(2021) 11 KL CK 0073

In the High Court Of Kerala

Case No : Writ Petition (CRL.) No. 342 Of 2021

Mathews Manual APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 239, 320, 482
Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2021) 11 KL CK 0073

Hon'ble Judges : R.Narayana Pisharadi, J

Bench : Single Bench

Advocate : R.B.Balachandran, C.K.Karunakaran, S Manu, Girish Kumar V

Final Decision : Dismissed

Judgement

R.Narayana Pisharadi, J

1. The petitioner is the fourth accused in the case C.C.No.15/2011 pending in the Court of the Special Judge (SPE/CBI), Thiruvananthapuram. It was a case originally pending in the Court of the Special Judge (SPE/CBI), Ernakulam as C.C.No.03/2005.

2. The offences alleged against the accused in the above case are under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') read with Section 120B of the Indian Penal Code and also under Sections 420, 468 and 471 of the Indian Penal Code.

3. There are altogether four accused in the case. The first and the second accused in the case are the former Branch Manager and Assistant Manager (Advances) respectively of the State Bank of Travancore, Pala Branch. The third accused in the case was the Development Officer of the United India Insurance Company. The petitioner, the fourth accused in the case, was the Managing Director of the company by name 'M/s.Malayalam Solvent Extractions Limited'.

4. The prosecution case, in C.C.No.15 of 2011, is as follows: The accused in the case had entered into a conspiracy to cheat the State Bank of Travancore. Pursuant to such conspiracy, the third accused opened an account in the Manganam Branch of the Bank in the name of Coral Enterprises by forging the signature of Elizabeth Mammen, the proprietor of that firm. The third accused then issued four blank cheques, for a total amount of Rs.25,74,900/-, to the fourth accused. The cheques contained the forged signature of Elizabeth Mammen. The fourth accused filled up the cheques in favour of two companies M/s.Malayalam Edibles India Limited and M/s.Malayalam Solvent Extractions Limited of which he was the Managing Director. He presented the cheques for discounting in the Pala Branch of the Bank, knowing fully well that the cheques were forged documents. The first and the second accused purchased the cheques and discounted them, knowing fully well that the fourth accused did not enjoy discounting facility and they credited the amount to the account of the two companies M/s.Malayalam Edibles India Limited and M/s.Malayalam Solvent Extractions Limited, thereby causing loss of Rs.25,74,900/- to the Bank. The first and the second accused then concealed the fraudulent transactions by manipulation of accounts.

5. The petitioner was the third accused in the case C.C.No.08/2004 on the file of the Court of the Special Judge (SPE/CBI), Ernakulam. The allegation against the accused in that case was more or less the same, that is, defrauding the Bank in the manner as alleged in the case C.C.No.15 of 2011. The total amount of loss sustained by the Bank in that case was 3.99 crores rupees.

6. After trial, the case C.C.No.8/2004 ended in conviction of the three accused therein, including the petitioner. The petitioner was convicted and sentenced for committing the offences punishable under Sections 120B and 420 of the Indian Penal Code. The petitioner has filed an appeal challenging the conviction and sentence against him and the appeal is pending before this Court as Crl.A.No.1006 of 2016.

7. It is stated that the petitioner has remitted the entire amount due to the Bank. On that ground, the petitioner has filed this writ petition seeking the following reliefs.

"i. Issue a Writ of Certiorari or such other writ, or direction quashing all further proceedings as against the petitioner in C.C.No.15/2011 pending on the files of the Special Court for trial of CBI cases at Thiruvananthapuram in the light of the Apex Court judgment in Central Bureau of Investigation v. Sadhu Ram Singla and Others [2017 (5) SCC 350

: 2017 KHC 6156]. Alternatively,

ii. To stay all further proceedings as against the petitioner in C.C.No.15/2011 pending on the file of the Special Court for trial of CBI cases at Thiruvananthapuram, pending the disposal of this Writ Petition (Criminal).

iii. To pass such other writs, orders or directions as this Hon'ble Court may deem fit and proper to issue on the facts and circumstances of the case and in the interest of justice."

8. Heard learned counsel for the petitioner and the learned Central Government Standing Counsel on admission of the writ petition.

9. Learned counsel for the petitioner submitted that the petitioner has paid the entire amount due to the Bank and therefore, continuing the criminal proceedings against him would be an abuse of process of the court. Learned counsel for the petitioner has relied upon the decision of the Supreme Court in Central Bureau of Investigation v. Sadhu Ram Singla : (2017) 5 SCC 350 in support of this submission.

10. Ext.P4 is the copy of a letter dated 28.01.2016 addressed by the State Bank of Travancore, Pala Branch to the Managing Director of the Malayalam Solvent Extractions Limited. This letter reads as follows:

"Since all the loan accounts have been compromised under OTS and remitted in full the bank has got no claim against any of the group companies (viz. MSE, MEI & RPRL), its directors or guarantors. The bank has got no cases pending against them either."

11. In Sadhu Ram Singla (supra), the accused company had transactions with State Bank of Patiala since the year 1976 and it was availing the credit limits from a consortium of banks with the Bank as the leader and it enjoyed total fund based credit limits from the banking system to an extent of Rs.31,500.00 lacs in March, 1996. However, in the year 1996, due to destruction of stock, it claimed to have suffered heavy loss to the extent of Rs.38.08 crores. The destruction of stock could not be corroborated by any evidence. The accused company had been granted credit facilities against hypothecation of stock which included stock lying at the port. But, on verification of the stock by the Bank, it was found that the company had fraudulently obtained higher credit limits on the basis of stock statements which appeared to be forged and false. Law was set into motion registering FIR under Section 120-B read with Sections 420, 467, 468 and 471 of Indian Penal Code, against the Board of Directors of the company. Charge-sheet was filed before the Special Judicial Magistrate against the accused under Sections 420/471 read with Section 120B of Indian Penal Code, for having entered into criminal conspiracy between 1995 to 1996 and causing loss to the Bank to the extent of Rs.28.49 crores through false stock statements, forged bank guarantee and dishonest use of funds generated. During the pendency of the proceedings, a compromise was arrived at between the Bank and the company under a One Time Settlement (OTS) scheme of the Bank, through which sums of Rs.6 crores and Rs.1.25 crores were deposited by the accused. Thereafter, the Bank released the securities and guarantees of the accused, withdrew the recovery proceeding and acknowledged by a letter that nothing was due from the accused to the Bank. An application filed by the accused for

compounding of offences under Section 320 Cr.P.C was dismissed by the trial court on the ground that offences under Sections 471 and 468 of the Indian Penal Code are non-compoundable. Thereafter, the accused approached the High Court, invoking its power under Section 482 Cr.P.C for quashing the FIR and also the resultant proceedings pending before the Magistrate, on the basis of the settlement. The High Court, on the basis of settlement of dispute, quashed the criminal proceedings against the accused. The appeal filed by the C.B.I was dismissed by the Supreme Court holding that "depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties".

12. In my view, for more than one reason, the decision in Sadhu Ram Singla (supra) has no application to the facts of the present case.

13. In the first place, in Sadhu Ram Singla (supra), the Supreme Court has not laid down any dictum that continuance of the criminal proceedings, in all cases where a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of the Court. The Supreme Court has kept the point of law open by stating that "in our opinion, it would be proper to keep the said point of law open" and the Court dismissed the appeal "in the given facts".

14. In the second place, the facts in the present case and facts in Sadhu Ram Singla (supra) are not similar, as contended by the learned counsel for the petitioner. In Sadhu Ram Singla (supra), the company had availed excess amount from the bank on the basis of stock statements alleged to be forged and false but loss of the stock which was lying at the port could not be established for want of evidence. In the present case, the third accused had allegedly opened an account in the bank in the name of another firm by forging the signature of the proprietor of that firm and issued cheques to the petitioner which contained forged signature of the proprietor of that firm. The petitioner had allegedly presented the cheques in the bank with the full knowledge that they were forged documents and got them discounted and the money was credited to the accounts of the two companies of which he was the Managing Director. The facts in the two cases cannot be found to be similar.

15. In the third place, in Sadhu Ram Singla (supra), no offence under the PC Act had been alleged against any of the accused. In the present case, though no offence under the PC Act has been directly alleged against the petitioner, who is not a public servant, he is accused of involved in a conspiracy to commit an offence under the PC Act, along with other accused who are public servants.

16. In the fourth place, on similar facts, the Supreme Court has not followed Sadhu Ram Singla (supra) in a subsequent decision, which is referred to below.

17. In Central Bureau of Investigation v. Hari Singh Ranka : (2019) 16 SCC 687,

the offences alleged against the Chairman and the Managing Director of a company were under Sections 120B, 420, 467, 468, 471 of the Indian Penal Code. After the investigation, charge-sheet was filed against 13 accused persons. The accused persons filed applications under Section 239 Cr.P.C seeking discharge, mainly on the ground that the company had since entered into One Time Settlement (OTS) with the bank and the allegation of forgery and use of forged documents as genuine were not raised by the bank in the proceedings before the Debt Recovery Tribunal and as such, no case was made out against them. The allegation levelled against the accused was that they entered into a criminal conspiracy to cheat the Bank of Baroda and in pursuance of the said criminal conspiracy, they availed working capital facility and several other credit facility from the Bank by using false documents as genuine. The funds of the Bank of Baroda to the tune of Rs.43.86 crores were misused and not repaid by the accused. The trial court discharged the accused, mainly relying upon the OTS. The revision petition filed by the CBI before the Sessions Court against the order of discharge was dismissed. The CBI filed petition in the High Court under Section 482 Cr.P.C but the High court affirmed the impugned orders. Allowing the appeal filed by the C.B.I, the Supreme Court observed that it was not a simple case where an accused had borrowed money from the bank and diverted it somewhere else and, thereafter, paid the amount. It was held that civil settlement of the controversy would not suffice to wipe off the criminal liability. The case reflected fiscal impurity and, in a way, financial fraud. It was held that the modus operandi as narrated in the charge sheet could not be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. The Supreme Court set aside the order of discharge which was mainly based on settlement of liability, holding that OTS could wipe off only the civil liability of the accused, not the criminal one.

18. In Hari Singh Ranka (supra), the decision in Sadhu Ram Singla (supra) has been distiguished by stating as follows:

"Learned senior counsel appearing on behalf of the respondents has relied upon the decision of this Court in Sadhu Ram Singh's case (supra), OTS was arrived at between the parties in the wake of that High Court had exercised the power of quashing, which order has been upheld by this Court. The case was registered under Sections 120-B/420/467/468/471 of the Indian Penal Code read with Section 469 Indian Penal Code. It was a case in which it could not be corroborated by the evidence that the company had been using credit facility against the hypothecation of the stock, which stock was lying at the port. It was found that the respondent company had fraudulently obtained higher limits which appear to be forged and false. The facts of Sadhu Ram Singh's case (supra) were totally different. Loss of the stock could not be established was one of the main consideration and facts were not similar".

19. The plea that no offence under the PC Act is alleged against the petitioner does not help him. In Rumi Dhar v. State of West Bengal : AIR 2009 SC 2195,

although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded for commission of the offences under Sections 120B/420/467/468/471 of the Indian Penal Code along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The Apex Court refused to quash the charge against the accused by holding as follows:

"Appellant is said to have taken part in conspiracy in defrauding the bank. Serious charges of falsification of accounts and forgery of records have also been alleged. Although no charge against the appellant under the Prevention of Corruption Act has been framed, indisputably, the officers of the bank are facing the said charges. It is now a well settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan, criminal offences have been committed by the persons accused thereof including the officers of the bank, criminal proceedings would also indisputably be maintainable. When a settlement is arrived at by and between the creditor and the debtor, the offence committed as such does not come to an end".

(emphasis supplied)

20. In State of Maharashtra v. Vikram Anantrai Doshi : (2014) 15 SCC 29, it has been held that, these types of cases are not where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 Cr.P.C and quash the proceeding. It is not legally permissible.

21. A three Judge Bench of the Supreme Court, in Parbatbhai Aahir v. State of Gujarat : AIR 2017 SC 4843, has summarised the principles regarding quashing of criminal proceedings on the basis of settlement and enumerated the types of cases where it can be done. It has been held as follows:

" (i) to (vii) xxxxxxxxxx

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance".

(emphasis supplied)

22. In the light of the discussion above, I find that the decision in Sadhu Ram Singla (supra) does not apply to the facts of the present case. In the light of the decisions in Hari Singh Ranka (supra) and Parbatbhai Aahir (supra), the prayer for quashing the proceedings against the petitioner in the case C.C.No.15/2011 pending in the Special Court, cannot be entertained.

Consequently, the writ petition is dismissed in limine.