

(2014) 09 AP CK 0084

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4190 of 2013

T.B. Shankar Rao

APPELLANT

Vs

The C.B.I. State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(2), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2015) 1 ALD(Cri) 307 : (2015) 2 ALT(Cri) 47

Hon'ble Judges : S. Ravi Kumar, J

Bench : Single Bench

Advocate : M. Jagadish Kumar, Advocate for the Appellant; P. Kesava Rao, Special Public Prosecutor, Advocate for the Respondent

Judgement

S. Ravi Kumar, J.—This petition is filed to quash proceedings in C.C. No. 3 of 2003 on the file of II Additional Special Judge for C.B.I. Cases, Nampally, Hyderabad.

2. Petitioners herein are A. 5 to A. 8 in the above referred C.C.C.B.I., Hyderabad filed charge sheet against petitioners and seven others for offences under Indian Penal Code and also for the offences of Prevention of Corruption Act.

3. The offences alleged against the petitioners are only under Indian Penal Code which are punishable under Sections 120B, 420, 468 and 471 I.P.C. Out of eleven accused, A. 1 to A. 3, A. 10 and A. 11 are public servants and Bank officials and remaining are private persons. The petitioners herein are also private persons. The first petitioner (A. 5) and second petitioner (A. 6) are husband and wife. Third petitioner (A. 7) is mother-in-law of first petitioner (A. 5) and 4th petitioner is a private limited company represented by first petitioner (A. 5).

4. According to Charge Sheet allegations, in pursuance of criminal conspiracy, petitioners with a dishonest intention applied for loans for establishing poultry

units and manufacturing poultry medicines without any lands for poultry units on their own to Andhra Bank, Shamsheergunj Branch, Hyderabad. In connivance with the officials of the bank, petitioners obtained loan to the extent of 81.25 lakhs under the scheme of term loans and OCC facility and by availing the said loan, lands were purchased subsequently and those lands were offered as security and thereby, caused loss to the bank and obtained wrongful gain for them.

5. According to petitioners, first petitioner (A. 5) representing M/s. Sunita Poultry Farm obtained term loan of Rs. 23.75 lakhs in 1995-1996 repayable in monthly installments, over a period of 84 months with a gestation period of one year after sanction of loan amount, he started paying the amount right from 22-2-1996 and paid installments till 31-12-1999 and thereafter, as per the settlement and compromise with Andhra bank paid 18.68 lakhs between 30-12-2002 to 29-5-2003 and repaid the entire loan amount. Similarly, second petitioner (A. 6) obtained loan of Rs. 23.75 lakhs during 95-96 and commenced payment of installments from 12-4-2006 and paid upto 28-2-2000 and in pursuance of the settlement/compromise, paid an amount of Rs. 23.76 lakhs between 30-12-2002 to 29-5-2003.

6. Similarly, 3rd petitioner (A. 7) obtained loan of Rs. 23.75 lakhs during 95-96 and commenced payment of installments from 12-4-1996 and paid upto 28-3-2000 and as per the settlement/compromise with the bank, paid an amount of Rs. 23.76 lacks between 30-12-2002 to 29-5-2003.

7. According to petitioners, the total loan amount from the bank was repaid by the end of May, 2003 in pursuance of one time settlement/compromise with the bank and this compromise was arrived after long correspondence between the petitioners and the bank and therefore, allegation that loans were obtained to cause loss to the bank and gain to the petitioners is not well founded.

8. According to the petitioners, they commenced payment of EMI from the inception i.e., 1996 onwards and therefore, the allegation that the loans were obtained with dishonest intention at the inception is also not well founded.

9. Heard both sides.

10. Advocate for petitioners submitted that all the petitioners are charged for the offences under Sections 420, 468, 471 and 120B I.P.C. and that for the offence of cheating, there must be dishonest intention from the inception, but from the fact it is clear that there is no prima facie material to show that they have such intention from the inception, on the other hand, material on record would disclose that they have no such intention and they commenced payment of EMI from the middle of 1996. He further submitted that the other allegation against the petitioners is that they have used forged documents and caused loss to the bank.

11. He further submitted that repayment schedule commenced in the year 1996

and even by the date of FIR, substantial loan amount is paid back and if really, the intention of the petitioners was to cause loss, there should not have been repayment of substantial amount. He further submitted that the total amount obtained under different loan accounts is 81.03 lacks and the total money paid by way of installments was Rs. 70.29 lakhs and the amount paid after settlement is 77.43 lakhs, thus a total sum of Rs. 147-72 lakhs is paid and all the loan accounts are cleared by middle of 2003.

12. He further submitted that there is absolutely no loss to the bank, on the other hand, the entire loan amount with interest was repaid. He further submitted that petitioners earlier filed a quash petition relying on two Supreme Court judgments of Nikhil Merchant Vs. Central Bureau of Investigation and Another, and B.S. Joshi and Others Vs. State of Haryana and Another, , but this court by relying on judgments of Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others, and also B.S. Joshi and Others Vs. State of Haryana and Another, , dismissed the said quash petition. But in Gian Singh Vs. State of Punjab and Another, case, three judges bench of the Honourable Supreme Court upheld the view of Nikhil Merchant and B.S. Joshi cases (1st and 2nd cited) while answering the reference made to that bench and relying on the same, this court in Criminal Petition No. 1510 of 2009 quashed proceedings in C.C. No. 57 of 2005 on the file of Special Judge for C.B.I. Cases, Hyderabad by order dated 16-10-2012 on a similar set of facts and therefore, continuation of proceedings against the petitioners would amount to abuse of process of court and as such, they are entitled to the relief claimed.

13. He further submitted that decision in Gian Singh's case (5th cited) was not delivered by the date of disposal of earlier quash petition. He further submitted that even otherwise second quash petition is not a bar and it is maintainable as per the decision of Supreme Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, . He further submitted that even if the facts as narrated in charge sheet are accepted in toto, there may be irregularities in sanction of the loan but there is no illegality and on this ground also, proceedings are to be quashed.

14. On the other hand, Special Public Prosecutor for C.B.I. submitted that the allegations against the petitioners are in respect of serious offences of cheating and use of false and fictitious documents. He further submitted that there is also allegation of opening of fictitious accounts and that petitioners knowing fully well that the accounts are fictitious withdrawn the amounts and therefore, there is strong material against the petitioners and the same require trial. He further submitted that even charges are framed and some witnesses were examined and all the objections raised by the petitioners are matter of evidence which are to be decided during trial. He further submitted that mere repayment of loan will not absolve the petitioners from the offences and therefore, there are no grounds to quash the proceedings.

15. In reply, learned advocate for petitioners submitted that in Superintendent

and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, ., Honourable Supreme Court while holding that there is no bar to file a second petition and quashed proceedings in that case holding that there was no progress in the trial for a period of one and half year after the disposal of the first quash petition, but here in our case, first quash petition was dismissed four years back and till now there is no progress in the trial and therefore, the objection of learned Public Prosecutor is not tenable.

16. Now the point that would arise for my consideration in this petition is whether proceedings in C.C. No. 3 of 2003 on the file of II Additional Special Judge for C.B.I. Cases, Nampally, Hyderabad is liable to be quashed or not?.

POINT:

17. As already referred above, petitioners are facing charges for the offences under Sections 420, 468, 471 and 120B IPC.

18. As seen from the charges framed, the allegation against petitioners are that they obtained agricultural term loan on fictitious firms and withdrawn 81.25 lakhs from Andhra bank, thereby, caused wrongful loss to the Bank and correspondingly they had wrongful gain.

19. The other allegation is that they have used invalid and incomplete documents as collateral security with false quotations for availing above referred loans and use of invalid and incomplete documents or false quotations is only to have wrongful gain of availing loan.

20. From the correspondence and certificates issued by the Andhra bank Shamsheergunj Branch, it is clear that loan amounts are repaid partly by way of equated monthly installments as agreed and the remaining amount under one time settlement/compromise with the bank.

21. According to petitioners, as per the Nikhil Merchant Vs. Central Bureau of Investigation and Another, , proceedings have to be quashed. In Nikhil Merchant Vs. Central Bureau of Investigation and Another, , the Honourable Supreme Court in a similar set of facts quashed the proceedings. The point that was decided in that case by the Supreme Court is whether criminal proceedings can be quashed pursuant to the compromise arrived at.

22. The facts and observations of the Honourable Supreme Court in that decision are as follows:

The facts of the case warrant interference in these proceedings.

23. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company N, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

24. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Section 320(2) Cr.P.C. with the leave of the court. However, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in *B.S. Joshi and Others Vs. State of Haryana and Another*, , becomes relevant.

25. In the instant case, the disputes between the company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets.

26. On an overall view of the facts and keeping in mind the decision in *B.S. Joshi and Others Vs. State of Haryana and Another*, , and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, this is a fit case where technically should not be allowed to stand in the way in the quashing of the criminal proceedings, since the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

27. Admittedly, petitioners earlier filed criminal petition No. 1968 of 2009 and this court along with other similar petitions by a common order dated 17th December, 2009 dismissed the said application holding that this *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, cannot be applied in view of the decisions of *Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others*, and *B.S. Joshi and Others Vs. State of Haryana and Another*, .

28. A reference was made to the Honourable Supreme court in *Gian Singh Vs. State of Punjab and Another*, wherein the correctness of the decision of the *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, and *B.S. Joshi and Others Vs. State of Haryana and Another*, and other decisions of Honourable Supreme Court were doubted by two Judge bench of Honourable Supreme Court and a three judges Bench of Honourable Supreme Court after analyzing decisions of Supreme Court on the subject including *Central Bureau of Investigation Vs. A. Ravishankar Prasad and Others*, and *B.S. Joshi and Others Vs. State of Haryana and Another*, , upheld the correctness of view taken in *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, and *B.S. Joshi and Others Vs. State of Haryana and Another*, and *Manoj Sharma Vs. State and Others*, .

29. The Honourable Supreme Court made the following observations in *Gian Singh Vs. State of Punjab and Another*, .

30. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or

complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

31. Now the contention of the learned Public Prosecutor for C.B.I. is that while quashing the proceedings on the ground of compromise, the High Courts have to consider the nature and gravity and since this offence against petitioners is grave in nature, the repayment of loan amount is not a ground to quash.

32. But from a reading of the above observations of the Supreme Court in *Gian Singh Vs. State of Punjab and Another*, it is clear that Criminal Cases having overwhelmingly and predominately civil flavour stand on different footing for the purpose of quashing particularly the offences arising from commercial financial, mercantile, civil and partnership or such like transactions or the

offences arising out of matrimonial relating to dowry etc., or family disputes.

33. In *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, , almost on a similar set of facts the Honourable Supreme court quashed the proceedings while taking into consideration the parties therein have cleared the amounts due to the bank. In that case also, the allegation against the accused therein was that they have availed loan credit facility by making false representation to avail loan to which the accused therein was not entitled. In that case also, the offences leveled against the accused therein are for the offences under Sections 420, 468 and 471 I.P.C. besides 120B I.P.C.

34. The objection of learned Special Public Prosecutor for C.B.I. is Honourable Supreme Court (in *Gian Singh Vs. State of Punjab and Another*, , pointed out some restrictions and those restrictions would apply to the facts of this case.

35. Recently, Honourable Supreme Court had considered this aspect in a similar set of facts and held that the restrictions pointed out in *Gian Singh Vs. State of Punjab and Another*, are not applicable and confirmed the view in *Nikhil Merchant Vs. Central Bureau of Investigation and Another*, . This observation was made in *CBI, ACB, Mumbai Vs. Narendra Lal Jain and Others*, and the relevant portion is as follows:

In the present case, as already seen, the offence with which the accused-respondents had been charged are under Section 120B/ 420 of the Indian Penal Code. The civil liability of the respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120B is not. To the latter offence the ratio laid down in *B.S. Joshi and Nikhil Merchant* would apply if the facts of the given case would so justify. The observation in *Gian Singh* (para 61) will not be attracted in the present case in view of the offences alleged i.e., under Sections 420/ 120B I.P.C.

36. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 Cr.P.C. it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C.

37. As rightly pointed out by advocate for petitioners, the facts in Nikhil Merchant Vs. Central Bureau of Investigation and Another, are almost similar to the case on hand.

38. In our case, from the correspondence between petitioners and Andhra Bank, it is clear that Bank accepted one time settlement and in pursuance of such settlement the entire loan amount is paid and there is no grievance to the Bank.

39. Though other side has not raised any objection with regard to maintainability of second petition, Advocate for petitioners submitted that second petition is not a bar and to support his argument, he placed reliance on a Supreme Court decision.

40. In Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, ., Honourable Supreme court held that dismissal of earlier application for quashing is not a bar to consider fresh application.

41. In that case, the Honourable Supreme Court observed as follows:

The earlier application which was rejected by the High Court was an application under Section 561A of the Code of Criminal Procedure to quash the proceeding and the High Court rejected it on the ground that the evidence was yet to be led and it was not desirable to interfere with the preceding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents No. 1 and 2 were constrained to make a fresh application to the High Court under Section 561A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time, when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents

Nos. 1 and 2 for the purpose of deciding whether it should exercise

@ page-SC 1005

its inherent jurisdiction under Section 561A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the order of the High Court.

42. From a reading of the above judgment of the Honourable Supreme Court, where there was no progress over a period of one and half year after disposal of the earlier quash application, the second application was considered and quash of proceedings ordered by the High Court were upheld. In this case also, decision of Gian Singh Vs. State of Punjab and Another, was not there when the first application of the petitioners is disposed of and in view of the change of circumstance and also due to the fact that no progress is made in the trial, the petitioners again moved for quash and in view of the above referred judgment of the Supreme Court, this second petition is absolutely maintainable.

43. As already referred above, the facts and circumstances in this case are similar to that of Nikhil Merchant Vs. Central Bureau of Investigation and Another, . In that case also the offences against the accused therein are for offences under Sections 120B, 420, 468, 471 I.P.C. who were private persons and for the offences under Prevention of Corruption Act were against the Bank Officials.

44. In this case also, the offences against private persons are under Section 120B, 420, 468 and 471 I.P.C. and the offences against bank officials are under the Prevention of Corruption Act besides the IPC offences.

45. In this case also in pursuance of the settlement and compromise between the bank and petitioners, entire loan amount is paid.

46. As seen from the record, the total loan amount was Rs. 81.03 lakhs and the amount repaid by the petitioners was Rs. 147.72 lakhs.

47. Considering the judgments of the Honourable Supreme Court referred above, and applying the principles and observations made in the above referred decisions, I am of the view that continuation of the proceedings against the petitioners would be futile exercise, therefore, to secure ends of justice, powers under Section 482 Cr.P.C. have to be exercised.

48. For these reasons, this Criminal Petition is allowed and proceedings in C.C. No. 3 of 2003 on the file of II Additional Special Judge for C.B.I. Cases, Nampally, Hyderabad against petitioners, are hereby quashed.

49. As a sequel to the disposal of this Criminal petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.