

SUPREME COURT OF INDIA

Sushil Suri

Vs.

C.B.I & Anr.

CrI.A.No.1109 of 2011

(D.K.Jain and H.L.Dattu,JJ.,)

06.05.2011

JUDGMENT

D.K.Jain,J.,

SLP(CrI) No.6113 of 2009

1. Leave granted.

2.This appeal, by special leave, is directed against judgment dated 21st May 2009 delivered by the High Court of Delhi in Criminal Misc. Case No.3842 of 2008, in a petition filed by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."). By the impugned judgment, a learned Single Judge of the High Court has declined to quash the Chargesheet filed against the appellant and other directors of a Company, namely, M/s Morpen Laboratories Ltd. (for short "the Company") for offences punishable under Sections 120B, 420, 409, 468 and 471 of the Indian Penal Code, 1860 (for short "the IPC").

3. Briefly stated, the facts, material for adjudication of the issue, arising in this appeal, are as follows:

A source information was received by the Central Bureau of Investigation (for short "the CBI") that in the year 1999 two Chartered Accountants, namely, Sanjay Malik and Bipin Kakkar, had dishonestly and fraudulently opened/caused to be opened several fictitious accounts in some banks in the names of certain concerns, with an intention and object to facilitate the diversion of bank finance availed by various public limited companies for the purpose other than what had been stated in the loan application. On the basis of the said information, a First Information Report (FIR) was registered against the afore-mentioned Company and its directors. The relevant portion of the FIR reads thus:

"That in June 1999, S/Sh. K.B. Suri, Sushil Suri and Smt. Kanta Suri, the Executive Directors of M/s. Morepen Labs Ltd. having their office at 416-418, Antriksh Bhawan (sic), 22, K.G. Marg, New Delhi, conspired together and in furtherance of the said criminal conspiracy they, dishonestly and fraudulently made an application to Punjab & Sind Bank, Connaught Place, New Delhi for Hire-Purchase Finance to the tune of `300 Lacs, by submitting fake and forged purchase orders, invoices and bills relating to supply of machineries and equipments to be installed in their factory/works situated in Distt. Solan (HP). That the above Executive Directors of the company, dishonestly, fraudulently and in conspiracy with other accused persons submitted to the bank, fake and forged invoices of fictitious/non-existent supplier i.e. M/s. R.K. Engineers, M/s. Teem Metals Pvt. Ltd. and M/s. Malson Impex, made accommodation payments representing as genuine advance payments to suppliers and thereby caused the bank to release funds to the tune of `300 lacs towards cost of machineries and equipments and pay orders in various amounts issued by the bank for the purpose of making payments to suppliers. These amounts were then fraudulently deposited in several fictitious accounts of S/Sh. Sanjay Malik and Bipin Kakkar at Corporation Bank and Canara Bank and encashed. The bank finance raised by the company on the pretext of procurement of machineries and equipments were not used for the purpose stated in the application for loan, instead the bank loan was diverted by the above Executive Directors, in collusion with S/Sh. Sanjay Malik and Bipin Kakkar, for other undisclosed non-business purposes. That during the year 1998 also the above Executive Directors of M/s. Morepen Labs Ltd. had adopted a similar modus-operandi in collusion with some other unknown persons/Chartered Accountants and applied for bank finance to the tune of `200 lacs for purchase of machineries and equipments with an object to divert bank finance for undisclosed non-business orders, invoices and bills of fictitious suppliers, i.e. M/s. B.K. Chemi- Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. and caused the bank to release loan of `200 lacs for the purpose of procurement of machineries and equipments to be installed in their factory works situated in Distt. Solan (HP). The bank loan thus released by Punjab & Sind Bank (Hire- Purchase Branch), Connaught Circus, New Delhi was not actually used for the purpose stated in the loan proposal rather the pay orders issued by the bank in the name of fictitious suppliers M/s. Chemi-Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. were deposited in fictitious accounts opened in the above name and style at Bank of Rajasthan, Kamla Nagar Branch, Delhi and encashed. No suppliers of machineries and equipments were made by M/s. B.K. Chemi-Plant Industries and M/s. Flexon Hose and Engineering Co. Pvt. Ltd. to M/s. Morepen Labs. Ltd. and bank finance availed by the company for the said purpose were again used for some undisclosed non-business purposes. The above facts and circumstances disclose the commission of offences u/s 120-B, IPC r/w 420, 409, 468 and 471 IPC and substantive offences thereunder against Chartered Accountants S/Sh. Sanjay Malik and Bipin Kakkar and S/Sh. K.B. Suri, Sushil Suri and Smt. Kanta Suri, Executive Directors of M/s. Morepen Labs. Ltd., New Delhi and other unknown persons. Therefore, a regular case is registered and entrusted to Sh. A.K. Singh, Dy. SP/SIU-VII, for investigation."

4. The Company is a public limited company, engaged in the manufacturing of pharmaceutical products. In order to run its affairs, from time to time, the Company had been raising funds from different sources, like loans from different banks/financial institutions as also from the open market by way of 'public issues', 'rights issues' and 'bonds' etc. Investigations revealed that in the year 1998, the Company, through its directors, including the appellant in this appeal, applied for a hire purchase advance of `2 crores from Punjab and Sind Bank (for short "PSB"), Hire Purchase Branch, New Delhi, for purchase of various machinery items to be installed at their manufacturing units at different places. It transpired that the machinery for which the loan was raised from PSB was never purchased by the Company and, in fact, to defraud PSB, photographs of the existing/some other machinery were taken by affixing labels of PSB and the same were filed with PSB, as confirmation for having purchased the machinery, for which the loan was raised under the hire purchase limit. It was discovered that although the loan taken by the Company from PSB had been repaid, but the Company never purchased any machinery, utilising the funds disbursed by PSB against the purchase of machinery. Furthermore, the value of the machinery, purportedly purchased with these funds, was reflected in the balance-sheet of the Company and even depreciation on the said machinery, amounting to `52,33,066/-, was also claimed in the Income Tax Return/Minimum Alternate Tax (MAT) for the assessment year 1998-1999, without any such machinery having been actually acquired.

5. In the year 1999, the Company and its directors again applied for hire purchase advance of `3 crores from PSB for purchase of more machines. In their balance-sheet for the assessment year 1999-2000, the Company again claimed the benefit of depreciation in the Income Tax/Minimum Alternate Tax amounting to `1,44,88,605/- although no such machinery was purchased by the Company. It further transpired that loan proposals were supported by forged proforma invoices, purportedly issued by some suppliers in whose name fictitious bank accounts were opened to encash the Demand Drafts/Pay Orders issued by PSB in favour of these firms. The investigations thus, revealed that the appellant and a number of other persons had committed the afore-mentioned offences. Accordingly, a Chargesheet was filed by the CBI on 13th October, 2004 in the Court of Chief Metropolitan Magistrate, Delhi.

6. The Chief Metropolitan Magistrate took cognizance of the offences and summoned the accused to stand trial. On being so summoned, the appellant filed the afore-stated petition under Section 482 of the Cr.P.C., praying for quashing of the Chargesheet mainly on the ground that once the Company had repaid the loan to PSB along with interest, no loss was caused to PSB and, therefore, they had not committed any offence for which Chargesheet had been filed. In support of the said plea, decision of this Court in *Nikhil Merchant Vs. Central Bureau of Investigation & Anr.*¹ was pressed into service. On behalf of the CBI, it was pleaded that the appellant and others, by forging documents/vouchers to show purchase of machinery, a pre-condition for release of instalments of loan, had not only duped PSB but also defrauded the revenue by claiming depreciation on non-existent machinery and in the process cheated the public exchequer of crores of rupees.

7. As already stated, the High Court has come to the conclusion that merely because the Company and its directors had repaid the loan to PSB they could not be exonerated of the offences committed by forging/fabricating the documents with the intention of defrauding the bank as well as the exchequer. The High Court was of the view that the ratio of the decision of this Court in *Rumi Dhar (Smt) Vs. State of West Bengal & Anr.*², was applicable on the facts of the present case and the decision of this Court in *Nikhil Merchant (supra)* was clearly distinguishable on facts. Thus, the High Court held that on the peculiar facts of the case, the appellant was not entitled to any relief. Accordingly, the petition filed by the appellant was dismissed with costs. He was directed to appear before the trial court. Aggrieved thereby, the appellant is before us in this appeal.

8. Mr. Vijay Aggarwal, learned counsel appearing on behalf of the appellant assailed the judgment of the High Court on the ground that all the dues, as claimed by PSB having been paid by the debtor Company without demur, more so, when the Bank had not initiated any action for the recovery of money, the case of the appellant is on a much stronger footing as compared to the case of *Nikhil Merchant (supra)*, wherein this Court had quashed the criminal proceedings initiated against the borrower in view of their compromise with the Bank. It was contended that since in the present case, there is no allegation that the appellant had committed any offence under the Prevention of Corruption Act 1988, at best, the allegation in the Chargesheet may attract Section 420 of the IPC, which offence is otherwise compoundable under Section 320 of the Cr.P.C. It was asserted that full amount in question having been paid to the Bank, there was no monetary loss to the Bank and, therefore, continuation of criminal proceedings against all the accused, including the appellant, would not only be an exercise in futility but an abuse of the process of law as well. It was thus, pleaded that it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Cr.P.C. and quashed the Chargesheet. In support, while relying heavily on the decision in *Nikhil Merchant (supra)*, learned counsel also commended us to the decisions of this Court in *B.S. Joshi & Ors. Vs. State of Haryana & Anr.*³ and *Madan Mohan Abbot Vs. State of Punjab*⁴. The decision in *Rumi Dhar (supra)* relied upon by the High Court, was sought to be distinguished by submitting that in that case the provisions of the Prevention of Corruption Act, 1988 had been invoked; the Bank had to file a suit for recovery of the amount due to it and the Revision Petition filed against framing of charge against the accused in that case had also been dismissed, which is not the case here.

9. Per contra, Mr. H.P. Rawal, learned Additional Solicitor General of India, appearing for the CBI, supporting the impugned judgment, strenuously urged that having regard to the nature of the allegations against the appellant, based on the evidence collected during the course of investigations, the High Court has rightly refused to exercise its jurisdiction under Section 482 of the Cr.P.C. Relying on a decision of this Court in *Central Bureau of Investigation Vs. A. Ravishankar Prasad & Ors.*⁵, learned counsel contended that overwhelming material is available on record which clearly shows that the Company and its directors, including the appellant, and other persons had conspired to forge, fabricate and use documents in order to avail loan from the bank and had opened or caused to be opened fictitious bank accounts in the names of the suppliers to encash the pay orders/demand drafts issued by PSB and played fraud with PSB as also on the public exchequer by claiming depreciation on the machinery,

which was never purchased. It was argued that the offences for which the appellant has been Chargesheeted would survive irrespective of discharge of debt of PSB by the Company. Relying on the decision of this Court in *Sajjan Kumar Vs. Central Bureau of Investigation*⁶, learned counsel asserted that when the material on record is per se sufficient for the Court to form an opinion that the accused have committed the offences alleged against them and frame the said charges, there is no reason why the Chargesheet against the appellant should be quashed at such a preliminary stage when he has only been summoned to stand trial.

10. Before embarking on an evaluation of the rival submissions, it would be instructive to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Cr.P.C.

11. Section 482 of the Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely:

“(i) to give effect to an order under the Cr.P.C.; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Cr.P.C. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Chargesheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

12. In one of the earlier cases in *R.P. Kapur Vs. State of Punjab*⁷ this Court had culled out some of the categories of cases where the inherent powers under Section 482 of the Cr.P.C. could be exercised by the High Court to quash criminal proceedings against the accused. These are:

"(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

13. In *Dinesh Dutt Joshi Vs. State of Rajasthan & Anr.*⁸, while explaining the object and purpose of Section 482 of the Cr.P.C., this Court had observed thus:

"6.....The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

14. Recently, this Court in *A. Ravishankar Prasad & Ors.* (supra), relied upon by learned counsel for the CBI, referring to several earlier decisions on the point, including *R.P. Kapur* (supra); *State of Haryana & Ors. Vs. Bhajan Lal & Ors.*⁹; *Janata Dal Vs. H.S. Chowdhary & Ors.*¹⁰; *B.S. Joshi & Ors.* (supra); *Nikhil Merchant* (supra) etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case. It has been further observed that the inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.

15. Bearing in mind the object, scope and width of power of the High Court under Section 482 of the Cr.P.C., enunciated above, the question for consideration is whether on facts in hand, the High Court was correct in law in declining to exercise its jurisdiction under the said Section?

16. Having examined the case in light of the allegations in the Chargesheet, we are of the opinion that the view taken by the High Court in the matter cannot be flawed and deserves to be affirmed. It is manifest from a bare reading of the Chargesheet, placed on record, that the gravamen of the allegations against the appellant as also the co-accused is that the Company, acting through its directors in concert with the Chartered Accountants and some other persons: (i) conceived a criminal conspiracy and executed it by forging and fabricating a number of documents, like photographs of old machines, purchase orders and invoices showing purchase of machinery in order to support their claim to avail hire purchase loan from PSB; (ii) on the strength of these false documents, PSB parted with the money by issuing pay orders & demand drafts in favour of the Company and (iii) the accused opened six fictitious accounts in the banks (four accounts in Bank of Rajasthan and two in Bank of Madura) to encash the pay orders/bank drafts issued by PSB in favour of the suppliers of machines, thereby directly rotating back the loan amount to the borrower from these fictitious accounts, and in the process committed a systematic fraud on the Bank (PSB) and

obtained pecuniary advantage for themselves. Precise details of all the fictitious accounts as also the further flow of money realised on encashment of demand drafts/pay orders have been incorporated in the Chargesheet. Additionally, by allegedly claiming depreciation on the new machinery, which was never purchased, on the basis of forged invoices etc.; the accused cheated the public exchequer as well.

17. As afore-stated, in the Chargesheet, the accused are alleged to have committed offences punishable under Section 120B, read with Sections 420, 409, 468 and 471 IPC. We feel that at this preliminary stage of proceedings, it would neither be desirable nor proper to return a final finding as to whether the essential ingredients of the said Sections are satisfied. For the purpose of the present appeal, it will suffice to observe that on a conspectus of the factual scenario, noted above, prima facie, the Chargesheet does disclose the commission of offences by the appellant under the afore-noted Sections. The essential ingredient of the offence of "criminal conspiracy", defined in Section 120A IPC, is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A IPC, then in that event mere proof of an agreement between the accused for commission of such crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. (See: *Suresh Chandra Bahri Vs. State of Bihar*¹¹).

18. Similarly, the definition of "forgery" in Section 463 IPC is very wide. The basic elements of forgery are: (i) the making of a false document or part of it and (ii) such making should be with such intention as is specified in the Section viz. (a) to cause damage or injury to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property; or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed. As stated above, in the instant case more than sufficient circumstances exist suggesting the hatching of criminal conspiracy and forgery of several documents leading to commission of the aforementioned Sections. We refrain from saying more on the subject at this juncture, lest it may cause prejudice to the appellant or the prosecution.

19. We may now advert to the decision of this Court in the case of Nikhil Merchant (supra), on which great emphasis was laid, on behalf of the appellant. In that case a Chargesheet was filed by the CBI against the accused under Section 120B read with Sections 420, 467, 468, 471 IPC 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. The allegation under the Chargesheet was that the accused persons had conspired with each other in fraudulently diverting the funds of the Bank. Offence alleging forgery was also included in the Chargesheet. In the meantime, the suit for recovery of money filed by the Bank against the Company, to which the appellant in that case was also a party, was disposed of on a

written compromise arrived at between the parties. Consequent upon the compromise of the suit and having regard to the contents of clause 11 of the consent terms, which stipulated that neither party had any claim against the other and parties were withdrawing all allegations and counter allegations made against each other, the said appellant filed an application for discharge. The application was rejected by the trial court. A petition preferred under Section 482 of the Cr.P.C. was also dismissed by the High Court. In further appeal to this Court, accepting the contention of the appellant that this Court could transcend the limitation imposed under Section 320 of the Cr.P.C. and pass orders quashing criminal proceedings even where non compoundable offences were involved, quashing the criminal proceedings the Court observed thus:

"30. 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. 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?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case 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."

[Emphasis supplied]

20. A bare reading of the afore-extracted paragraphs would indicate that the question posed for consideration in that case was with regard to the power of this Court under Article 142 of the Constitution of India to quash the criminal proceedings in the facts and circumstances of a given case and not in relation to the powers of the High Court under Section 482 of the Cr.P.C. The Court came to the conclusion that it was a fit case where it should exercise its powers under Article 142 of the Constitution. In our opinion, Nikhil Merchant (supra) does not hold as an absolute proposition of law that whenever a dispute between the parties, having overtones of a civil dispute with criminal facets is settled between them, continuance of criminal proceedings would be an exercise in futility and, therefore, should be quashed. Similarly, in B.S. Joshi & Ors. (supra), which has been relied upon in Nikhil Merchant (supra), the question for consideration was whether the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or Complaint for offences which are not compoundable under Section 320 of the Cr.P.C. It was held that Section 320 cannot limit or

affect the powers of the High Court under Section 482 of the Cr.P.C., a well settled proposition of law. We are of the opinion that Nikhil Merchant (supra) as also the other two judgments relied upon on behalf of the appellant are clearly distinguishable on facts. It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See: *Zee Telefilms Ltd. & Anr. Vs. Union of India & Anr.*¹²). In this regard, the following words of Lord Denning, quoted in *Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & Anr.*¹³, are also quite apt:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

21. In the present case, having regard to the modus operandi adopted by the accused, as projected in the Chargesheet and briefly referred to in para 17 (supra), we have no hesitation in holding that it is not a fit case for exercise of jurisdiction by the High Court under Section 482 of the Cr.P.C. as also by this Court under Article 142 of the Constitution of India. As noted above, the accused had not only duped PSB, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society.

22. The view we have taken above, gets fortified by a recent decision of this Court in Rumi Dhar (supra), wherein while dealing with a fact situation, akin to the present case, referring to the decision in Nikhil Merchant (supra), the Court declined to quash criminal proceedings in that case, observing thus:

"24. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstances of each case. The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing the charge."

23. We respectfully concur with the afore-extracted observations. In the final analysis, we hold that merely because the dues of the bank have been paid up, the appellant cannot be exonerated from the criminal liability. Therefore, the Chargesheet against him cannot be quashed.

24. In view of the foregoing discussion, we do not find any merit in this appeal and it is dismissed accordingly. The Trial Court shall now proceed with the case as expeditiously as possible without being influenced by any observations made by the High Court or in this judgment on the merits of the Chargesheet.

¹(2008) 9 SCC 0677

² (2009) 6 SCC 0364

³ (2003) 4 SCC 0675

⁴(2008) 4 SCC 0582

⁵(2009) 6 SCC 0351

⁶(2010) 9 SCC 0368

⁷AIR 1960 SC 0866

⁸(2001) 8 SCC 0570

⁹(1992) Supp (1) SCC 0335

¹⁰(1992) 4 SCC 0305

¹¹(1995) Supp (1) SCC 0080

¹²(2005) 4 SCC 0649

¹³(2002) 3 SCC 0496