL) of Rs. 60 lakhs and Letter of Credit (LC) of Rs. 100 lakhs in favour of M/s Ravishankar Films Pvt.Ltd. (A-12). While forwarding the proposal, he exaggerated information about the profile of the company. While this proposal was pending for sanction, V.R. Chidambaram (A-30), the then Zonal Manager of Indian Bank, Chennai had permitted an ad hoc TOD facility of Rs. 50 lakhs on 25.10.90 over phone, without ascertaining the requirement of the firm for such huge funds. However, S. Ravindran (A-13) released the entire amount of Rs. 50 lakhs on 24.10.90 itself. This amount was disbursed by S. Ravindran (A-13) to the sister concerns of M/s Ravishankar Films Pvt.Ltd. (A-12) as per the request of the Directors of the company A. Ravishankar Prasad (A-10) and A. Manohar Prasad (A-11) and while doing so he failed to ensure proper end use of the banks funds.

14. The charge-sheet annexed with the paperbook running from pages 78 to 191 gives details of the clandestine dealings and systematic fraud committed by the respondents in collusion with the bank officials. By recapitulating all details we would unnecessarily burden this judgment. Regarding investigation of this case, we would like to observe that this case seems to be one of the very few well-investigated cases. In this case, details and particulars regarding respective individual roles of the respondents in receiving pecuniary advantages from the bank officials in a clandestine manner have been enumerated. By no stretch of imagination, it can be said that allegations in the complaint and charge-sheet taken at their face value do not constitute offences alleged.

15. Undoubtedly, the High Court possesses inherent powers u/s 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power u/s 482 Cr.P.C. can be exercised in following category of cases:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

This Court time and again has observed that the extraordinary power u/s 482,

Cr.P.C. should be exercised sparingly and with great care and caution. The court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power u/s 482 Cr.P.C. it has become necessary to recapitulate the ratio of the decided cases.

16. Reference to the following cases would reveal that the courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice.

17. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English 10 courts have also used inherent power to achieve the same objective.

18. In *Connelly v. DPP* [1964] AC 1254, Lord Devlin while dealing with similar provisions under the English law stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

19. Lord Salmon in *Director of Public Prosecutions vs. Humphry* stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further stated that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

20. In *R.P. Kapur Vs. The State of Punjab*, , this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

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

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

21. 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 ensure 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 with regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

22. This Court had an occasion to deal with the concept of inherent powers in *State of Karnataka Vs. L. Muniswamy and Others*, . The court again reiterated that the wholesome power u/s 482 Cr.P.C. entitles the High Court to quash a proceeding when 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 High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

23. In another leading case *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , this Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers u/s 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

24. This Court again in *Janata Dal Vs. H.S. Chowdhary and Others*, observed that in what circumstances the inherent powers should be exercised:

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

25. The learned Counsel for the respondents submitted written submissions and relied on some of the decided cases of this Court.

26. The decision in *Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta*, was relied upon by the learned Counsel for the respondents. The court observed 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 by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations incorporated in a complaint or F.I.R., a criminal offence is constituted or not.

27. In this case, the court further held that looking to the facts of the case it appears that after completion of civil suit further investigation in connection with complaints may not be expedient. In concluding para, it was observed as under:

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 intents and purposes, amount to compounding of the offence of cheating.

28. The tenor of the judgment indicates that quashing of the complaint would depend on the facts of the each case.

29. In *Union of India and others Vs. B.R. Bajaj and others*, the court after examining this Court's judgment in *Ch. Bhajan Lal's case (supra)* observed that at the stage of FIR the court should refrain from interfering when the FIR discloses commission of a cognizable offence.

30. In *B.S. Joshi and Others Vs. State of Haryana and Another*, the court reiterated the legal position that the court's inherent powers have no limit but should be exercised with utmost care and caution. Inherent powers must be utilized with the sole purpose to prevent the abuse of the process of the court or to otherwise secure the ends of justice. In exercise of inherent powers, proper scrutiny of facts and circumstances of concerned case are absolutely imperative.

31. In *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, , this Court while relying on the aforesaid judgment in *B.S. Joshi's case (supra)* observed that on overall view of the facts the court was satisfied that technicality should not be allowed to stand in the way of quashing of the criminal proceedings.

32. In *Jagdish Chanana and Others Vs. State of Haryana and Another*, this Court observed as under:

The fact that a compromise has indeed been recorded is admitted by all sides and in terms of the compromise the disputes which are purely personal in nature and arise out of commercial transactions, have been settled in terms of the compromise with one of the terms of the compromise being that proceedings pending in court may be withdrawn or compromised or quashed, as the case may be. In the light of the compromise, it is unlikely that the prosecution will succeed in the matter. We also see that the dispute is a purely personal one and no public policy is involved in the transaction that had been entered into between the parties. To continue with the proceedings, therefore, would be a futile exercise.

33. In *Madan Mohan Abbot Vs. State of Punjab*, in which one of us (Bedi, J.) was the author of the judgment observed as under:

We need to emphasise that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the

matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

34. In a recently delivered judgment of this Court in Smt. Rumi Dhar Vs. State of West Bengal and Another, , this Court approved the observations of the Special Judge. The observations of Special Judge are set out as under:

The learned Special Judge in his order dated 16.12.2006 rejected the contention raised on behalf of the appellant herein, stating:

I have gone through the record, citation and considered the circumstances. It is true that the accused has put a good gesture by paying of the dues of the bank but I am at one with the Ld. PP that this payment cannot exonerate the accused from a prima facie charge. If I allow this, then I may have to swallow in a case of bribery that the accused has paid back the amount to the sufferer the amount received as bribe. It is a question of trial whether there was any criminal intention on the part of this Lady accused in this crime. The criminal intention is to be inferred from the evidence to be adduced by the prosecution. Simply because the money has been returned, I cannot shut the mouth of the prosecution from adducing evidence against this accused. Thus, I do not like to pass any order in favour of the accused. The prayer for discharge of accused No. 7, Rumi Dhar stands rejected. Let the case proceed. Fix 7.2.07 for consideration of charge. The sureties must produce all the accused persons on that date.

35. The facts of the instant case are quite akin to Rumi Dhar (supra)'s case. In the instant case, the charge-sheet clearly reveal substantial material on record making a clear case u/s 120B read with Section 420 IPC against the respondents and their connivance with the bank officials.

36. The High Court in the impugned judgment has misunderstood and misapplied the ratio of the three-Judge Bench of this Court in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, to the facts of this case. One of us (Bhandari, J.) was the author of the said judgment. The ratio of the said judgment is in para 24 at at page 25 which reads as under:

Inherent powers u/s 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

37. The court in para 27 also observed that inherent power should not be exercised to stifle a legitimate prosecution.

38. Let us consider the facts of this case and apply the ratio of Goswami's case (supra) where facts are as follows:

(I) allegations are that accused have committed serious offences such as forgery, fabrication of documents and used those documents as genuine;

(II) allegations are that accused/respondents herein, A. Ravishankar Prasad and A. Manohar Prasad have entered into a conspiracy with the Chairman and Managing Director and other officials of the Indian Bank, Chennai with the object of cheating the Indian Bank in the matter of recommending, sanctioning, disbursing huge credit facilities running over hundreds of crores.

(III) Trial of all four cases are at advanced stage in which 92 witnesses have already been examined.

39. While applying the ratio of Goswami's case (supra), how can any court in its legitimate exercise of power u/s 482 Cr.P.C. quash the proceedings against accused A. Ravishankar Prasad and A. Manohar Prasad in the face of aforesaid allegations. In the instant case, wrong application of the ratio of the said judgment has led to grave miscarriage of justice.

40. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of the each case. The object incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

41. Both English and the Indian courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

42. When we apply the settled legal position to the facts of this case it is not possible to conclude that the complaint and charge-sheet prima facie do not constitute any offence against the respondents. It is also not possible to conclude that material on record taken on face value make out no case u/s 120B read with Section 420 IPC against the respondents. Prima facie, we are of the opinion that this is one case where adequate material is available on record to proceed against the respondents.

43. In our considered view it was extremely unfortunate that the High Court in the impugned judgment has erroneously invoked inherent power of the court u/s 482 of the Code of Criminal Procedure. The High Court ought to have considered the entire material available to establish a case against the respondents u/s 120B read with Section 420 IPC. It is significant that the respondents and the other bank officials share the charges u/s 120B read with Section 420 IPC. Quashing the charges against the respondents would also have very serious repercussions on the pending cases against the other bank officials.

44. In four cases, 92 witnesses have already been examined. The trial of the case was at the advanced stage. At this stage, the High Court has seriously erred in quashing the charges against respondent Nos. 1 and 2.

45. Quashing the proceedings at that stage was clearly an abuse of the process of the court. The court neither considered the entire material nor appreciated the legal position in proper perspective. The impugned judgment is wholly unsustainable in law and is accordingly set aside. Unfortunately, because of unnecessary interference by the High Court u/s 482 Cr.P.C. the trial of this case could not be completed and concluded.

46. Before parting with the case we would like to observe that mere re-payment of loan under a settlement cannot exempt the accused from the criminal proceeding in the facts of this case.

47. We would like to observe that any observations made in this case have been made to decide the present case. The trial court may decide the case without being influenced by any observations made by this Court.

48. In this view of the fact, in the interest of justice we direct that the trial be now completed as expeditiously as possible. The trial court is directed to conduct the trial on day to day basis and parties are directed to cooperate with the trial court. The trial court shall ensure that unnecessary adjournments be avoided and trial be concluded as expeditiously as possible.

49. The appeals are consequently allowed and the impugned judgment of the High Court is set aside. The appeals stand disposed of accordingly.