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SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1302_____ OF 2008
@ S.L.P. (CRL) NO.6355 of 2005

Nikhil Merchant ...Appellant

Vs.

Central Bureau of Investigation & Anr ...Respondent(s)

J U D G M E N T

Altamas Kabir, J.

1. Leave granted.

2. Central Bureau of Investigation (hereinafter referred to as "CBI") filed a charge sheet against five accused persons under Section 120B read with Sections 420, 467, 468, 471A Indian Penal Code read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the

said charge sheet, the appellant herein was made accused No.3 and the Company, in respect of which he was the former Managing Director, M/s. Neemuch Emballage Ltd., Mumbai, was made the accused No.4. The other three accused are officials of the Andhra Bank.

3. The accused No.4-Company was granted financial assistance by the Andhra Bank, Opera House Branch under various facilities. On account of default in repayment of the loans, the Bank filed a suit for recovery of the amount payable and in addition, on 19th December, 1995, a complaint was made by the General Manager and the Chief Vigilance Officer of the Bank on the basis whereof investigations were undertaken by the CBI, which filed the above-mentioned charge sheet in the Court of the Special Judge on 30th December, 1998. The allegations under the charge sheet indicate that the accused persons conspired with each other in fraudulently diverting the funds of the Andhra Bank. Offences alleging forgery were also included in

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the charge sheet. The above-mentioned suit between the Company and the Bank, to which the appellant herein was also a party, was disposed of on a compromise arrived at between the parties which was reduced into writing, and was filed in the suit. On the basis of the consent terms, the suit was compromised upon the defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms. What is of importance in this case is clause 11 of the consent terms, which reads as follows:-

> "Clause 11. Agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter allegations made against each other."

4. Consequent upon the compromise of the suit and having regard to the contents of Clause 11 of the consent terms, the appellant herein filed an application for discharge from the criminal complaint, in respect of which charge sheet had

been filed by the CBI. The said application was rejected by the Special Judge (CBI), Greater Bombay, by his order dated 11th December, 2002, which came to be challenged by the appellant before the Bombay High Court in Cr.R.A. No.49/2005, along with several other writ petitions filed by the other accused.

5. Before the High Court, it was urged that since the subject matter of the dispute had been settled between the appellant and the Bank, it would be unreasonable to continue with the criminal proceedings which had been commenced on a complaint filed on behalf of the Bank having particular regard to clause 11 of the consent terms by which the parties had withdrawn all claims against each other. It was submitted that the learned Special Judge had erred in rejecting the appellant's prayer for discharge from the criminal case. In support of the aforesaid contentions made on behalf of the appellant before the High Court, reference was made to the decision of this

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Court in the case of Central Bureau of Investigation vs. Duncans Agro Industries Ltd., [1996 (5) SCC 591] wherein on the basis of facts similar to the facts of this case, this Court had held that even if an offence of cheating is prima facie made out, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Bank, for all intents and purposes, amount to compounding of the offence of cheating. This Court accordingly, upheld the order of the High Court quashing the criminal complaint after the civil action had been compromised between the parties.

6. Apart from the said decision, reliance was also placed on another decision of this Court in the case of B.S. Joshi and Ors. Vs. State of Haryana & Anr., [2003(4) SCC 675] wherein while dealing with the proceedings under Sections 498-A and 406 Indian Penal Code involving matrimonial disputes and offences, this Court held that even though the provisions of Section

320 of the Code of Criminal Procedure would not apply to such offences, which are not compoundable it did not limit or affect the powers under Section 482 and the powers conferred on the High Courts and the Supreme Court under Articles 226 and 136 of the Constitution of India. Referring to the decision of this Court in State of Haryana vs Bhajan Lal, [1992 Suppl. (1) SCC 335] this Court observed that the categories indicated in the said case which warranted exercise of power under Section 482 CrPC were only illustrative and not exhaustive. This Court ultimately held that the High Court in exercise of its inherent powers can quash criminal proceedings or a FIR or complaint and Section 320 CrPC does not limit or affect the power of the High Court under Section 482 of the Code.

7. After considering the said decision in the light of the submissions made on behalf of the respective parties, the High Court took the view that in the Duncans Agro case (supra) this

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Court was considering the situation involving Section 420 IPC which was compoundable under Section 320(2) CrPC, while in the instant case, the charge sheet was also under Sections 467, 468, 471-A IPC along with the provisions of the Prevention of Corruption Act, which were non-compoundable. The High Court, therefore, held that neither of the said two cases would have application to the facts of this case and rejected the appellant's prayer for discharge from the criminal cases.

8. This appeal has been filed against the said order of the High Court rejecting the appellant's prayer for discharge from the criminal complaint.

9. Appearing for the appellant, Mr. R. Nariman, learned senior advocate, submitted that the appellant was not the direct beneficiary of the loans which had been granted by the complainant Bank, but had stood guarantee for the same in his capacity as the Managing Director of the Company to whom such loans had been advanced.

Mr. Nariman submitted that while the loans were said to have been advanced to the Company-Accused No.4 between 1986 and 1989, the suit for recovery of the unpaid dues was filed by the Andhra Bank in 1992 and two years thereafter the complaint was lodged by the Bank on 19th September, 1994 and the charge sheet was filed by the CBI four years later on 30th December, 1998. Thereafter, the suit filed by the Bank for the recovery of its dues was compromised by a consent decree on 12th October, 2000, and in view of clause 11 of the consent terms, apart from the said suit, all other actions, including the criminal proceedings, also stood compounded. In support of his aforesaid submissions, Mr. Nariman also relied on the decision rendered by this Court in the Duncans Agro case (supra) and B.S. Joshi's case (supra) and submitted that the High Court had erred in coming to a finding that the said two decisions had no application to the case in hand.

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10. Mr. Nariman submitted that paragraph 2 of the Judgment in the Duncans Agro case (supra) would clearly indicate that the offences disclosed in the first of the two FIRs attracted the provisions of Section 120B read with Sections 409, 420, 467, 468 and 471 IPC. It was not that the High Court was considering the case only under Section 420 IPC which was compoundable. Mr. Nariman submitted that it is such misreading of the judgment which has led the High court to commit an error in its decision under challenge. Mr. Nariman urged that the decision in B.S. Joshi's case (supra) squarely covers the facts of this case also since in exercise of inherent powers, this Court could transcend the limitation imposed under Section 320 CrPC and pass orders quashing criminal proceedings or FIR or complaint even where non- compoundable offences were involved.

11. Mr. Nariman submitted that since the disputes out of which the criminal proceeding has arisen have been compromised between the appellant and the Bank, continuing with the compliant would only amount to misuse of the process of Court.

12. In addition to his above submissions Mr. Nariman submitted that after the chargesheet was filed by the CBI on 30.12.1998, no further steps have been taken in the matter and that even charges have not been framed. He submitted that the proceedings were stayed by this Court on the SLP filed by the appellant only on 3.1.2006. He also submitted that even the Bank had not taken any action against its employees against whom chargesheet had been filed. He urged that from the manner in which the entire matter has been pursued no other object has been sought to be achieved except to harass the appellant for the last 14 years when the initial complaint was lodged by the Bank.

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13. It was lastly submitted by Mr. Nariman that, in any event, the contents of the chargesheet and the allegations made therein, at best make out a case for cheating and not forgery and consequently both the Duncans Agro Industries case (supra) and B.S.Joshi's case (supra) would apply to the facts of the case and the proceedings were liable to be quashed.

14. The learned Additional Solicitor General, Mr. A.Sharan, on the other hand, submitted that neither of the aforesaid two cases have any application to the facts of the instant case and the appellant had erroneously relied on the same. The learned Additional Solicitor General submitted that the CBI had filed chargesheet against the appellant under Section 120-B read with Sections 420,467, 468, 471 IPC and also under Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and

Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

15. The learned Additional Solicitor General submitted that apart from Section 420 IPC the appellant had been charged with other offences in the chargesheet as indicated hereinabove, most of which being offences under the IPC as also the Prevention of Corruption Act, were non-compoundable. It was urged that in the Duncans Agro Industries case (supra)the Court had proceeded on the basis that the charge against the accused was one only under Section 420 IPC and a decision was rendered accordingly, despite the fact that the chargesheet also included offences under Sections 468 and 471 IPC which were non-compoundable. It was urged that the decision in B.S. Joshi's case (supra) does not also help the case of the appellant since what was being considered therein was whether the High Court had jurisdiction to

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exercise authority in a writ petition where the Court was not shackled by the restrictive provisions of Section 320 of the Code of Criminal Procedure. The learned Additional Solicitor General while not disputing the position that in the Duncans Agro case (supra) the Court had referred to the chargesheet against the appellant which included charges under Sections 468 and 471 IPC, also submitted that the ultimate decision was rendered only in the context of Section 420 IPC and not the other non-compoundable sections. He also submitted that the allegations contained in the chargesheet in the present case not only made out an offence of cheating, but also of forgery on account of the various documents which had been prepared under the signature of the appellant showing inflated stocks to induce the Bank to provide additional credit facility and funds which it would not have otherwise been legally entitled to.

16. Rebutting the submissions made on behalf of the appellant, the learned Additional Solicitor General referred to the provisions of Sections 463 and 464 IPC which relate to the definition of "forgery" and "the making of a false document". He pointed out that under the definition of forgery in Section 463 any person making any false document or false electronic record or part of a document or electronic record with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with any property or to enter into any expressed or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery. Referring to Section 464 he submitted that a person is said to make a false document or false electronic record who dishonestly or fraudulently, inter alia, makes, signs, seals or executes a document or part of a document with the intention of

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causing it to be believed that such document was made, signed, sealed, executed, transmitted or affixed by or by authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed. The learned Additional Solicitor General submitted that in the instant case the preparation of such a false document with the intention of cheating comes squarely within the definition of forgery under Section 463 IPC.

17. It was urged that all the ingredients of offences committed under Sections 468 and 471 as also Section 420 IPC are made out in the chargesheet, and hence, even if the matter was compromised between the parties, the criminal proceedings could not be compounded on that basis since the offences involved also include non-compoundable offences.

18. It was urged that even if no steps have been taken by the CBI since the chargesheet was

filed in 1998, the same would not be a ground for quashing the criminal proceedings once the chargesheet had been filed. He submitted that in view of the decision of this Court in Supreme Court Bar Association vs Union of India (1998) 4 SCC 409, this Court would possibly not be justified in giving directions in the instant case even under Article 142 of the Constitution, since the Constitution Bench had held that in exercise of its plenary powers under Article 142 this Court could not ignore any substantive statutory provision dealing with the subject. It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties where it is just and equitable to do so. It was further observed that the power under Article 142 of the Constitution was vested

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in the Supreme Court to prevent any obstruction to the stream of justice.

19. The learned Additional Solicitor General submitted that the power under Article 142 is to be exercised sparingly and only in rare and exceptional cases and in the absence of any exceptional circumstances the appeal was liable to be dismissed.

20. Having carefully considered the facts of the case and the submissions of learned counsel in regard thereto, we are of the view that, although, technically there is force in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in these proceedings.

21. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company, M/s Neemuch Emballage Limited, Mumbai, in order to avail of 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.

22. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of the Court. Of course, 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's case (supra) becomes relevant.

23. 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

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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. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

24. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) 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, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the

compromise arrived at between the parties would be a futile exercise.

25. We, therefore, set aside the order passed by the High Court dismissing the petitioner's revision application No.49 of 2003 in Special Case No.80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed.

.....J
(ALTAMAS KABIR)

.....J
(MARKANDEY KATJU)

New Delhi
Dated: 20.8.2008