REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 661 OF 2009
(Arising out of SLP (Crl.) No.362 of 2008)

Smt. Rumi Dhar … Appellant

Versus

State of West Bengal and another … Respondents

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.

2. Application of the provisions of Section 320 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') is in question in this application. The said question arises in the following factual matrix.

3. Appellant and her husband (A-4) along with various other persons including the officers of the Oriental Bank of Commerce Khidirpur Branch, Calcutta (hereinafter called 'the Bank') were prosecuted for alleged

commission of offences under Sections 120-B/ 420/467/468 and 471 of the Indian Penal Code. The officers of the Bank had also been prosecuted under Sections 13(2) read with Section 13(1)(d) of the Prevention and Corruption Act, 1988.

4. A charge sheet was filed against the appellant and seven others. She was inter alia charged for taking the benefit of overdrafts between the period 8th February, 1993 to 5th March, 1993 without furnishing any security.

5. For the purpose of realisation of the said amount, indisputably the Bank filed an application for recovery thereof before the Debt Recovery Tribunal. It is not in dispute that before the said Tribunal, appellant and the Bank had entered into a settlement pursuant whereto or in furtherance a sum of Rs.25.51 lacs was paid.

6. It is also not in dispute that for the said purpose, the C.B.I. had returned the title deeds in respect of the property which were kept as security for obtaining the loan from the bank.

7. On or about 22.02.2006 the Appellant filed an application under section 239 of the Code for discharge, inter alia, contending:-

i) That having regard to the settlement arrived at between her and the Bank no case for proceeding against her has been out.

ii) That she having already paid Rs. 25.51 Lacs and the CBI having returned the title deeds which had been kept as security for the loan from the said bank, the criminal proceeding should be dropped relying on or on the basis of the said settlement.

iii) That the dispute between the parties were purely civil in nature and that she had not fabricated any document or cheated the bank in anyway what so ever, charges could not have been framed against her.

8. In response to the said application the CBI had contended that mere payment of loan to the bank could not exonerate the accused from a criminal proceeding.

9. The learned Judge, Special Court Alipore in Special Case No. 3 of 1993 vide order dated 12.12.2006 dismissed the application of the appellant noting that mere repayment could not exonerate the accused from the prima facie charge in a criminal case.

10. On or about 06.03.2007 the appellant filed a revision application under section 401 and 402 of the CrPC before the High Court of Calcutta which was registered as CRR No. 910 of 2007.

Before the High Court, it was argued that further continuation of the criminal proceeding, despite repayment of the amount of loan by the appellant, would amount to an abuse of the process of Court and the same should, therefore, be quashed.

11. In the said revision application the CBI contended that the criminal case against the appellant was started not only for obtaining loan but also on the ground of criminal conspiracy with the bank officials. It was accordingly contended that the court below had rightly rejected the application and the impugned order does not warrant any interference.

12. On or about 17.07.2007 the learned Single Judge of the High Court dismissed the revision application. The court after discussing the arguments of both the parties opined :

> "I have taken into consideration the submissions of the ld. Advocates for both the sides. It is the case of the prosecution that the loan in question was sanctioned in favour of the petitioner by way of forming a criminal conspiracy, which was allegedly engineered by the bank officials. It is further been alleged that this accused/petitioner also took part in the said conspiracy. Now it is the

> admitted position that after investigation charge sheet has also been filed against the petitioner and the matter is now fixed for framing of charge. Ld. Trial Judge in his impugned order discussed the entire matter and thereafter he was of the opinion that merely because of the fact that the amount in question has already been paid in favour of the bank, that cannot exonerate the accused/petitioner, so far as the charge of conspiracy is concerned."

13. The learned judge distinguished the case of CBI, New Delhi v. Duncans Agro Industries Limited Calcutta, (1996) 5 SCC 591 relied on by the appellant noting that the said case involved quashing of a criminal case which was still under investigation. The judge noted that the in the case before him the application for quashing the criminal proceedings was filed at a stage when the thorough investigation of the case had already been completed and a charge sheet had been filed. The court concluded that the trial judge was justified in rejecting the petition filed under Section 239 of the Code the appellant.

14. Mr. Nagendra Rai, learned senior counsel appearing on behalf of the appellant, would submit :

(1) Considering the fact that the Bank had filed a suit to recover money before the DRT and the dispute between the parties having been settled and the amount in question having been repayed, continuation

of the criminal proceeding would be nothing but an abuse of the process of law.

(2) Settlement having been arrived at by and between the parties and, particularly having regard to the nature of allegations made against the appellant herein, the High Court committed a serious error in refusing to record the settlement and quashing the criminal proceedings against her.

15. Mr. Amit Anand, learned counsel appearing on behalf of CBI, on the other hand, would urge :

(i) No case has been made out for composition of the criminal offence, as the settlement was arrived at by and between the appellant and the bank only in respect of the civil dispute between the parties relating to issuance of a certificate by the Debt Recovery Tribunal and not for the purpose of withdrawal of the criminal case.

(ii) Having regard to the nature of evidence collected against the appellant during investigation and consequent filing of a charge sheet, the High Court has rightly refused to exercise its discretionary jurisdiction.

16. Sub-section (1) of Section 320 of the Code specifies the offences which are compoundable in nature; Sub-section (2) providing for the offences which are compoundable with the permission of the court.

17. Appellant is said to have taken part in conspiracy in defrauding the bank. Serious charges of falsification of accounts and forgery of records have also been alleged. Although no charge against the appellant under the Prevention of Corruption Act has been framed, indisputably, the officers of the bank are facing the said charges.

18. It is now a well settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan, criminal offences have been committed by the persons accused thereof including the officers of the bank, criminal proceedings would also indisputably be maintainable. When a settlement is arrived at by and between the creditor and the debtor, the offence committed as such does not come to an end. The judgment of a tribunal in a civil proceeding and that too when it is rendered on the basis of settlement entered into by and between the parties, would not be of much relevance in a criminal proceeding having regard to the provisions contained in Section 43 of the Indian Evidence Act.

19. The judgment in the civil proceedings will be admissibile in evidence only for a limited purpose. It is not a case where the parties have entered into a compromise in relation to the criminal charges. In fact, the offence alleged against the accused being an offence against the society and the allegations contained in the first information report having been investigated by the Central Bureau of Investigation, the bank could not have entered into any settlement at all. The CBI has not filed any application for withdrawal of the case. Not only a charge sheet has been filed, charges have also been framed. At the stage of framing charge, the appellant filed an application for discharge. One of the main accused is the husband of the appellant. The complicity of the accused persons was, thus, required to be taken into consideration for the purpose of determining the application for discharge upon taking a realistic view of the matter. While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.

20. We may also notice that the learned Tribunal, while accepting the settlement arrived at by and between the appellant and the bank, opined :

> "It is, thus, clear from this evidence that the amount of Rs.25.51 lacs has already been paid by the respondents. The objections of the appellant that the proposal of OTS stands withdrawn because the payment was not made by cheques or in the manner given in their application of OTS has no merit. There is no need of formal joint petition of compromise if the record shows in the applications of the parties and the contents therein their consent to the OTS could be derived from the other documents on record of the case. As is already discussed hereinabove as to the application of the CHB for OTS dated 7.2.2004 the consent was already recorded by the Ld. Recovery Officer in his order dated 7,10.2004. The balance payment of Rs.22.21 lacs by the respondents certificate debtors was payable in 20 monthly instalments which was to expire by December 2005. It is immaterial that how the payment is being made. The parties under the OTS is that the OTS is agreeable and consent was at an amount of Rs.25.51 lacs. It is immaterial that the payment is to be made by equated monthly instalments by post dated cheques or evenotherwise if the payment is made at an early date, then it is not wrong. But if the payments are made beyond the scheduled date, then it is the breach of the OTS and in such a situation the Tribunal may refuse to act upon the OTS. In the present case the amount has already been paid prior to December 2—5. Thus, it cannot be said that the payments as per compromise are not paid."

21. The learned Special Judge in his order dated 16.12.2006 rejected the contention raised on behalf of the appellant herein, stating :

> "I have gone through the record citation and considered the circumstances. It is true that the accd. has put a good gesture by paying of the dues of the bank but I am at one with the Ld. PP that this payment cannot exonerate the accd. from a prima facie charge. If I allow this, then I may have to swallow in a case of bribery that the accd. has paid back the amount to the sufferer the amount received as bribe. It is a question of trial whether there was any criminal intention on the part of this Lady accd. in this crime. The criminal intention is to be inferred from the evidence to be adduced by the prosecution. Simply because the money has been returned, I cannot shut the mouth of the prosecution from adducing evidence against this accd. Thus, I do not like to pass any order in favour of the accd. The prayer for discharge of accd. No.7, Rumi Dhar stands rejected. Let the case proceed. Fix 7.2.07 for consideration of charge. The sureties must produce all the accd. persons on that date."

22. It has not been argued before us that the learned Judge, in arriving at the said opinion, committed any error of law or the same otherwise suffers from any illegality so as to enable the High Court to interfere with the same matter. A prima facie case has been found out against the appellant. There is no error apparent on the face of the record warranting interference therewith.

Strong reliance has been placed by Mr. Rai on a decision of this Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi v.

Duncans Agro Industries Ltd., Calcutta [(1996) 5 SCC 591], wherein this Court held :

> "26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of Bhajan Lal (supra), P.P. Sharma (supra) and Janta Dal (supra), since relied on by Mr. Tulsi, the guiding principles in quashing a criminal case have been indicated."

It was furthermore observed :

> "27. In the instant case, a serious dispute has been raised by the learned Counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405 I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and

dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted appearing in Section 405 I.P.C. is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods arc hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the Respondents moved the High Court only in 1991 although the first FIR was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the purpose of framing the charge."

This is also not a case where unlike Duncans Agro Industries, no case of criminal breach of trust had been made out.

Our attention has also been drawn to a recent decision of this Court in Nikhil Merchant v. Central Bureau of Investigation & Anr. [(2008) 9 SCC 677], wherein this Court refused to refer the matter to a larger Bench, stating:

> "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?
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> 31. 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."

23. 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 circumstance 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 charge.

24. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly.

…….J.
[S.B. Sinha]

..……..…J.

[Dr. Mukundakam Sharma]

New Delhi;
April 8, 2009