(2015) 02 MP CK 0053

In the Madhya Pradesh High Court

Case No : M.Cr.C. Nos. 2986, 2987 and 2991/2014

Sheikh Alimuddin and Others — APPELLANT

Vs

Central Bureau of Investigation and Others — RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 210, 482
Penal Code, 1860 (IPC) — Section 120B, 120-B, 406, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 02 MP CK 0053

Hon'ble Judges : Rajendra Mahajan, J.;Ajit Singh, J.

Bench : Division Bench

Advocate : Surendra Singh, Learned Senior Counsel, Atulanand Awasthy and A.K. Dubey, Learned Counsel, for the Appellant; R.S. Siddiqui, Learned Assistant Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Mahajan, J.—Applicants have preferred these petitions u/s 482 of the Cr.P.C. being aggrieved by the order dated 11/02/2014 passed by the Court of Special Judge C.B.I. Bhopal and Second Additional Sessions Judge Bhopal (for short "the trial Court") in case Nos. SC CBI/2/2013, SC CBI/3/2013 and SC CBI/4/2013, whereby the trial court rejected the applications filed by the applicants under Section 210 of the Cr.P.C.

2. Since in the petitions material facts are almost same, the petitions have arisen out of the common F.I. Rs registered either by the State Police or the C.B.I., the point of law in issue in these petitions is the same, and the applicants are main parties in the cases, the petitions are being disposed of by this common order.

3. Material facts for the adjudication of the petitions are given below, in short:-

3.1 Shiv Kumar Gupta, the Chief Manager UCO Bank Malviyanagar, Bhopal Branch (for short "the Bank") made a written complaint dated 28/04/2010 to the

City Superintendent of Police T.T. Nagar Bhopal, alleging that M/s. Agronomy Services is a sole proprietary concern of Sheikh Alimuddin (applicant of M.Cr.C. no. 2986/14 and 2991/14). A term loan of Rs. 110.00 lacs was sanctioned and disbursed by the Bank to Sheikh Alimuddin for construction of warehouse at village Udpura Tehsil and District Sehore. On 23/12/2009, the cash credit limit of the firm was enhanced to Rs. 600.00 lacs for ''on-lending'' purpose. The said credit facilities were sanctioned and availed against the various securities including the pledge of warehouse receipts issued on behalf of the firm representing the storage goods and title of goods stored in the warehouse. As per the stock statement of firm dated 24/12/2009, Soyabean and Masur worth Rs. 10,01,48,675.90 paise were stored in the Warehouse against which Sheikh Alimuddin had deposited in advance title to goods with the bank. After due verification of the stock, the Bank permitted Sheik Alimuddin to avail of cash credit limit of Rs. 600.00 lacs. On 24/02/2010, the staff of the Bank physically verified the stock and found correct. On 29/03/2010, the Bank staff along with the concurrent auditor went for the stock verification in the warehouse, but they were prevented from entering the warehouse and inspecting the stock by the employees/ representative of the firm. Vide letter dated 21.04.2010, Sheikh Alimuddin confessed that he had sold out the stock in the month of March, 2010. The sale was done without taking due permission from the Bank, whereas not only the stock was pledged with the Bank but also it had possession over it. Thus, Sheikh Alimuddin had committed offences of fraud, criminal conspiracy, criminal breach of trust and forgery of documents against the Bank for which Sheikh Allimuddin is liable to be prosecuted u/s 406, 409, 420, 467, 468, 471 and 120B of the IPC.

3.2 On the same day i.e. 28/04/2010 aforesaid Shiv Kumar Gupta made another written complaint to the City Superintendent of Police T.T. Nagar, Bhopal alleging that M/s. Mayfair Warehousing is a partnership concern. Its partners are Sheikh Allimuddin and Ashish Kumar Diwan. A term loan of 91 lacs was sanctioned and disbursed by the Bank to the partners of the firm for construction of a ware-house at village Kothari Tehsil Ashta, District Sehore. On 23/12/2009, the cash credit limit of the firm was enhanced to Rs. 500.00 lacs for "on lending" purpose. The said credit facilities were sanctioned and availed against the various securities including the pledge of warehouse receipts issued on behalf of the firm representing the storage goods and title of goods stored in the warehouse. As per the stock statement of firm dated 29/12/2009, Soyabean worth Rs. 8,34,15,696.00 was kept in the warehouse against which the firm had deposited in advance title to goods with the Bank. After due verification of the Stock, the Bank permitted the firm to avail of cash credit limit of Rs. 500 lacs. On 24.02.2010, the staff of the Bank again physically verified the stock and found correct. On 29/03/2014, the Bank staff along with the concurrent auditor, made an attempt to verify the stock but due to the hurdles being created by the employees/ representatives of the firm, the stock verification could not be done. Thereafter, the firm stopped transactions with the Bank. Vide letter dated

22.04.2010, the partner of the firm Sheikh Alimuddin had informed that the firm had sold out the entire stock of Soyabean. The sale was done without taking due permission from the Bank, whereas not only the stock was pledged with the Bank but also it had possession over it. Thus, Sheikh Alimuddin, Ashish Kumar Diwan had committed offences of fraud, criminal conspiracy, criminal breach of trust and forgery of documents against the Bank, for which both of them are liable to be prosecuted u/s 406, 409, 420, 467, 468, 471 and 120-B of the IPC.

3.3 On the same day i.e. 28.04.2010 Shiv Kumar Gupta made yet another written complaint to the City Superintendent of Police, T.T. Nagar Bhopal, alleging that M/s. Fortune Warehouse is a partnership firm with partners Mohammed Juned Khan (applicant of M.Cr.C. No. 2987/2014) Asadullah Khan and Zohebullah Khan. On 09/04/2009, a term loan of Rs. 91 lacs was sanctioned and disbursed by the Bank to the partners of firm for construction of a warehouse at village Kothari, Tehsil Ashta District Sehore and the cash credit limit was granted to Rs. 400.00 lacs after renewal for on lending purpose. The said credit facilities were sanctioned and availed against the various securities including the pledge of warehouse receipts issued on behalf of the firm representing the storage goods and title of goods stored in the warehouse. As per the stock statement of firm dated 02/12/2009, Soyabean worth Rs. 5,84,57,490.00 was stored in the warehouse against which the firm had deposited in advance title to goods with the Bank. After due verification of the Stock, the Bank permitted the firm to avail of the aforesaid cash credit limit. On 24/02/2010, the staff of the Bank again physically verified the stock and found correct. On 29/03/2010, the Bank staff along with the concurrent auditor made an attempt to verify the stock but the employees and the representatives of the firm did not allow them to inspect the warehouse. Thereafter the firm stopped transactions with the Bank. Vide letter dated 22/04/2010, Mohammed Juned Khan had informed the Bank that the firm had sold out the entire stock of Soyabean. The sale was done without taking due permission from the Bank, whereas not only the stock was pledged with the Bank but also it had possession over it. Thus, the partners of the firm had committed offences of fraud, criminal conspiracy, criminal breach of trust and forgery of documents against the Bank for which they are liable to be prosecuted u/s 406, 409, 420, 467, 468, 471 and 120-B of the IPC.

3.4 The Police of Police Station T.T. Nagar made preliminary inquiries into all the three complaints and found that the allegations made therein are prima facie true. Thereupon, the Police T.T. Nagar registered a criminal case as crime No. 530/11 against the applicants and others on 14/05/2011 for offences under Sections 406, 420 and 120-B of the IPC.

3.5 In the meanwhile, Rajiv Yadav, the General Manager cum Zonal Manager of Bhopal Zone of the Bank made a written complaint dated 04/04/2011 in minute detail against the aforesaid three firms to the Superintendent of Police Central Bureau of Investigation Banking Securities and Fraud Cell, New Delhi, with a request to lodge a common FIR in respect of the firms, because, the applicant

Sheikh Alimuddin is the common conspirator in the above three cases as he is the borrower in M/s. Agronomy Services, the partner in M/s. Mayfair Warehousing and the guarantor in M/s. Fortune warehousing. Likewise Ashish Kumar Diwan is also a common conspirator in all the above three cases because he is the guarantor in M/s. Agronomy Services and M/s. Fortune Warehousing and the partner in M/s. Mayfair Warehousing. It is also stated in the complaint that the firms defrauded the Bank to the tune of Rs. 1874.85 lacs on 31/07/2010 inclusive of interest up to 31/03/2010. Upon this written report, the CBI, registered a regular criminal case by recording the FIR on 18/04/2011 against Sheikh Alimuddin (applicant) Ashish Kumar Diwan, Mohd. Juned Khan (applicant), Asadullah Khan, Zohebullah Khan unknown private persons and Bank officials under Sections 120-B read with 406, 420 of the IPC and 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

3.6 Upon completion of investigation, three charge- sheets had been filed by the CBI in the trial Court, which are registered as under:-

(1) Case No. SC-CBI/2/2013. The CBI vs. Sheikh Alimuddin and seven others.

(2) Case No. SC-CBI/3/2013. The CBI vs. Mohd. Juned Khan and six others.

(3) Case No. SC-CBI/4/2013. The CBI vs. Sheikh Alimuddin and six others.

3.7 In the aforesaid three cases, the applicants filed the applications under Section 210 of the Cr.P.C. in the trial court on almost same grounds, stating that complainant Shiv Kumar Gupta made three written complaints dated 28/04/2010 with the police station T.T. Nagar. Upon his complaints, the Police T.T. Nagar registered the FIR at crime No. 530/2011 against the applicants and other accused persons and initiated investigation, which is still pending. And on similar facts and circumstances, the CBI registered a criminal case against them and others on a written report dated 04/04/2011 made by Rajiv Yadav and filed charge-sheets in the trial Court. As per law under the same set of facts and circumstances two separate trials or proceedings cannot be held against one and same accused and he cannot be punished twice for the same offence. But, in the present case, the applicants would have to face two separate trials, one before the CJM Court and another before the Special Court. Under the aforesaid facts and circumstances in the interest of justice, the proceedings in the present cases be stayed till the Police T.T. Nagar takes the decision for either closure of the case or withdrawal of the case.

3.8 The trial court has decided the applications filed by the applicants vide impugned orders which are almost same. The trial Court rejected the applications holding that as the CBI has already filed the charge- sheets in the cases, the trial of the cases cannot be stayed in view of the law laid down by the Supreme Court in the case of Satya Narayan Sharma Vs. State of Rajasthan, .

3.9 Feeling aggrieved with the impugned orders, the applicants filed these petitions.

4. Learned counsel for the applicants submitted that on 28/04/2010 Shiv Kumar Gupta made a complaint against the applicants in the Police Station T.T. Nagar, upon which the Police took cognizance and registered crime No. 530/2011.Thereafter, on the same set of facts and evidence, the CBI registered the FIR on 18/04/2011 against the applicants and others. It is settled law that for the same set of facts and evidence two FIRs cannot be registered. Hence, the FIR registered in crime No. 530/11 shall prevail because of its earlier registration. Thus, under the provisions of Article 21 of the Constitution and Section 482 of the Cr.P.C., the FIR registered by the CBI against the applicants be dropped and quashed because of its subsequent registration in Crime No. 530/11. In support of the above contention, learned counsel relied upon the law laid down in the case Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, .

5. On the contrary, learned Assistant Solicitor General submitted that though the Police T.T. Nagar, Bhopal, received the complaints made by Shiv Kumar Gupta on 28/04/2010, yet the Police made preliminary inquiries into the complaints to ascertain the truthfulness of the allegations made therein. When the Police found prima facie the allegations are true, then on 14.05.11, the FIR was registered at crime no. 530/11. Thereafter, the Police started investigation into the case. He also submitted that preliminary inquiry does not amount to collection of evidence and so it cannot be regarded as investigation. Also, it cannot be said that the date of registration of the crime would be the date of submission of the written complaints i.e. 28/04/10. It was also submitted by him that the CBI received the written complaint made by Rajiv Yadav on 04/04/11 and it registered the complaint as FIR on 18/04/11 without making any preliminary inquiry into the complaints because the C.B.I. was of the view that the allegations made in the complaints prima facie disclosed commission of offences. In view of the above facts, it proves that the CBI registered the crime against the applicants and others, first in time. Therefore, the FIR registered by the CBI cannot be dropped and quashed. In support of the aforesaid contention, the learned Assistant Solicitor General relied upon the decision of Supreme Court rendered in The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, The learned counsel also brought to our notice two letters dated 12/12/2011 and 24/04/2014. The first is written by the CBI to the Director General of Police M.P. wherein, it is requested to direct the Police Station T.T. Nagar, Bhopal to close the investigation in the aforesaid crime number stating that it has first registered the case on 18/04/2011 against the same accused persons on the same facts, whereas the Police Station T.T. Nagar registered the crime No. 530/2011 on 14.5.11 i.e. subsequent to registration of the case by it. The second is written by the SHO T.T. Nagar, Bhopal to the Court of CJM, Bhopal requesting it to accept the closure report in its crime No. 530/11 as the CBI registered the case on the same facts and evidence against the same accused persons first in time. Upon the basis of the aforesaid two letters, the learned Assistant Solicitor General stated that no prejudice or injustice was caused to the applicants.

6. Learned Panel Lawyer for the non-applicant no. 2 / State supported the arguments advanced by learned Assistant Solicitor General.

7. We have perused the entire records of the cases and considered the rival contentions:

8. First, we would like to state that the provisions of Section 210 of the Cr.P.C. are applicable in a situation when there is a complaint case and the Police investigation also in respect of the same offence, but the case in hand, both the Police and the CBI are investigating agencies. Hence, the applicants had wrongly filed applications in the trial court in the aforesaid section.

9. No doubt, on the same set of facts, circumstances and evidence against the same accused persons (including applicants) the Police T.T. Nagar and the CBI registered the criminal case. As per law laid down in case of Amitabhai Anilchandra Shah (supra) there cannot be two FIRs on the same sets of evidence against the same accused. In this case, it is also held that the FIR which is first in time shall prevail. Now, this Court has to decide which will be the first FIR of the two. It is true that Shiv Kumar Gupta made written complaints to the Police T.T. Nagar on 28/04/10, but it preferred to make the preliminary inquiry into the complaints instead of directly registering the complaints as FIRs. As per the records the Police T.T. Nagar registered the crime No. 530/11 on the outcome of the preliminary inquiries. The Supreme Court in the case of State of U.P. (supra)has held that preliminary inquiry does not amount to collection of evidence and so it cannot be termed as investigation. Hence, in view of the above ratio it can be said that the Police T.T. Nagar, started investigation into the case after the registration of crime No. 530/11 on 14/05/2011. The CBI registered the case against the applicants and others on 18/04/11. Thus, it is crystal clear that the FIR registered against the applicant and others by the CBI is first in time and it being so cannot be quashed or dropped vis-a-vis to the FIR of crime No. 530/11. As per the letter dated 24/04/2014 the SHO T.T. Nagar, Bhopal has also requested the CJM, Bhopal to accept the closure report in crime No. 530/11 in view of the registration of the case by CBI. Therefore, it is wrong apprehension on the part of the applicants that they have to face two parallel proceedings for one and the same offence.

10. To secure ends of justice, we deem it proper to direct the Chief Judicial Magistrate Bhopal to take notice of the letter dated 24/04/2014 submitted by the SHO Police Station, T.T. Nagar, Bhopal and pass appropriate orders therein without delay in accordance with the law keeping in mind that the C.B.I. had already filed the charge-sheets in the trial Court if the letter is pending before him for consideration.

11. In view of the above discussion, we do not find any merits in the applicants cases. Hence, their petitions u/s 482 of the Cr.P.C,. are dismissed.

12. Copies of this order be kept in M.Cr.C. No. 2987/2014 and 2991/2014.

13. A copy of this order be sent to the Court of CJM, Bhopal for information and compliance of the direction as set out in para 10 of this order.

