

(2022) 06 DEL CK 0097

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 986 Of 2013, Criminal Miscellaneous Application No. 3057 Of 2013

Ratan Exports & Industries Ltd.

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 109, 120A, 120B, 304A, 304II, 306, 409, 420

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 227, 311, 357, 357(1)(b), 397, 482

Prevention of Corruption Act 1988 — Section 13, 13(1)(d), 13(2)

Citation : (2022) 06 DEL CK 0097

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Shobha Gupta, Nishant Bahuguna, Vidit Agrawal, Sakshi Tiwari, Shubham Jalan, Prachi Sharma, Rajesh Kumar

Final Decision : Allowed

Judgement

Chandra Dhari Singh, J

1. The instant criminal miscellaneous petition under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed on behalf of the petitioner seeking following prayers: -

"a). allow the present petition u/s 482 of Cr.P.C. and thereby set aside the impugned order dated 29.11.2012 passed by the learned Special Judge in CC No. 51/11(R.C. No. 5(E)/01 titling CBI versus V. K. Maheshwari & others, whereby the learned Special Judge has framed charges against the petitioner for offence u/s 120-B, 109 r/w 409 IPC and 109 IPC r/w 13(I)(d) r/w 13(2) of PC Act, 1988; and/or,

(b). quash the criminal proceedings as against the petitioner in FIR/ Criminal Case No. RCA/BD1/2001(E)/2005/CBI/BS u/s 120B r/w 409/420 of IPC and

sections 13(2) and 13(I)(d) of the Prevention of Corruption Act 1988, pending in the Court of Special Judge (CBI)-09, Central District, Delhi, entitled as CBI Vs. V.K. Maheshwari 86 Ors..."

FACTUAL MATRIX

2. The petitioner M/s Ratan Exports and Industries Ltd. (hereinafter "Company") started its business in the year 1979, having its current account with the United Bank of India, Asaf Ali Road Branch, Delhi (hereinafter "UBI"). The petitioner company was engaged in export of tea, coffee, fruit, juice concentrate, canned food products, rice, garments, leather goods, computer peripherals, V belts, electronic items, brushes etc. in the erstwhile USSR and CIS countries. The Company being a proprietorship concern was subsequently converted into a Private Limited Company at the instance of the bank and later to a Public Limited Company with effect from 4th April 1984 and enjoyed the status of a government recognized trade house.

3. The petitioner Company was given an overall limit of Rs. 1250 lakhs by the bank which was further enhanced by the Board of Directors to Rs. 1672 lakhs by the board approval dated 19th November, 1991. Request was made for enhancement of the credit limit from Rs. 1672 lakhs which was actively followed up by the Head Office with the Branch Manager, Regional Manager, etc. The Head Office vide its letter dated 28th April, 1992, advised the Branch Manager, Janpath Branch of UBI Bank to obtain requisite documents from the company for forwarding enhancement proposal of the company which was endorsed by Head Office to the Regional Manager and Zonal Manager too.

4. The Janpath Branch of UBI made recommendation to the Regional Manager, North India Region for sanction of enhanced limit, which was forwarded by him with similar recommendation to Zonal Manager, New Delhi Zone vide letter dated 24th June, 1992. The Zonal Manager, New Delhi Zone, based on the recommendation of the Regional Manager, Sh. Hari Ram Pandey and the Branch Manager, Janpath Branch Sh. M. P. Sharma sent his recommendation dated 27th June, 1992 for the enhancement of credit limits to the Head Office for scrutiny of the relevant data furnished by the company and sanction of the proposal subject to the fund position of the bank permitting so.

5. Since, petitioner's account was a 'Head Office Controlled Account', the process was initiated by the Head Office by letter dated 28th April, 1992 addressed to the Janpath Branch and copies were endorsed to the Regional Manager and Zonal Manager. The Head Office of the bank recommended enhancement of overall credit limit from existing Rs. 1672 lakhs to Rs. 4442 lakhs by way of a board note and also mentioned that in view of urgent need of fund by the company for export commitment, the management committee of Board of Directors in the meeting dated 9th October, 1992, had approved adhoc export credit limit of Rs.700 lakhs within the aforesaid recommended credit limit of Rs. 4442 lakhs, subject to approval from Reserve Bank of India in respect of letter of credit

(Inland & Foreign) facility for Rs. 400 lakhs.

6. The Head Office also in advance sought for approval of Reserve Bank of India for enhancement of overall credit limit of Rs. 4442 lakhs. The Head Office (Credits) after completing scrutiny of the data furnished by the company, forwarded the same to the General Manager (Credit), who marked the same to the Chief Manager (Credit). The Chief Manager (Credit) after having screened the said proposal/recommendation forwarded it to the Assistant General Manager, who after examining the same sent it back to General Manager (Credit) to prepare a draft board note which was sent to the Executive Director. The draft Board Note was submitted to the Chairman cum Managing Director, who approved the Board Note for enhancement of the credit limit of the petitioner Company, and the said approved Board Note was then placed before the Board of Directors. The Board of Directors, consisting of six directors, approved the proposal for sanction of enhanced credit limit to the tune of Rs. 4442 lakhs (44.42 cores). The sanction was conveyed by the Head Office (Credit), to the Zonal Manager with intimation to the Branch Manager and the Regional Manager.

7. There was delay in payment to the bank by the petitioner company in the year 1993. Rajan Bagaria (Accused No. 3), ex-director of the petitioner company, who owned Aarvee International (sister concern) on whom D.A. bills were drawn by the company and discounted by the bank informed the then C.M.D. of the bank, A.K. Bhattacharya, vide fax letter 16th October, 1993 that goods shipped by the petitioner Company have been received by them in Moscow and are lying in their godown and gave an undertaking that all due payments would be made to M/s Ratan Exports within a year.

8. The Head Office Board Note No. CROPII/04/437/BN/98/93 of 5th November, 1993, initiated by the Chief Manager (CROP-II) and signed by the Assistant General Manager (Credit), Shantanu Guha, and D.G.M. (Credit) containing developments in the account and recommending to allow continuance of the limit of Rs. 4442 lakhs to the petitioner Company, refers to the visit of Rajan Bagaria, M.D. of Arvee International, besides other senior officials of the company to Head Office on 3rd November, 1993, when they explained the position relating to the non-payment of bills arising out of the unstable political and economic scenario in Russia and other CIS countries and their commitment to make payment of all outstanding bills by end of December, 1993. The Board note was approved by the ED and CMD, Dr. A.K. Bhattacharya.

9. This note was followed by another development report vide Office Note Bearing No. CROP11/04/437/282/93 dated 13th December, 1993 which also refers to visit of Ratan Lal Bagaria (Accused No. 2), the then Managing Director of the Company, to Head Office and meeting with Senior Officials. This was followed by another development report Office Note no. CROP-11/04/437/94 dated 17th January, 1994, again referring to visit of Ratan Lal Bagaria to the Head Office meeting senior officials to explain the developments and progress relating to payment of outstanding bills. The note was approved by General

Manager (Credit). All these notes and several other letters written by the Managing Director of the petitioner Company to the CMD of the Bank

10. Thereafter, the overdue position of the petitioner company was substantially brought down from Rs. 15.43 crores in Sept. 1993 to Rs. 1.64 crores as on 29th April, 1994 and subsequently to NIL.

11. The problem thereafter got further aggravated due to investigation undertaken against the Company in April, 1995 on charges of money laundering, FERA violations as also willfully employing other suppliers in the process. The Collector of Customs Madras by his letter dated 1st May, 1995 had frozen the accounts and again vide letter dated 25th May, 1995 allowed de-freezing of account with instructions that the Company should provide no objection from the Directorate of Enforcement, New Delhi and keep Rupees One Crore aside for possible fine/Penalty to the Dept. The account gradually became NPA as on 31st March, 1996.

12. Thereafter, the petitioner company made payment worth over Rs. 11 Crores during 1996.

13. An FIR was lodged with the Central Bureau of Investigation (hereinafter "CBI"), New Delhi against the petitioner Company (Accused No. 4), its directors and few officials of the Bank for causing wrongful loss to the United Bank of India. CBI started investigation and collected the relevant documents.

14. The CBI submitted charge-sheet before the court concerned, against the Company on 26th March, 2004 through its M.D., two directors of the Company, V.K. Maheshwari (Accused No.1), the then Chief Manager of Overseas Branch New Delhi to whom the account of the company was transferred from Janpath Branch in September 1995, when the specialized branch was opened, the then General Manager M.K. Basu (Accused No. 5) and the then Zonal Manager (Accused No. 6). Shantanu Guha, the then Chief Manager (Credit Operations-II), Head Office was shown in column No. 2 in the charge sheet as the bank refused to give sanction for his prosecution.

15. A joint application dated 31st March, 2006 was filed by the United Bank of India and the Company through its then directors before the DRT, New Delhi, wherein it was stated that the Bank undertakes to issue no dues certificate to the petitioner Company and that all the claims and all inter-se grievances, disputes, claims and complaints before any forum and/authority shall be deemed to be fully and finally settled and compromised. It further stated that the petitioner Company will be discharged in respect of their liabilities in pending recovery proceedings.

16. Since the parties arrived at settlement and on the settlement the DRT proceedings were dropped, bank had given no due certificate to the petitioner Company. The petitioner Company filed an application for discharge under Section 227 of the Cr.P.C. before the learned Trial Court. The CBI has also moved

an application on 24th February, 2009 before the learned Trial Court, stating therein the bank has entered into a onetime settlement with the Company and received the full and final settlement amount and hence, the investigation in respect of the foreign buyers namely M/s Continental Trading Co., Poland, M/s Arvee International PTE Ltd, Singapore and M/s Interlog Pvt. Ltd., Singapore was not necessary and required as no useful purpose would be served by making further investigation in respect of the aforesaid foreign companies.

17. The Learned Special Judge vide order dated 29th November, 2012 framed charges against the Company, however, its application under Section 227 of the Cr.P.C was not decided. Hence, the instant petition has been filed on behalf of the petitioner company.

SUBMISSIONS

On behalf of the Petitioner:

18. Learned counsel for the petitioner submitted that the entire process of approval for increasing the credit limit shows that the proposal travelled and got approved through the entire chain of authorities at all levels till the highest authority and not one but all the authorities recommended/approved the proposal before the final decision by the Board of Directors.

19. It is further submitted that the learned Session Judge in the impugned order deleted Section 420 of the Indian Penal Code, 1860 (hereinafter "IPC") while framing charges as the case of prosecution is not that the Bank had been defrauded by the Company by concealing some facts or by keeping the Bank in dark. It is submitted that it is a case of pure banking transaction. Neither the officials of the Bank nor the Board of Directors of the Bank were involved.

20. Learned counsel for the petitioner submitted that Accused No. 3 and 6 have already been discharged and Accused No. 2 has now ceased to be a director. The petitioner being a corporate body/juristic person cannot itself be punished or jailed but can only be penalized through the directors. Therefore, the company cannot be penalized but the directors can be. The company can be held liable for fine/compensation apropos to the loss established. It is submitted that considering the view that dues have been paid to the bank by the petitioner, there is no justification or gain in continuing proceedings against the petitioner company as one of the accused in the criminal case. It is further submitted that petitioner being an artificial/juristic person does not possess mens rea which is sine qua non for commission of offence Section 420 of the IPC and as per Section 357 of Cr.P.C., the Court can impose fine to compensate the complainant for any loss or injury caused by the offence, when compensation, in the opinion of the Court, is recoverable by such person in a Civil Court.

21. To strengthen her arguments, learned counsel for the petitioner has relied upon a judgment of the Constitution bench of the Hon'ble Supreme Court in the matter of Standard Chartered Bank vs. Directorate of Enforcement, (2005) 4 SCC

530, wherein it has been held, by a majority of 3:2, that a company cannot be sentenced to imprisonment. The Court can only impose the punishment of fine against a company. Relevant para 31 of the judgment is extracted as under: -

"31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment, the court can impose the punishment of fine which could be enforced against the company.... As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company."

22. Learned counsel for the petitioner submitted that the learned Special Judge by the impugned order has held that the offence of cheating cannot be said to be made out due to full settlement by the Company, more so when this Court has already discharged the Bank officials K. Ramakrishna (Accused No. 6) and Rajan Bagaria (Accused No. 3) and when the other hierarchy of officers including the CMD of the bank who were involved in the process of granting approvals in favour of the petitioner company have not even been implicated for any criminal offence. The learned Special Judge therefore, vide the impugned order had deleted Section 420 of the IPC. It is further submitted that Accused No. 1 has already been discharged by this Court and moreover, the offences under the Section 13(l)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act") would not be made out independently against any private person for want of involvement of any public servant.

23. Learned counsel for the petitioner submitted that the Bank has not filed any complaint against petitioner Company or its director, except a recovery suit and the same was withdrawn immediately on settlement of its dues with the petitioner Company and much of the fuss has been made for foreign bill purchase on DA basis in place of DP basis in the chargesheet, however, the Trial Court vide the impugned order had ruled out this allegation by observing that these allegations would not survive in view of the fact that no sanction for prosecution has been given as against Shantanu Guha and Ramakrishna has already been discharged while in the chargesheet the allegation was pointed towards these two only. Similarly, as regards the allegations of 'in-house' trading, the Trial Court in the impugned order has held that the same would not survive in view of the fact that Rajan Bagaria has already stands discharged.

24. Learned counsel for the petitioner submitted that in light of the abovementioned the instant petitioner should be allowed and the impugned order is liable to be set aside.

On behalf of the Respondent:

25. Per contra, Mr. Rajesh Kumar, learned SPP appearing on behalf of respondent submitted that quashing is sought on the grounds (i) that proceedings against public servants Accused No. 1 and Accused No. 6 have been quashed by the High Court and other public servant has died before framing of the charges, therefore

in the absence of any public servant the case cannot proceed with before the Trial Court, (ii) that petitioner being a Juristic person cannot be prosecuted in the absence of any other accused for the offences as charged, and (iii) that the accused company has compromised with the Bank and made payments of settlement amounts.

26. Learned SPP for the respondent submitted that merely because the accused have compromised with the Bank, it is no ground to quash the proceedings, particularly in offences under the PC Act and that quashing of proceedings against other accused is no ground for quashing the proceedings against the petitioner, as the facts and material is distinguishable and different in each case. It is further submitted that even if two public servants have been discharged, there was another public servant Accused No. 5 at the time of the offence, who had committed the offence under Section 13 of the PC Act, therefore the proceedings cannot be quashed on this ground.

27. It is submitted that now the matter has reached its final stage and fixed for recording of the statement of the accused under Section 311 of the Cr.P.C. It is also submitted that the learned Trial Court will be appreciating the entire evidence led by the prosecution as the trial proceeds and the accused will get an opportunity to explain all the circumstances before the learned Trial Court. Therefore, the instant petition is liable to be dismissed for being devoid of any merit.

ANALYSIS AND FINDINGS

28. In the present case, the petitioner company has already settled the claim of the bank by paying Rs. 8 crores as full and final payment to the satisfaction of the Bank and the Bank has issued no dues certificate by specifically stating that, as per the schedule, all the inter-se grievances, disputes, claims and complaints before any forum and/or authority shall be deemed to be fully and finally settled and compromised. In view of the aforesaid settlement of all the claims of the Bank, the Bank withdrew its application for recovery of dues filed before the DRT and the DRT has closed the matter in view of the compromise/settlement.

29. In the instant matter, there were total six accused persons wherein the petitioner company is Accused No. 4. The Accused No. 1, V.K. Maheshwari, who was the then Chief Manager, UBI has already been discharged by the Coordinate Bench of this Court vide order dated 24th February, 2016, the Accused No. 3, Rajan Bagaria, ex-director of the petitioner Company has been discharged by the Coordinate Bench of this Court vide order dated 29th April, 2009 and Accused no. 6, K. Ramakrishna, the then Zonal Manager of the UBI has been discharged by the Coordinate Bench of this Court vide order dated 16th April, 2012. The Accused No. 5, Manas Kumar Basu, the then General Manager, UBI passed away before framing of charges and hence, proceedings against him were abated vide order dated 1st October, 2011. The Accused No. 2, Ratan Lal Bagaria was declared as proclaimed offender by the learned Special Judge vide order dated

8th November, 2012. He has been ceased to be Director of the petitioner Company with effect from 31st August, 2006. In this manner, now effectively, the trial is pending to be proceeded against the Company as the sole accused.

30. The petitioner has challenged the order of charge dated 29th November, 2012, seeking quashing of the criminal proceedings on the ground that a company cannot be sentenced to imprisonment. The Court can only impose the punishment of fine against a company. As per the settlement all the disputes between the parties have been amicably settled and one-time payment has been made to the bank. On the basis of the said settlement, the Bank has withdrawn its application for recovery of dues filed before the DRT and the DRT has closed the matter in view of the compromise. Moreover, all accused persons, except the one who has been declared as proclaimed offender, have already been discharged by this Court.

31. On the question whether a company can be sentenced to imprisonment the Constitution bench of the Hon'ble Supreme Court in the matter of Standard Chartered Bank vs. Directorate of Enforcement, (2005) 4 SCC 530 has held as under: -

"31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment, the court can impose the punishment of fine which could be enforced against the company.... As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company."

32. As per Section 357 of the Cr.P.C., the Court can impose fine to compensate the complainant for any loss or injury caused by the offence or to undo the pecuniary loss. In the present case, the Bank has already settled its liability with the petitioner company, pursuant to which, the petitioner company has paid Rs. 8 crores as full and final payment to the satisfaction of the Bank and the Bank has issued no dues certificate by specifically stating that, as per the schedule, all the claims of and all inter-se grievances, disputes, claims and complaints before any forum and/or authority shall be deemed to be fully and finally settled and compromised. Pursuant to the aforesaid settlement, the Bank withdrew its application for recovery of dues filed before the DRT and the DRT has also closed the matter in view of the compromise.

33. Moreover, a bare reading of Section 357(1)(b) of the Cr.P.C. clearly shows that a fine at best can be imposed to undo the pecuniary loss, which in the present case has already been settled by way of full and final payment. Therefore, even if the petitioner is prosecuted, it would not result into any further punishment on the petitioner, who is a juristic person.

34. In the case of State of Karnataka vs. L. Muniswamy and Ors. (1977) 2 SCC 699, the Hon'ble Supreme Court has held as under:-

"In the exercise of the wholesome power u/s 482 of the Act 2 of 1974 (s. 561 of 1898 Code), the High Court is entitled to quash a proceeding if 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."

A similar view has been expressed in *Baijnath Jha vs. Sita Ram & Anr.* (2008) 8 SCC 77, *Zandu Pharmaceutical Works Ltd. and Ors. vs. Mohd. Sharaful Haque and Anr.* (2005) 1 SCC 122 and *M.Mohan vs. the State*, (2011) 3 SCC 626.

35. In view of the above discussions, that, a company cannot be sentenced to imprisonment, that there is categorical finding that no loss has suffered by the Bank, moreover, that the bank has already settled the civil dispute with the petitioner company and pursuant to that an amount of Rs. 8 Crores has been paid to the Bank to its satisfaction and recovery proceedings have already been withdrawn by the Bank, it is clear that no useful purpose would be served by continuing the trial against the petitioner company all alone. Even if the outcome of the trial comes against the petitioner, then also the petitioner company cannot be asked to pay more than the pecuniary loss suffered by the Bank, if any, which has already been satisfied by the petitioner company with the bank.

36. In the impugned order, the learned Special Judge as categorically observed that the loss caused to the bank was valued to the tune of Rs. 3,50,57,073/- due to incessantly discounting of bills of the Accused No.4, despite no money being received against such bills, was not possible unless Accused No. 1, V.K. Maheshwari had abused his position as a public servant. The learned Trial Court, therefore, observed that the Accused No. 1 V.K. Maheshwari committed substantive offence under Section 13(I)(d) and 13(2) of the PC Act and the Accused No. 4, Company, had committed an offence under Section 109 of the IPC read with Section 13(I)(d) and 13(2) of the PC Act.

37. Now on face of the fact that the Accused No. 1, V.K. Maheshwari has already been discharged by the Coordinate Bench of this Court vide order dated 24th February, 2016, the offence under Section 13(I)(d) and 13(2) of the PC Act could not be made out against any private person for want of involvement of any public servant.

38. The allegation of criminal conspiracy is also between the petitioner Company and the discharged Accused No. 1, V.K. Maheshwari. The essential ingredients or pre-conditions of an offence of criminal conspiracy, as provided for under Section 120A of the IPC, is that there has to be meeting of minds of minimum of two persons to do or cause to be done (i) an illegal act or (ii) an act which is which is not illegal by illegal means. One person, all alone, cannot commit an offence as defined under Section 120A of the IPC.

39. In the case of *Topandas vs The State of Bombay*, AIR 1956 SC 33, it was held as under:-

"... 7. If authority for the above proposition were needed, it is to be found in Archbold's Criminal Pleading, Evidence and Practice, 33rd edition, page 201, paragraph 361:- "Where several prisoners are included in the same indictment, the jury may find one guilty and acquit the others, and vice versa. But if several are indicted for a riot, and the jury acquit all but two, they must acquit those two also, unless it is charged in the indictment, and proved, that they committed the riot together with some other person not tried upon that indictment. 2 Hawk. c. 47. s. 8. And, if upon an indictment for a conspiracy, the jury acquit all the prisoners but one, they must acquit that one also, unless it is charged in the indictment, and proved, that he conspired with some other person not tried upon that indictment. 2 Hawk. c. 47. s. 8; 3 Chit. Cr. L., (2nd ed.) 1141; R. v. Thompson, 16 Q.B.D. 832; R. v. Manning, 12. Q.B.D. 241; R. v. Plummer [1902] 2 K.B. 339".

8. King v. Plummer ([1902] 2 K.B. 339) which is cited in support of this proposition was a case in which, on a trial of indictment charging three persons jointly with conspiring together, one person had pleaded guilty and a judgment passed against him, and the other two were acquitted. It was held -that the judgment passed against one who had pleaded guilty was bad and could not stand. Lord Justice Wright observed at page 343:- "There is much authority to the effect that, if the appellant had pleaded not guilty to the charge of conspiracy, and the trial of all three defendants together had proceeded on that charge, and had resulted in the conviction of the appellant and the acquittal of the only alleged co-conspirators, no judgment could have been passed on the appellant, because the verdict must have been regarded as repugnant in finding that there was a criminal agreement. between the appellant and the others and none between them and him: see Harrison v. Errington (Popham,202), where upon an indictment of three for riot two were found not guilty and one guilty, and upon error brought it was held a "void verdict", and said to be "like to the case in 11 Hen. 4, c. 2, conspiracy against two, and only one of them is found guilty, it is void, for one alone cannot conspire"."

9. Lord Justice Bruce at page 347 quoted with approval the statement in the Chitty's Criminal Law, 2nd ed., Vol. III, page 1141:-

"And it is holden that if all the defendants mentioned in the indictment, except one, are acquitted, and it is not stated as a conspiracy with certain persons unknown, the conviction of the single defendant will be invalid, and no judgment can be passed upon him".

10. The following observations made by Lord Justice Bruce are apposite in the context before us:-

"The point of the passage turns upon the circumstance that the defendants are included in the same indictment, and I think it logically follows from the nature of the offence of conspiracy that, where two or more persons are charged in the same indictment with conspiracy with another, and the indictment contains no

charge of their conspiring with other persons not named in the indictment, then, if all but one of the persons named in the indictment are acquitted, no valid judgment can be passed upon the one remaining person, whether he has been convicted by the verdict of a jury or upon his own confession, because, as the record of conviction can only be made up in the terms of the indictment, it would be inconsistent and contradictory and so bad on its face. The gist of the crime of conspiracy is that two or more persons did combine, confederate, and agree together to carry out the object of the conspiracy".

11. This position has also been accepted in India. In *Gulab Singh v. The Emperor* (A.I.R. 1916 All. 141) Justice Knox followed the case of *The King v. Plummer*, supra, and held that "it is necessary in a prosecution for conspiracy to prove that there were two or more persons agreeing for the purpose of conspiracy" and that "there could not be a conspiracy of one".

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13. Ratanlal in his *Law of Crimes*, 18th ed., page 270, has summarised the position as it emerges from the above two cases in the manner following:-

"Where, therefore, three persons were charged with having entered into a conspiracy, and two of them were acquitted, the third person could not be convicted of conspiracy whether the conviction be upon the verdict of a jury or upon his own confession".

40. The Coordinate Bench of this Court has quashed the proceeding against the Accused No. 6, K. Ramakrishna, vide order dated 16th April, 2012. While passing the said order, the Coordinate Bench has categorically noted that no loss was caused to the Bank, and rather the Bank has earned Rs. 20 crores as interest, that the petitioner company was undisputedly a valued client of the bank and had immensely satisfactory transaction with the bank for more than two decades. The Managing Director of the Company used to directly correspond with the CMD of the bank and its file was directly controlled by the Head office. Even the enhancement proposal was initiated and forwarded by Head Office to the Branch Manager to be processed. The problem started from August, 1993 to April, 1994 on account of large-scale crystallization of bills due to political turmoil, disintegration of Soviet Union and in the absence of mutually agreed trade terms between India and CIS countries, the realization of export bills was getting abnormally delayed. For the same reason, the Bank never initiated any criminal case against the petitioner company or its directors, except a recovery suit and the same was withdrawn immediately after the settlement. Vide judgment and order dated 29th April, 2009, the Coordinate Bench of this Court quashed the criminal proceeding against the Accused no. 2, Ratan Lal Bagaria.

41. The scope of Section 482 of the Cr.P.C. is well defined and inherent powers could be exercised by the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This extraordinary power is

to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into the materials, the acceptability of which is essentially a matter of trial.

42. In the case of *Rajiv Thapar & Ors vs. Madan Lal Kapoor*, (2013) 3 SCC 330, the Hon'ble Supreme Court has held as under:-

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

43. In the case of *State of Maharashtra vs. Salman Salim Khan*, (2004) 1 SCC 525, the Hon'ble Supreme Court has held as under:-

"4. The law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the trial is being held before a Court of Magistrate, it is open to that court at any stage of trial if it comes to the conclusion that the material on record indicates the commission of an offence which requires to be tried by a superior court, it can always do so by committing such case for further trial to a superior court as contemplated in the Code of Criminal Procedure (the Code). On

the contrary, if the trial is being conducted in a superior court like the Sessions Court and if that court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as has happened in this case, proceedings get protracted by the intervention of the superior courts.

8. Being aggrieved by the dismissal of his application and the consequential framing of charge under Section 304 Part II, the respondent preferred a criminal application under Section 482 of the Code before the Criminal Appellate Bench of the High Court of Judicature at Bombay. The High Court by the impugned order has allowed the said application and quashed the order made by the learned Sessions Judge framing a charge under Section 304 Part II IPC against the respondent herein while it maintained the other charges and directed the appropriate Magistrate's Court to frame de novo charges under various sections mentioned in the said impugned order of the High Court including one under Section 304-A IPC.

12. We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the Apex Court, most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time, we are also in agreement with the arguments of the learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under Section 304 Part II IPC."

44. In the case of M.Mohan vs. The State, (2011) 3 SCC 626, the Hon'ble Supreme Court held as under:-

"53. This Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] observed that the wholesome power under Section 482 CrPC

entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings 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. In this case, the Court observed 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.

55. This Court in *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] observed as under : (SCC p. 695, para 7)

"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 are 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."

57. In *Emperor v. Khwaja Nazir Ahmad* [(1943-44) 71 IA 203 : AIR 1945 PC 18] and *Lala Jairam Das v. King Emperor* [(1944-45) 72 IA 120 : AIR 1945 PC 94] the Judicial Committee has taken the view that Section 561-A of the old Code which is equivalent to Section 482 CrPC gave no new powers but only provided that powers already inherently possessed should be preserved. This view holds the field till date.

62. In *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure 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 under Section 482 CrPC, 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 : (SCC pp. 378-79, para 102)

“(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 under Section 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 under Section 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 Act concerned (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 Act concerned, 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.”

67. In *State of A.P. v. Gourishetty Mahesh* [(2010) 11 SCC 226 : (2011) 1 SCC (Cri) 142] this Court observed that the power under Section 482 of the Code of Criminal Procedure is wide and they require care and caution in its exercise. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The Court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under Section 482 of the Code.

68. In the light of the settled legal position, in our considered opinion, the High Court was not justified in rejecting the petition filed by the appellants under Section 482 CrPC for quashing the charges under Section 306 IPC against them. The High Court ought to have quashed the proceedings so that the appellants who were not remotely connected with the offence under Section 306 IPC should not have been compelled to face the rigmaroles of a criminal trial. As a result, the charges under Section 306 IPC against the appellants are quashed.”

CONCLUSION

45. After going through the legal position discussed above and the facts and circumstances of the case, it is noted that allegations are against the two officers, i.e. Accused No. 6, K. Ramakrishna and Accused No. 1, V.K. Maheshwari, who have already been discharged by the Coordinate Bench of this Court vide judgment and order dated 16th April, 2012 and 24th February, 2016, respectively. It is also an admitted fact that the allegation of the criminal conspiracy is between the petitioner company and the Accused No. 1, V.K. Maheshwari, who has been discharged by the Coordinate Bench of this Court. It is also an admitted fact that the petitioner company was charged for offence punishable under Section 120B/109/409 of the IPC read with Section 13(I)(d) and 13(2) of the PC Act. Therefore, one person all alone cannot commit an offence of conspiracy and be convicted for offence punishable under Section 120B of the IPC. Further, the offence punishable under Section 409 of the IPC could not survive anymore in view of the fact that Accused No. 1, V.K. Maheshwari, has already been discharged by the Coordinate Bench of this Court.

46. After going through the facts and circumstances as well as the aforesaid discussions, this Court is of the considered opinion that if the trial is allowed to go, it will amount to gross miscarriage of the justice, since, the petitioner Company cannot be punished/sentenced after being held guilty of committing an offence being a juristic person. Therefore, there would be no purpose to proceed with the trial against the petitioner. In such an eventuality, jurisdiction of this Court under Section 482 of the Cr.P.C. comes to rescue.

47. Keeping in view the legal position discussed above and the facts and circumstances of the case, the present petition is allowed.

48. Accordingly, the order dated 29th November, 2012 and the consequent proceedings in Criminal Case No.51/11 & RC. No.5(E)/01 under Sections 120B/409 of the Indian Penal Code, 1860 and Sections 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 with emanating proceedings against the petitioner are hereby quashed. Further, criminal proceedings against the petitioner in Criminal Case No. RCA/BD1/2001(E)/2005/CBI/BS under Section 120B read with 409/420 of the IPC and Sections 13(2) and 13(I)(d) of the PC Act, pending in the Court of Special Judge (CBI)-09, Central District, Delhi, titled 'CBI vs. V.K. Maheshwari 86 Ors' is also quashed.

49. Pending application, if any, also stands disposed of.

50. The judgment be uploaded on the website forthwith.