
(2005) 05 DEL CK 0171

In the Delhi High Court

Case No : Criminal M.C. No's. 3856 of 2003 and 58 of 2004

Rashmi Agarwal

APPELLANT

Vs

The Central Bureau of Investigation
 Neeraj Jain Vs
State

RESPONDENT

Date of Decision : 30-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 409, 420
Prevention of Corruption Act, 1988 — Section 13(2), 31(1)

Citation : (2005) 122 DLT 62 : (2005) 83 DRJ 153

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Parag P. Tripathi and Neeraj Chaudhary, for the Appellant; R.M. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—These three petitions are against the orders dated 23.8.2003 & 27.9.2003 framing charges against all the petitioners u/s 120-B read with Section 420/467/468/471 IPC and for quashing of criminal proceedings. The three petitioners are alleged to have conspired to cheat the New Bank of India, Connaught Place, New Delhi. On 30.11.1989, the accused No. 2, O.P.Rajvanshi, applied for financial facility to the extent of Rs.50 lakhs in the name of his firm, M/s.Vikram Enterprises. The accused No. 1, V.K.Bhutiani, was the Senior Manager at that time in that branch of the New Bank of India. The firm, M/s. Vikram Enterprises, had obtained an order for export of garments worth Rs.30 lakhs from a Hong Kong firm under a foreign letter of credit. On the basis of the export order and the foreign letter of credit, loan facility was sanctioned in the name of M/s. Vikram Enterprises on 25.11.1989. The accused No. 2 allegedly utilised about Rs.17 lakhs but did not repay the amount. The CBI registered a FIR on source information and filed a charge-sheet against six persons, one of whom, namely, Mohd.Yusuf, is now dead. The petitioners are three of the six

persons including accused No. 2, O.P. Rajvanshi, who allegedly conspired to cheat the bank and in the process committed the offence under Sections 468 & 471. V.K. Bhutiani, an officer of the bank, who was also named as a conspirator in the offence, has since been discharged. Allegations against O.P. Rajvanshi and the three petitioners relate to offence of cheating apart from that of forgery and user of a forged document. In order to get the sanctioned loan amount released O.P. Rajvanshi produced an agreement purporting to be between his firm and deceased Mohd. Yusuf, viz., M/s. Haji Gudar S. Abdul Karim, for supply of garments by the latter's firm to the former's firm. Simultaneously O.P. Rajvanshi submitted a letter purportedly signed by the deceased accused with two proforma invoices of the deceased for Rs.20,10,000/- and for Rs.2,25,000/- drawn on M/s. Vikram Enterprises. One receipt dated 20.12.1989 purported to have been signed by the deceased accused for Rs.4,35,000/- was also submitted by O.P. Rajvanshi for meeting the requirement of 25% of margin money to be paid by M/s. Vikram Enterprises. It was found that Mohd. Yusuf was not an exporter but was only a small vegetable seller and that all those documents had been manufactured merely to induce the bank to release the money in favor of O.P. Rajvanshi. Similarly one invoice of Multiple Traders, a proprietorship concern of accused No. 4 (Rashmi Agarwal), one of the petitioners before this court, dated 15.12.1989 for Rs.2,30,000/- purported to have been signed by one Ashwini and another receipt of Rs.1 lakh purported to have been signed by Ashwini on behalf of Multiple Traders were also produced by O.P. Rajvanshi. The CBI found that these documents, purported to be of Multiple Traders, were signed by accused No. 5 (Praveen Agarwal), one of the petitioners before this court. Praveen Agarwal happens to be the husband of Rashmi Agarwal and signed as Ashwini. Allegedly these documents had been fabricated only to be kept on the bank's file to facilitate release of funds by the bank to M/s. Vikram Enterprises. On the basis of these documents the bank released funds to the extent of Rs.17 lakhs between 26.12.1989 to 28.12.1989 by way of three bank drafts, one of which was for Rs.2,30,000/- in favor of Multiple Traders and two in favor of the firm of the deceased accused for Rs.12,65,000/- and for Rs.2,25,000/- by debiting the amounts to packing credit limit account of M/s. Vikram Enterprises. During investigation, CBI found that signatures of Mohd. Yusuf had actually been forged by O.P. Rajvanshi himself. The hand-writing expert's report also confirmed signature of Ashwini to have been written by the accused No. 5 (Praveen Agarwal). Ashwini on examination by the CBI said that the signatures on the two aforesaid vouchers were not his. Apart from this, accused No. 5 is also found to have been involved in the offence from the very beginning as the loan application of M/s. Vikram Enterprises was filled in by him. Accused No. 6, Neeraj Jain, was the surety to the loan in favor of the M/s. Vikram Enterprises. His complicity in the offence is manifest from the fact that a sum of Rs.14,64,000/- was received by him from accused No. 3 in cash suggesting that he was not merely a guarantor but an active participant in the offence. A receipt for this amount purported to have been signed by Neeraj Jain has been recovered by the CBI. Thus, according to the story of the CBI the three

petitioners before this court, who are accused Nos. 4, 5 & 6 along with other accused, namely, O.P. Rajvanshi and Mohd. Yusuf, conspired to deprive the bank of substantial amount of money. According to the CBI, Mohd. Yusuf was only a scapegoat as his name was used only for the purpose of withdrawing the money.

2. The trial court found sufficient material to frame charge against the accused V.K. Bhutiani, O.P. Rajvanshi, Rashmi Agarwal, Praveen Agarwal and Neeraj Jain and directed framing of charge u/s 31(1)(d) read with Section 13(2) of the Prevention of Corruption Act against V.K. Bhutiani and under Sections 420/468/471 IPC against all the accused. It is this order on charge which is under challenge in these petitions.

3. Although various grounds for setting aside the order on charge and dismissing the criminal case have been mentioned in the petition, the main point urged before this court is that a compromise has been arrived at between O.P. Rajvanshi and the bank, under which all the dues of the bank have been repaid and, Therefore, there is no substantial dispute between the bank and accused No. 2, who is the principal offender. It is submitted that the dispute is primarily of civil nature and that having been settled the criminal complaint was required to be quashed. The prosecution does not dispute that the dues of the bank have been recovered and that the civil dispute has been settled but opposes the prayer for quashing the charges or for quashing the criminal proceedings.

4. In support of their plea, the petitioners rely upon the judgment of the Supreme Court in the case of Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, . Apparently in the case of Duncans Agro (Supra) offence u/s 420/467/471 IPC was alleged to have been committed by M/s. Duncans Agro in its dealing with United Bank of India in obtaining certain credit facilities. Apparently the case of Duncans Agro (Supra) and the present case appear to be very similar. However, a close reading of the case of Duncans Agro (Supra) shows that the present case and the case of Duncans Agro were based on entirely different facts.

5. Reliance on the Duncans Agro (Supra) case is entirely misplaced. The head note of the report as also the sections appended to the FIR are both misleading and this can be discovered on a careful reading of the judgment. The FIR in that case was also on source information. The bank involved was the United Bank of India (in short 'UBI'), Royal Exchange Branch, Calcutta. The FIR indicted M/s. Duncans Agro Industries Ltd. (hereinafter referred to as 'Duncans') and the officers of Duncans as well as those of the UBI. Duncans had obtained cash credit limit of Rs.17.50 crores in the account of its division M/s. National Tobacco Company (NTC), subject to drawing power according to hypothication of stock etc. of Duncan. On 10.8.84 Duncan obtained an order from the Calcutta High Court that National Tobacco Company would henceforth function as New Tobacco Company Ltd., ('NTC' for short) which would be a fully owned subsidiary of M/s. Duncan and would be managed according to the Scheme of Arrangement approved by the High Court. Duncan thereafter applied for transfer of credit limit

standing in their name to that of NTC. Misled by the opinions of some of its senior officers, the UBI allowed the transfer of the credit facility to NTC, subject to certain conditions, inter alia, that the shareholding of Duncans in NTC will not undergo any change without the approval of the UBI. Thereafter the NTC and Duncan managed with the executive of the UBI to convert the debts of Duncan to 'Nil' without any payment and obtained a memorandum of satisfaction of charge from the officer of the UBI without making any payment. Thereafter, a MOU was entered into by the Duncans & NTC delinking the two companies altogether thereby violating the undertaking of NTC to the UBI that the shareholding of Duncans in the NTC would remain unchanged. This also made the very basis of High Court's scheme infructuous. The motive behind the act was to keep the assets of Duncans out of the reach of the UBI. The Duncans thereafter disposed of its stocks worth Rs.12 crores. It was alleged in the FIR that the above facts constituted an offence u/s 409, 420, 467, 468 & 471 IPC. Subsequently the dues were paid and the UBI was satisfied in respect of the account of NTC. The civil dispute having been satisfied Duncans approached the High Court for quashing the criminal case which was allowed.

6. It is amply clear from the above narration that no offence u/s 467, 468 or 471 was at all disclosed in the FIR. During investigation it was revealed that one accused, D.K. Sengupta, had signed as Chief Manager, which was not his post. The alleged anomaly was sufficiently explained. The Supreme Court did not consider in the facts of that case, that there was any forgery. Nor was the Supreme Court required to go into the question whether the offence u/s 467, 468, 471 were compoundable or could be quashed. The Court went into the question whether any criminal offence had been committed u/s 406 or not and found that no offence u/s 406 had been made out. The rest of the offence u/s 420 was compoundable. The Supreme Court in that situation upheld the quashing of the FIR by the High Court.

7. The facts in the present case are different in that an offence of forgery and use of a forged document in order to commit cheating has been established by the investigation. This cheating and forgery has been committed to make a big gain out of public money. As the facts above show one principal player in the whole game was admittedly a small vegetable vendor and could not have issued any voucher or letter as if he was a person in the business of manufacturing, selling or exporting ready-made garments. O.P. Rajvanshi is also found to have forged the signatures of Mohd. Yusuf or to have signed as Mohd. Yusuf for the purpose of commission of the offence. Another player, Multiple Traders is also involved in the siphoning of the amount and a grave suspicion of the offence comes in the mind of the court because of forgery committed in respect of the signature of one Ashwini. Praveen Agarwal was apparently involved from the very beginning because he was the person who filled in the application for loan. Accused No. 4, Rashmi Agarwal, gets involved as a conspirator because vouchers purportedly signed by Ashwini were issued from her proprietorship concern called Multiple Traders. Accused No. 6, Neeraj Jain, is said to be the principal gainer out

of the whole game because he received a large amount in cash and was also the guarantor for the loan. In the case of Duncans Agro (Supra) the Supreme Court found that no offence whatsoever of forgery, use of a forged document or of criminal breach of trust had at all been made out in the case. Section 406 IPC was the main stay in that case apart from Section 420 IPC. The Supreme Court found that in facts mentioned in the case the offence of Section 406 IPC was also not made out. In fact, there was no allegation of forgery or using a forged document except saying that one of the accused had signed as Chief Manager which was not his designation. It cannot be said by any stretch of argument that the Supreme Court approved of quashing of a complaint under Sections 467, 471 & 420 IPC and that too in respect of public funds. In my opinion, the petitioners can get no gain out of the case of Dunkan Agro (Supra).

8. It is further to be noticed that although the bank has received its dues from M/s. Vikram Enterprises or from the guarantor, Mr. Neeraj Jain, there is no compromise between the parties in respect of the criminal case. The bank is the trustee of the public money and it cannot be heard to make a request for excusing conspirators in the offence against it. The case of B.S. Joshi and Others Vs. State of Haryana and Another, , which is cited by the petitioners cannot come to their rescue in any way.

9. Reliance has been placed on the Supreme Court judgment in the case of Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors. reported as (1998) 1 SCC 692 in which the Supreme Court quashed a FIR u/s 406 and 467 read with Section 34 & 120-B IPC. The Supreme Court in this judgment laid down guiding principles for determining whether in a given case a FIR can be quashed in exercise of powers u/s 482 Cr.P.C. The petition u/s 482 Cr.P.C. in that case was filed immediately on service of summons. The ground on which the quashment was prayed for was that criminal proceedings were without any basis and if, at all, it was a civil wrong and there were no means read in the matter. The Supreme Court ruled:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, Therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

10. The Supreme Court quashed the proceedings on a finding "...this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting." Clearly the present case is

entirely different from the one in which an order of quashment was made by the Supreme Court. It has also be noticed that the grounds on which the quashment is prayed for here is quite different from the ground on which the quashment was prayed for before the Supreme Court.

11. The two other judgments relied upon are of this court in the cases of Charan Singh Sharma Vs. State and Others, and Bhim Raj Sharma Vs. State and Others, . Both the cases, in fact, relate to the same FIR. In these cases also an allegation of forgery had been made but no part of the allegation was established. In that case a bold allegation was made and only an investigation u/s 156(3) Cr.P.C. had been ordered. The allegation of forgery was made by a person who was the heir to the debtor and faced suits for recovery of dues of the predecessor. On a compromise of the civil dispute the FIR was quashed. Quashing of a FIR u/s 482 Cr.P.C. in respect of such private conflicts is quite distinct and different from quashing of a FIR in a matter like the one at hand in which the allegation is of embezzlement of public funds by means of fraud and forgery.

12. Another ground taken for quashment of the FIR is the delay in the disposal of the case. It is true that the CBI had registered the case sometime in 1991 and the charge-sheet was filed on May, 1993. The delay by itself is not sufficient to quash the proceedings. In fact, at the time of arguments this was not the main thrust of the counsel for the petitioners. The Supreme Court in the Constitution Bench judgment in the case of P. Ramachandra Rao Vs. State of Karnataka, has upset some earlier view's that on account of the delay in disposal the criminal cases could be quashed.

13. In my opinion, if the FIR or the order on charge is quashed on the ground of a compromise, it will lay down a very bad precedence for then it will be an open invitation for people to conspire to cheat with immunity. Anybody would be tempted to commit similar offence for they would know that they could escape prosecution and punishment if they could settle the civil dispute.

14. The other grounds for quashing the order on charge is that no offence is made out against the petitioners. As the facts are given above, all the offences including that of conspiracy has been sufficiently made out. Even a grave suspicion is sufficient to frame charge. On the facts mentioned above, none of the petitioners can hope to get an order of discharge.

15. There is no force in the petitions. All the three are dismissed accordingly.