
(2006) 11 DEL CK 0130

In the Delhi High Court

Case No : Criminal M.C. No's. 227 of 2005 and 1926-29 of 2006

G. Udayan Dravid and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 321, 482
Penal Code, 1860 (IPC) — Section 120B, 336, 34, 405, 406

Citation : (2007) 137 DLT 583 : (2009) 93 DRJ 624

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Harish Malhotra, A.S. Kulshrestha and Tanuj Khurana, for the Appellant; Pawan Sharma and Satish Kumar, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—These two petitions filed u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") are essentially for the same relief, i.e., quashing of the FIR No. 62/2004 u/s 406/120B IPC registered at police station Kapashera. The petitioners have sought quashing in one petition on the ground of compromise / settlement arrived at between the petitioners on the one hand and the complainant bank (ICICI Bank Ltd) on the other. Quashing of the FIR has also been sought on merits in the other petition. However, both the petitions are taken up together and, Therefore, they are being disposed of by this common judgment.

2. There is no dispute that the FIR referred to above came to be registered at the instance of the complainant bank on account of the alleged non-payment of the loans taken by the petitioners for 14 vehicles which stood hypothecated with the complainant bank. There is also no dispute that the petitioners and the complainant bank have settled the matter amongst themselves. An affidavit of one of the petitioners, namely, G. Udayan Dravid dated 16.11.2006 has been filed in this court as per the draft provided by the complainant bank. It is also

clear that the complainant bank has now no grievance left insofar as the present matter is concerned.

3. It is in these circumstances that the learned Counsel appearing on behalf of the petitioners submitted that it was a fit case for quashing of the FIR and all proceedings pursuant thereto. The learned Counsel appearing on behalf of the complainant bank has not opposed this prayer in view of the settlement / compromise arrived at between the complainant bank and the petitioners.

4. However, the learned Counsel appearing on behalf of the State has taken an objection to the quashing of the FIR, whether on compromise or on merits. According to the learned Counsel for the State, the charge-sheet has been filed u/s 406/120B IPC against the petitioners. It is his contention that since the said offence is not compoundable in terms of Section 320 of the Code, this court ought not to exercise its jurisdiction u/s 482, CrPC and quash the FIR. He further submitted that a clear case u/s 406 IPC was made out against the petitioners as borne out by the material collected and indicated in the charge-sheet. It is his contention that if the matter is allowed to proceed, he is certain that it would lead to conviction of the petitioners u/s 406/120B IPC.

5. Mr Malhotra, the learned senior counsel appearing on behalf of the petitioners placed reliance on several decisions of this court, both of single Judges and Division Benches as well as of the Supreme Court in support of his contention that where the parties have settled and compromised, even if the offences are not compoundable, the High Court is not powerless in quashing the FIR and criminal proceedings in exercise of its powers u/s 482, CrPC. He referred to the following decisions:

- i) Vicky Malhotra and Ors. v. State and Anr. 134 (2006) DLT 4321;
- ii) D.C. Singham v. State and Anr. 133 (2006) DLT 2722;
- iii) Daulat Zia Vs. Govt. of N.C.T. of Delhi and Others,
- iv) AIR 1988 2111 (SC)
- v) B.S. Joshi and Ors. v. State of Haryana 2003 (4) SCC 6754.

6. Mr Malhotra also made a submission that although the charge-sheet has been filed u/s 406 IPC, the offence punishable under that Section is not made out. Section 406 IPC relates to the punishment provided for criminal breach of trust which is explained in Section 405 IPC. He submitted that before there can be criminal breach of trust, there must be entrustment. He further submitted that in a case of hypothecation, there is no question of entrustment and, Therefore, there would be no question of criminal breach of trust. Consequently, no offence punishable u/s 406 IPC can be said to have been committed by the petitioners even if all the material placed on record by the prosecution Along with the charge-sheet is taken at face value. For this proposition, he placed reliance on the recent Supreme Court decision in the case of Indian Oil Corporation v. NEPC

India Ltd. and Ors. 2006 (2) JCC 11905 where it is clearly indicated that there is no entrustment in an hypothecation and that, Therefore, no case of criminal breach of trust in such an agreement could be made out. It was, Therefore, contended by Mr Malhotra that, at best, it could be a case of cheating u/s 415 IPC which was punishable u/s 420 IPC. The said offence, according to Mr Malhotra, being a compoundable offence can easily be compounded because the complainant bank has already settled and compromised the matter with the petitioners.

7. Therefore, according to Mr Malhotra, the learned senior counsel, appearing on behalf of the petitioners, whichever way one looks at the matter, it is either a case of compounding of the offence or a case for quashing. If the offence is treated as one punishable u/s 420, then the same may be compounded. However, if the court is of the view that Section 406 IPC is to be maintained, then it may be quashed u/s 482 of the Code.

8. The learned Counsel for the State placed reliance on a Constitution Bench decision in the case of Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc., as well as the Supreme Court decision in the case of State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, to submit that offences which are not compoundable ought not to be quashed in exercise of the powers u/s 482 of the Code. Mr Sharma also relied on the decision of the Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, to demonstrate the scope of the powers to be exercised by the High Court u/s 482, CrPC. In the same context, he relied upon the decision of the Supreme Court in the case State of Haryana and others Vs. Ch. Bhajan Lal and others, .

9. At this stage, the learned Counsel for the petitioner requested for some time to place further decisions of this court as well as of the Supreme Court on the issue raised above. The matter was adjourned to the next date, i.e., 30.11.2006. Today, Mr Harish Malhotra, the learned senior counsel appearing for the petitioner placed before this court the following decisions:

i) Ajay Kumar and Ors. v. State and Anr. 2006 [2] JCC 1073;

ii) Navrang Pal and Ors. v. State 2005 IV AD (Delhi) 657;

iii) Ramesh Kumar Vs. State,

iv) Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another,

Placing reliance on the aforesaid decisions, the learned senior counsel submitted that in the case of Ajay Kumar (supra), a learned single Judge of this court had clearly directed the quashing of the proceedings in respect of the offences under Sections 420/468/471/120B IPC after the parties had arrived at a compromise and settlement.

10. With regard to Navrang Pal (supra), the learned Counsel submitted that the detailed submissions made on behalf of the State, which are virtually identical to

the ones advanced before this court by the learned Counsel for the State, were considered and rejected. He submitted that Navrang Pal's case (supra) was one u/s 336/427/506/34 IPC where the parties had entered into a compromise and settlement. He also referred to the decision in the case of Ramesh Kumar (supra) wherein a Bench comprising of five Hon''ble Judges of this court overruled the decision of a Full Bench of this Court in the case of Gurcharan Singh v. State and Anr. 2002 I AD (Delhi) 576. The Bench of five Hon''ble Judges followed the decision of the Supreme Court in the case of B.S. Joshi (supra) and held that the High Court in exercise of its inherent powers could quash criminal proceedings or FIR or a complaint and that Section 320 of the Code would not limit or affect the powers u/s 482 of the Code.

11. With reference to Ram Biraji (supra), the learned senior counsel submitted that this was also a case u/s 406/419/420 and 120B IPC and it was at the stage where the Magistrate had taken cognizance and being aggrieved of the order of taking cognizance, the aggrieved party had approached the High Court u/s 482 of the Code praying for the quashing of cognizance taken by the Magistrate. The High Court of Patna had not allowed the application for quashing and being aggrieved by that order, the Supreme Court was approached. He submitted that the Supreme Court examined the facts of the case and came to the conclusion that no guilty intention could be attributed to the accused nor could there be any intention on their part to deceive the complainant even if all the material placed on record was accepted to be true and correct. The court came to the conclusion that essentially the dispute between the parties therein was a dispute amounting to a civil liability inter se the parties. Explaining the decision in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , the Supreme Court in Ram Biraji (supra) allowed the appeal and directed the quashing of the order whereby the Magistrate had taken cognizance against the accused for offences u/s 406/419/420 and 120B IPC.

12. Based on these decisions and the decisions cited earlier by Mr Malhotra, it was contended by him that in the present case, the loans were taken for the purposes of purchasing the vehicles which were hypothecated with the complainant bank. The allegation against the petitioners is that without repaying the loans in their entirety and without having the hypothecation discharged, the petitioners are alleged to have sold some of the vehicles to third parties. He submits that as per the charge-sheet itself, there is no evidence that any vehicle has been sold, but even if it is assumed that such sales were made, at best, it could amount to a case falling u/s 415 punishable u/s 420 IPC and, that too, if it is established that the intention to cheat was present at the beginning of the transaction. He submitted that, in any event, in view of the Supreme Court decision in the case of Indian Oil Corporation v. NEPC (supra), a transaction involving hypothecation did not amount to entrustment and, Therefore, Section 406 IPC could not be invoked.

13. That being the case, he submits that even if Section 420 IPC is inviolable in

this case, since the same is compoundable and the complainant bank is ready and willing to compound the same, the matter cannot proceed any further. Therefore, according to him, whichever way the matter is looked at, either as a case u/s 406 or one u/s 420, in both eventualities, the petitioners are entitled to an order of quashing in the former case and an order of compounding in the latter case.

14. Mr Pawan Sharma, continuing his opposition to the petitioners' case, submitted that the decision in Navrang Pal (supra) was a dispute between neighbours and the court permitted quashing for the maintenance of peace and harmony amongst them. With regard to the Supreme Court decision in B.S. Joshi (supra), he submitted that the said case pertains to a matrimonial case and the ratio of that decision has to be read in that context. With regard to Ajay Kumar (supra), he submitted that the parties therein were private parties and no public transaction was involved as indicated in para 5 thereof. It is in those circumstances that the quashing was permitted. As regards the case of Ramesh Kumar (supra), he submitted that just-like the decision in B.S. Joshi (supra), that was also a matrimonial case. And, lastly, as regards Ram Biraji (supra), Mr Sharma submitted that that also pertained to a transaction of a transfer of a plot between private parties not involving any public transaction. He submitted that all these cases where quashing has been permitted have been connected with private transactions or matrimonial matters or disputes between the neighbours not involving any public transactions. According to him, the ratio of B.S. Joshi (supra) should be limited to this genre of cases and should not be extended to cover all the cases.

15. Mr Sharma referred to a decision in the case of Bankat and Anr. v. State of Maharashtra 2004 IV AD S.C. 593 wherein the Supreme Court was categorical in observing that the scheme of compounding of offences was clearly set out in Section 320 of the Code. It was also categorically pointed out in the said judgment that in view of the provisions of Section 320(9) of the Code, no court could compound an offence which was not specifically made compoundable as per the table contained in the said provision. He referred to this judgment in the context that Section 406, being a non-compoundable offence, could not be compounded by the court in view of the statutory provisions and the aforesaid decision of the Supreme Court. This decision does not apply to the present case as compounding of the offence u/s 406 is not sought. The petitioners have prayed for quashing both on the basis of compromise / settlement and on merits. The latter, on the ground that the offence punishable u/s 406 is not made out.

16. I have considered the arguments advanced by the parties. The position is that the Supreme Court in the case of B.S. Joshi (supra), has clearly stated:

In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers u/s 482 of the Code.

I am not in agreement with the submissions made by Mr Sharma that this observation and conclusion of the Supreme Court in B.S. Joshi (supra) has to be given a limited meaning "limited only to cases pertaining to matrimonial matters or relations between private parties or close relatives or neighbours. The Supreme Court in B.S. Joshi (supra) had considered a large number of cases and it is thereafter that the above observation and conclusion was arrived at. The said conclusion is essentially a recognition of the wide amplitude of the powers referred to in Section 482 which are inherent in the High Courts. It is one matter to say that the High Court has the power u/s 482 to quash even those cases which are not compoundable and it is another matter to say that in a particular case that power may not be exercised. But as a general rule, it cannot be said that the High Court does not have the power u/s 482 of the Code to quash even those cases which are not of a matrimonial nature or of a similar class of cases as mentioned by Mr Sharma. The power is there. It is for the High Court to be circumspect in using the same. And, that is the only limitation to that power.

17. In this view of the matter, it is for the court to examine in each case as to whether the power should be exercised or not. There may be various reasons why the High Court may think it proper to exercise that power or to refuse the same. No strait-jacket formula can be laid down for it. However, if the High Court is of the view that the continuance of criminal proceedings would be an exercise in futility and would be mere wastage of public money and public time and time of the court, then it would be appropriate for the High Court to entertain a petition u/s 482 of the Code and quash the proceedings. The learned Counsel for the State referred to the Supreme Court decision in Union Carbide (supra) and Awadh Kishore Gupta (supra) to submit that offences which are not compoundable ought not to be quashed u/s 482 of the Code. But, do these decisions say so" In Union Carbide (supra), as would be apparent from contention D set out in paragraph 55 thereof, the orders terminating criminal proceedings were challenged on three grounds that: (i) if the orders were to be construed as permitting compounding of offences, they ran in the teeth of the statutory prohibition contained in Section 320(9) of the Code; (ii) if the orders were construed as permitting a withdrawal of the prosecution u/s 321 of the Code, they would, again, be bad as being vocative of settled principles guiding withdrawal of prosecutions; and (iii) if the orders amounted to a quashing of the proceedings u/s 482 of the Code, grounds for such quashing did not obtain in the case. With regard to the first ground, there is no manner of doubt that, in view of the prohibition contained in Section 320(9) of the Code, no court can compound an offence which is not compoundable. But, this is not what the petitioners are seeking. The second ground also does not arise in the present case. And, the third ground taken is not that the proceedings could not have been quashed u/s 482 of the Code but that "the grounds for such quashing did not obtain in the case." So, the Supreme Court decision in Union Carbide (supra) does not hold that offences which are not compoundable ought not to be quashed in exercise of the powers u/s 482 of the Code.

18. An examination of the Supreme Court decision in *Awadh Kishore (supra)*, *R.P. Kapur (supra)* and *Bhajan Lal (supra)* also does not disclose any finding or conclusion that a criminal proceeding involving a non-compoundable offence cannot be quashed by the High Court in exercise of its inherent powers which have been saved by Section 482 of the Code. In *R.P. Kapur (supra)* as well as in *Bhajan Lal (supra)*, the Supreme Court set out illustrative cases / instances where the inherent power could and should be exercised. These were illustrative cases / instances and not exhaustive. In fact, the wide amplitude of the inherent powers of the High Court have been recognized in all these cases as well as in *Awadh Kishore (supra)* wherein, with reference to Section 482 of the Code, it was observed:

8...The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (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. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.

It was also held:

11. As noted above, 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. 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. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and 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 proceeding at any stage....

19. Thus, the powers exercised by the High Court are very wide. It is true that in exercising such powers the High Court has to be cautious and circumspect. There is no gainsaying that the degree of power varies proportionately with the degree of caution and care that is needed for its exercise. It is one thing to suggest that care must be taken in exercise of a power and it is quite another to say that the court has no power. None of the decisions sought to be relied upon by the learned Counsel for the State lay down the proposition that a criminal proceeding involving a non-compoundable offence cannot, under any circumstance, be quashed by the High Court in exercise of the powers saved by Section 482 of the Code.

20. In the present case, there are two reasons why the proceedings may be

terminated. First of all, the case does not belong to a category of cases any different from the ones in which this High Court as well as the Supreme Court have been permitting quashing. It was the contention of Mr Sharma that in the present case, public money was involved because the loans were extended by ICICI Bank Ltd and, essentially, the banks deal with public money. I am unable to subscribe to this view because the expression "public money" has an entirely different connotation. The ICICI Bank Ltd is a limited banking company working under the guidelines of the Reserve Bank of India like any other private bank. It is transacting business in the commercial field and is like any other commercial concern. There is no doubt that the banks accept deposits from the members of public and extend loans and other facilities to their clients and make profits out of these transactions. But, this does not mean that "public money" is involved in transactions of banks. Most commercial transactions involve the public. Merchandise sold to the public through retail outlets also involve transactions with the public. But, the entire money collected through these transactions cannot be termed as public money. Possibly, the only element of public money in these transactions would be the sales tax or VAT collected.

Similarly, just because banks deal in money in place of goods, does not place them on a different footing. It could be said that public money is involved where, for example, tax deducted at source is collected by an assessed and he retains the same. Because, in that case, the tax is collected on behalf of the Government and it is collected from the public and has all the trappings of what is known as "public money". In the present case, the transactions are purely of a commercial nature. There is no public element in it and they are governed by commercial laws, Therefore, I am not in agreement with the submissions made by Mr Sharma that the transactions involved in the present case are any different from the ones involved in the cases where the courts have permitted quashing of the offences.

21. The second reason why quashing should be permitted is that the parties have compromised and coupled with this is the consideration that, strictly speaking, the offence u/s 406 IPC is not made out even if all the material placed on behalf the prosecution is taken to be true and correct. This aspect has been elaborated above that unless there is entrustment, there cannot be an offence punishable u/s 406 IPC as held by the Supreme Court in the case of Indian Oil (supra). Therefore, if that view is taken, at best, the only offence that can be allegedly made out is the one punishable u/s 420 IPC, which is a compoundable offence and the bank is ready and willing to compound the same and has compromised / settled the dispute with the petitioners. So, whether the case is looked at from the standpoint of compromise or compromise coupled with merits, the ultimate effect would be the same. In the former case, treating the offence as one u/s 406 IPC, it would amount to quashing of the criminal complaint whereas in the latter case, considering the offence to be one u/s 420 IPC, it would amount to compounding. The effect would be the same "the criminal proceedings shall end.

22. Considering the fact that Section 406 IPC has been invoked by the investigating agency in the charge-sheet, I think it would be appropriate if the former route is taken and the FIR and all the proceedings pursuant thereto are quashed. Accordingly, these petitions are allowed and the said FIR and the proceedings pursuant thereto are quashed.