

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51238 of 2015

Arising Out of PS. Case No.-7 Year-2001 Thana- C.B.I CASE District- Patna

Sindhu Ratna Kul Bhaskar, son of late Sindhu Kumar Sinha, resident of Indira Nilaya, Behind Vindyachal Apartment, Bording Road, Patna 1

... ... Petitioner

Versus

The State Of Bihar Through C.B.I.

... ... Opposite Party

with

CRIMINAL MISCELLANEOUS No. 51868 of 2015

Arising Out of PS. Case No.-7 Year-2001 Thana- C.B.I CASE District- Patna

Vineet Kumar Verma, S/o Shri Bijay Kumar Verma, Resident of Mohalla- Amlatoli, P.O.- Buxar, P.S.- Buxar Town, Dist- Buxar.

... ... Petitioner

Versus

The state of bihar through C.B.I. District-Patna

... ... Opposite Party

with

CRIMINAL MISCELLANEOUS No. 52233 of 2015

Arising Out of PS. Case No.-7 Year-2001 Thana- C.B.I CASE District- Patna

Vishakha Sindhu, W/o Sri Sindhu Ratan Kul Bhaskar, Resident of Indra Nilay, Behind Vindhya Apartment, Boring Road, P.S. - Sri Krishnapuri, Patna 800 001.

... ... Petitioner

Versus

The State Of Bihar Through C.B.I., District- Patna

... ... Opposite Party

Appearance :

(In CRIMINAL MISCELLANEOUS No. 51238 of 2015)

For the Petitioner/s : Mr. R.K.P. Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate

For the C.B.I. : Mr. Avanish Kumar Singh, Advocate
Mr. Ambar Narayan, Advocate
Mr. Barkha, Advocate
Mr. Mukul Kumar Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 51868 of 2015)

For the Petitioner : Mr. R.K.P. Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate



For the C.B.I. : Mr. Avanish Kumar Singh, Advocate
Mr. Ambar Narayan, Advocate
Mr. Barkha, Advocate
Mr. Mukul Kumar Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 52233 of 2015)

For the Petitioner : Mr. R.K.P. Singh, Advocate
Mr. Bal Bhushan Choudhary, Advocate
For the C.B.I. : Mr. Avanish Kumar Singh, Advocate
Mr. Ambar Narayan, Advocate
Mr. Barkha, Advocate
Mr. Mukul Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 16-05-2025**

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the Central Bureau of Investigation.

2. Since in all these cases same order has been assailed by the respective petitioners, they have been heard together and are being disposed of by this common judgment.

3. In all these cases, the petitioners have challenged the order dated 28.09.2015 passed by the learned Special Judge, C.B.I.-I, Patna, in R.C. No.7(A) of 2001 (Special Case No.101 of 2011), whereby the discharge petitions preferred by the petitioners have been rejected.

4. The petitioner - Sindhu Ratan Kul Bhaskar of Criminal Miscellaneous No.51238 of 2015 is the bank official, petitioner - Vishakha Sindhu of Criminal Miscellaneous No.52233 of 2015 is the wife of petitioner - Sindhu Ratan Kul



Bhaskar and also one of the Directors of M/s. Sidhi Exports Private Limited and petitioner - Vineet Kumar Verma of Criminal Miscellaneous No.51868 of 2015 is the brother-in-law of Sindhu Ratan Kul Bhaskar and one of the Directors of M/S. Sidhi Overseas Private Limited.

5. The prosecution case in brief, relevant for present purpose, is that from reliable source information was received that petitioner - Sindhu Ratan Kul Bhaskar while functioning as Manager in the Central Bank of India, Main Branch, Patna, in connivance with other accused persons including the petitioners namely, Vineet Kumar Verma and Vishakha Sindhu has abused his official position and sanctioned pre/post shipment advances to the firms belonging to his relative and associate and thereby, caused wrongful loss to the tune of Rs.368.56 lakhs to the Bank. It is further alleged that the accused persons including the petitioners also committed forgery by altering original dates on the aforesaid illegal advances. It is also alleged that petitioner - Sindhu Ratan Kul Bhaskar unauthorisedly made advances against foreign outward bills for collection to the extent of Rs.148 lakhs to M/s. Sidhi Exports Private Limited, a firm in which his wife was one of the Directors and with *mala fide* intention made debit entries in the



current deposit nominal account no.259 and correspondingly credited the overdraft account of M/s. Sidhi Exports Private Limited.

5.1. It is also alleged that the petitioner- Sindhu Ratan Kul Bhaskar falsified the accounts of the Bank with *mala fide* intention and thereby caused wrongful loss of interest on the aforesaid amount to the bank. It is next alleged that petitioner- Vishakha Sindhu one of the Directors of M/S Sidhi Export Private Limited and wife of Sindhu Ratan Kul Bhaskar, dishonestly submitted an export bill for collection to the Central Bank of India, Main Branch, Patna after altering the name of original collecting Bank on the G.R. forms. She also suppressed the fact that the same bill had already been submitted to the Jammu & Kashmir Bank, the original collecting bank, for advance. It has been further alleged that petitioner - Sindhu Ratan Kul Bhaskar knowingly accepted this forged document in order to cover up the aforesaid illegal act and dishonestly altered the date on the forwarding letter written by the firm to the bank and allowed advances, thereby cheated the Bank.

5.2. The next allegation is that petitioner - Sindhu Ratan Kul Bhaskar in connivance with the then Branch Manager, Central Bank of India, Main Branch, Patna, acted



dishonestly and without authority sanctioned packing credit limit to M/s. Sidhi Overseas Private Limited without considering business antecedents of the aforesaid firm. He also dishonestly allowed heavy overdrawings in the packing credit account of aforesaid firm and therefore, the illegal actions of petitioner- Sindhu Ratan Kul Bhaskar and other bank officials resulted in wrongful gain of Rs.80.93 Lakh to the firm and a corresponding loss of Rs.80.93 lakhs to the Bank. It has been further alleged that in order to conceal the above-mentioned overdrawing positions, petitioner-Sindhu Ratan Kul Bhaskar also altered the relevant records of the Bank.

5.3. It is next alleged that petitioner - Sindhu Ratna Kul Bhaskar in connivance with other bank officials, dishonestly and in an unauthorised manner allowed foreign outward bill for collection advances to M/s. Sidhi Overseas Private Limited, thereby causing the bank to deliver money to the said firm and these actions caused a wrongful gain of Rs.91.50 lakhs to the firm. The next allegation is that petitioner - Sindhu Ratan Kul Bhaskar in conspiracy with petitioner - Vineet Kumar Verma induced the Central Bank of India to deliver money to the said firm, as a result of which, the firm made a wrongful gain of Rs.69.13 lakhs. Lastly, it has been



alleged that in order to cover up overdrawing position, petitioner - Sindhu Ratan Kul Bhaskar made false credit entry dated 16.08.1999 of Rs.19 lakhs in the packing credit account of M/s. Siddhi Overseas Private Limited by debiting a non-existent Other Term Loan account.

6. Based on the aforesaid complaint, the F.I.R. vide R.C. No.7(A) of 2001 dated 29.05.2001 was registered against the accused persons including these petitioners.

7. It has been submitted by learned counsel for the petitioners the case of the prosecution, as set out in F.I.R. itself clearly reveals that no case is made out against any of the petitioners. According to prosecution case, it is an admitted fact that there was a relationship of creditor and debtor between the Bank and the aforementioned two firms as they had entered into loan transactions and at no point of time, the Bank had suffered any loss whatsoever.

8. It has also been submitted that that Title Suit No.88 of 2001 was filed in the Court of Sub Judge-1, Patna by the representative of M/s. Siddhi Export Private Limited much prior to lodging of the present F.I.R. In the said suit, serious allegations were made against the biased officers of the Bank, who put embargo on the export of materials to the foreign



country, exported by the said two firms by putting hindrance in safe passage and delivery of the goods to the foreign buyers. It has further been submitted that the Bank also filed a recovery suit against M/s. Siddhi Overseas Private Limited claiming due amount of Rs.3,56,57,117/- . Thus, it is evident that actually there was civil dispute between the creditor-Bank and the debtor-firm and no question of cheating and forgery or conspiracy ever arose. So far as, M/s. Siddhi Export Private Limited is concerned, the Bank also filed O.A. No.21 of 2004 in the D.R.T. Patna against the aforesaid firm claiming due amount Rs.1,69,67,676/- . As a matter of fact, the Bank from time to time received payment from the foreign buyers against the sale of goods exported to them by both the firms but the officers of the Bank intentionally did not credit the amount received by the Bank against the export bill in the account of the firm.

9. It has been emphasized that both the recovery suits pending before Debts Recovery Tribunal, Patna ended in compromise, in pursuance of which, the aforementioned firm paid the entire due amount of loan after deducting the amount received from foreign buyers. Thus, all the three cases were disposed off and the loan of the Bank was



fully satisfied and hence no loss whatsoever was caused to the creditor Bank. Since the entire loan amount was realized by the Bank in the recovery suit proceeding before the Tribunal, in pursuance of compromise, no criminal charge would be sustainable on the same set of facts giving rise to civil litigation as well as criminal prosecution.

10. Learned counsel for the petitioners has detailed the procedure adopted by the bank while granting loan to any person or firm. Thereafter, learned counsel for the petitioners submits that the procedure adopted by the Bank in the case of M/s. Sidhi Overseas Private Limited was in accordance with the banking norms of the Bank. In support of the aforesaid submission, he brings out the following points to show that the banking norms were strictly followed while granting loan to the firm.

- (i) The firm successfully completed two years of export business and repaid the entire amount of loan to the bank. Thereafter overdraft limit was granted to the firm which is the usual feature of export advance. Thus, in total amount of loan Rs. 72 Lakh granted to the firm, however, the overdraft amount was Rs.22 Lakhs only.



(ii) Out of such advance, the firm purchased one thousand metric tonne rice for export to Durban. But the shipment was delayed due to hindrance put by the officers of the bank and they demanded repayment of loan amount in complete contravention of the norms and practice of export advance. However in the meantime, the foreign buyer sent an amount equivalent to Rs. 32 Lakh, as a consequence of which, now only Rs. 40 Lakh of loan remained unpaid which came within the overdraft limit of Rs.72 Lakh.

(iii) The firm in order to safeguard its interest and for restraining the bank officer from putting any hindrance in the shipment, filed Title Suit No. 88 of 2001 on 27.02.2001 in the Court of Sub Judge, Patna against the Bank.

(iv) On the contrary, the bank held up the export bill of the firm, by which Rs.3,51,73,125/- was blocked and thereafter the Bank also filed a case in D.R.T. Patna claiming due amount Rs.3,56,57,117/- which was registered as O.A. No.28/2003. But neither the bank received amount in installments which was



not credited to the loan account of the firm nor adjusted for liquidation of the alleged amount of loan.

11. It has been submitted by learned counsel for the petitioners that the branch of the Bank being fully computerized and its software is approved by the Central Office and therefore, no tampering can be done with the software. So far as the allegation that the G.R. form received in the Bank with error in the name of the Bank, it is emphasized that proper corrections were made in the aforesaid G.R. form as per the guidelines of the Reserve Bank of India.

12. It has also been submitted that neither in the R.B.I. audit, concurrent audit, statutory audit nor in the internal audit, which was being conducted regularly in the bank, any adverse remark has been made.

Submissions of petitioner-Sindhu Ratan Kul Bhashkar of Criminal Miscellaneous No.51238 of 2015.

13. It has been submitted by learned counsel for the petitioner - Sindhu Ratan Kul Bhashkar that he is innocent and has not committed any such offence as alleged in the F.I.R. The petitioner joined the services of the Central Bank of India and was posted at Rajendra Nagar Branch, Patna, in the month



of November, 1986 as Probationary Officer and thereafter he was deputed in Boring Road Branch in the year 1989. Again, he was deputed in New Dak Bungalow Branch, Patna, in the year 1997 and thereafter he was promoted to Scale-II Officer and posted at Madarna Branch, Vaishali on 25.05.1999.

14. Learned counsel for the petitioner has submitted that as per the F.I.R. the period of alleged occurrence is from August, 1999 to December, 2000 and the place of occurrence is Central Bank of India, Main Branch, Patna, but at the relevant point of time, the petitioner was not posted in the aforesaid Branch. It has been pointed out that prior to lodging of the instant F.I.R., a Title Suit was filed by the borrower-firm against the creditor-Bank in the Court of Sub Judge, Patna.

15. It has been submitted that that one Qamber Hasnain and petitioner - Vineet Kumar Verma started a partnership firm in November, 1998 after taking loan from the Central Bank of India, Main Branch, Patna and repaid the entire loan amount and thereafter in May, 1999 they converted the firm into a duly incorporated firm in the name and style of M/s. Siddhi Overseas Private Limited Limited and continued their export business with the financial assistance of the said Bank. Similarly, petitioner - Vishakha Sindhu and others also started



export firm in the name and style of M/s Siddhi Export Private Limited with the financial assistance of the same Bank. It is submitted that there is no law, rule or regulation which prohibits or restricts the relatives of any bank employee to carry out their own business and further the husband and wife being separate individuals are competent to do their own business even if either of them is in the service of the bank.

16. It has also been submitted that the petitioner had or has no concern whatsoever with the business of his relatives nor he was part of any of the said business and he never pledged his collateral nor he stood as a guarantor of any loan amount taken by the said two companies. Moreover, the petitioner was not the sanctioning authority of loan amount granted to the said two companies and both the companies were granted loan in accordance with the provisions of the export manual. It is pointed out by learned counsel for the petitioner that at the time of granting loan, one Pandey Arun Kumar Shrivastav was the Branch Manager of the Bank, who sanctioned packing credit in favour of M/s. Sidhi Overseas Private Limited in the year 1999 and had also reported about the said account to the Regional Office of the Bank.

17. Learned counsel for the petitioner has further



submitted that as the petitioner was having the experience and knowledge in export loan, he was directed to process the loan proposal of M/s. Sidhi Overseas Private Limited and accordingly, he did so, for which there is no bar in export manual or in the banking norms. The aforesaid firm was allowed overdraft by the other officers of the Bank and not by the petitioner. Further, the said overdraft account was duly reported to the higher officer, the auditors checked the aforesaid account and the Regional Office also verified the same.

18. It has been submitted by learned counsel for the petitioner that the overdraft account of M/s. Sidhi Exports Private Limited was opened by the then Branch Manager of the Bank and at that point of time the petitioner had not even joined the services of Bank. It is submitted that while granting loan facilities, the required procedures were followed and all the required loan documents were submitted by the firms and further collateral securities were also taken from them.

19. It has been argued by learned counsel for the petitioner that due to dispute between the bank and the firm, the Bank officers illegally held up the export bill of Rs.3,51,73,125/-, due to which money was blocked and delay was caused in realizing the amount of export bill from the



foreign buyers and ultimately the amount was received in the Bank but, the officers of the Bank in quite arbitrary manner did not credit the said received amount in the loan account of the firm and rather had put the aforesaid amount in a separate account. When all these matters were brought to the notice of the Debts Recovery Tribunal, Patna and when the loan account and the repayment schedule was provided by the firm, the Tribunal had examined the same and ultimately the Bank admitted and acknowledged the repayment of entire loan amount. Therefore, in view of the above narrated factual background, no offence is made out against this petitioner being an officer of the Bank and he can not be blamed for any irregularity whatsoever committed by any officer of the bank.

20. It has been argued by learned counsel for the petitioner that despite several requests made on behalf of the petitioner, the Bank did not provide him Officers' Duty Register kept and maintained in the main Branch of the Bank nor the Investigating Officer had seized or verified such register. Apart from the above, the letter written by Pandey Arun Kumar Shrivastav, the then Branch Manager, to the Zonal Manager, Patna in respect of said two loan accounts was never provided to the Investigating Agency to examine the same. It has also been



argued that the the Investigating Officer has not examined the list of relevant documents which have been submitted by the petitioner.

**Submissions of petitioner - Vineet Kumar Verma of
Criminal Miscellaneous No.51868 of 2015.**

21. Learned counsel for the petitioner - Vineet Kumar Verma submits that no officer or employee of the Central bank of India lodged the instant F.I.R. since in the place of the name of informant/complainant "source" has been mentioned. Further, no auditor of the Bank had detected any fraud or forgery in the loan account and/or in loan transaction of M/s. Sidhi Overseas Private Limited. If there was any illegality or irregularity or fraud or forgery in the loan transaction of the aforesaid firm, the competent officer of the bank during periodical inspection would have reported the same but, there is no such report by any officer regarding the same. Further, no Vigilance Officer of the Bank during vigilance inquiry ever detected or reported any fraud or forgery against any officer of the Bank in relation to the loan account of the firm and therefore, the F.I.R. ought not to have been registered.

22. It has been submitted by learned counsel for the petitioner that there is inordinate delay in lodging the F.I.R.



that too without any explanation. In the F.I.R., it has been alleged in the loan disbursement, there were several discrepancies but no supporting document with regard to the aforesaid discrepancies were ever produced before the Investigating Agency at the time of lodging of the F.I.R. or even during investigation before submitting the charge sheet. Thus, all the allegations are groundless and there is no sufficient ground to proceed against the petitioner.

23. It has also been submitted by learned counsel for the petitioner that it is admitted by the prosecution that loan was granted to the firm on the basis of packing credit agreement granting a limit of Rs.50 Lakh and hence in the face of such agreement of loan, no case of cheating and/or forgery is made out. There is no allegation whatsoever against the petitioner that he has made any false document and by committing forgery took loan from the Bank. It is settled law that in case of bank loan, there is a relation of debtor and creditor which does not come within the purview of cheating.

**Submissions of petitioner - Vishakha Sindhu of
Criminal Miscellaneous No.52233 of 2015.**

24. It has been submitted by learned counsel for the petitioner - Vishakha Sindhu that she is not the Director in-charge of the firm namely, M/s. Siddhi Export Private Limited.



There are other Directors as well as Director in-charge of management of the firm and she has falsely and maliciously been made accused in this case. It has also been submitted that as per the allegation made in the F.I.R. the husband of this petitioner made debit entry in nominal account where no interest is being charged. It is falsely alleged that the petitioner submitted export bill for collection to Jammu & Kashmir Bank by altering the name of original bank and the bill does not contain her writing or signature. Moreover, without getting the disputed writing on the bill examined by an expert, such allegation is meaningless and highly absurd.

25. It has also been submitted that initially M/s. Sidhi Export Private Limited had overdraft account in the said bank which was sanctioned by the then Branch Manager on 24.10.1999 with a limit of Rs. 2.15 lakh. The husband of the petitioner was not even posted at that time in the said bank and therefore, he did nothing in respect of such account nor he sanctioned the limit of the amount.

26. Lastly, it has been submitted that first export bill was raised in July 2001 and in August of the same year payment was received. Hence post shipment advance against export bill was fully adjusted and no loss was caused to the



Bank. The firm has given collateral security and also furnished the loan documents to cover the advance Rs.95 Lakh. The export bill was valued at Rs.3 crore and the collateral assets were valued at Rs. 3.10 crore, but the bank due to ulterior and *mala fide* motive recalled the export bills with a view to file a criminal case before the Central Bureau of Investigation. However, the firm had been negotiating with the third parties to collect sale proceed amount of exported goods which was not possible without co-operation of the Bank.

27. It has been submitted by learned counsel for the petitioners that no case of criminal breach of trust is made out when the litigation emanates from an agreement and failure to deposit any money in the Bank is not an offence either under section 405 or section 409 of the Indian Penal Code. Further, the compromise entered into between the parties in the civil suit amounts to compounding of the criminal offence as well.

28. In support of this submissions, learned counsel for the petitioners has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of *Velji Raghavji Patel vs. State of Maharashtra* reported as *1964 SCC OnLine SC 185* and *Central Bureau of Investigation, New Delhi vs. Duncans Agro Industries Ltd. Calcutta* reported as *(1996) 5*



S.C.C. 591.

29. It has been submitted by learned counsel for the petitioners that omnibus statement of misrepresentation and absence of detail of alleged offence of cheating amounts to abuse of the process of law and the criminal proceeding is liable to be quashed. In support of this submission, he has placed reliance on the decision rendered in the case of ***G. Sagar Suri & Anr. vs. State of UP. & Others*** reported as **(2000) 2 SCC 636.**

30. Learned counsel for the petitioners also relied upon the decision rendered in the case of ***ALPIC Finance Ltd. vs. P. Sadashivan & Anr.*** reported as **(2001) 3 SCC 513.**

31. It has been submitted by learned counsel for the petitioners that in case of breach of contract would amount to cheating only if intention to cheat was existing at the very inception. If such intention develops later on, there is no cheating and remedy lies before the civil court by filing a properly constituted suit. In support of this contention, he has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Uma Shankar Gopalika vs. State of Bihar & Anr.*** reported as **(2005) 10 SCC 336.**



32. The learned counsel for the petitioner has also relied upon the decision rendered in the case of **Indian Oil Corporation vs. NEPC India Ltd. & Ors.** reported as **(2006) 6 SCC 736** and has submitted that in the aforesaid case it has been held that “*any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged*”. He also relied upon the decision rendered in the case of **Rajwant Singh vs. State of Bihar & Anr.** reported as **2007 (1) PLJR 406 : 2006 SCC OnLine Pat 463**, wherein it has been held that “*for breach of contractual obligation and at best the petitioner can pursue civil remedy, if such remedy is available to him and if the facts in the complaint on its face value is taken as correct*”.

33. Learned counsel for the petitioner has also relied upon the decision of the Hon’ble Supreme Court rendered in the case of **Nikhil Merchant vs. CBI & Anr.** reported as **2008(9) SCC 677**, more particularly paragraph nos. 27, 28, 29, 30 and 31, which read as under:-

“27. 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.

28. *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 Ltd., Mumbai, 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.*
29. *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 CrPC 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 case becomes relevant.*
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.”*

34. Learned counsel for the petitioners to make out a case for warranting interference from this Court has also relied on the following decisions :-

(i) ***R.P. Kapur vs. State of Punjab*** reported as

1960 SCC OnLine SC 21;

(ii) ***M/s. Pepsi Foods Ltd. & Another v/s Special***

Judicial Magistrate & Others reported as

(1998) 5 SCC 749 ;

(iii) ***State of Haryana and Ors. vs. Ch.***



Bhajanlal & Ors. reported as ***1992 Supp (1)***

SCC 335;

(iv) ***Madhavrao Jiwajirao Scindia & Ors. vs.***

Sambhajirao Chandrojirao Angre &

Others reported as ***AIR 1988 S.C. 709 :***

(1988) 1 SCC 692;

35. On the point that liability of the firm cannot be enforced against the directors/officers/share holders of the firm, he has relied upon following judgments:-

(i) ***Bejai Singh Dugar v/s Certificate Officer***

Bhagalpur & Others 1965 BLJR - 341

(DB);

(ii) ***Smt. Sarla Devi Agrawal vs. State of Bihar***

reported as 1979 BBCJ 213 (DB);

(iii) ***Damodar Prasad Nathani vs. The State of***

Bihar & Ors. 1999 (1) PLJR 522;

(iv) ***Kanhya Lal vs. The vs. the State of Bihar***

2002(2) BBCJ 278;

(v) ***K.K. Ahuja vs. V.K. Vora and Anr. 2009***

(10) SCC 48.

36. A counter affidavit has been filed by the respondent - C.B.I. wherein it has been stated that during



investigation, it has come that petitioner - Vishakha Sindhu, Director of M/s. Sidhi Export Private Limited in conspiracy with petitioner-Sindhu Ratna Kul Bhaskar and one Pandey Arun Kumar Srivastava, obtained funds wrongfully through fraudulent overdrafts from 26.10.1999 to 09.09.2000. These overdrafts were given by Pandey Arun Kumar Srivastava without any power to do so and against the interest of the Bank. Petitioner-Sindhu Ratan Kul Bhaksar fraudulently transferred funds from the CD nominal account No.259 to OD account No.6188 to the tune of Rs.148 Lakh for wiping out the fraudulent overdrafts and providing the easy money to the firm of his wife.

37. It has further been stated that Sindhu Ratna Kul Bhaksar and Pandey Arun Kumar Srivastava in conspiracy with Vineet Kumar Verma and Qamber Husnain both Directors of the firm, abused their official position and fraudulently and dishonestly provided funds to the firm by sanctioning Packing Credit pre-shipment and post-shipment advance beyond their lending power. On other occasions, they negotiated some export bills of M/s. Sidhi Export/Sidhi Overseas and wiped out the pre-shipment advances of the packing credit account given beyond the lending power. Further, petitioner-Sindhu Ratan Kul



Bhaksar unauthorisedly debited CD Nominal account no.259 and credited the CD account of Sidhi Export/Sidhi Overseas Private Limited. Thus, both the accused public servants caused wrongful loss to the Central Bank of India to the tune of Rs.241.56 lakh.

38. During investigation, it has also come that petitioner-Sindhu Ratna Kul Bhaksar was working as scale II officer on temporary posting at Dak Bungalow Branch of the Central Bank of India, Patna, during the year 1999 to 2000. M/s. Sidhi Export Private Limited was having current account in the Dak Bungalow Branch of the Bank. It has also come during investigation that on 26.10.1999 overdraft facility was sanctioned by Pandey Arun Kumar Srivastava, the then Branch Manager of the bank. The OD account was singly operated by the petitioner -Visakha Sindhu, the Director of M/s. Sidhi Export Private Limited, who is the wife of petitioner- Sindhu Ratna Kul Bhaksar. As such, it was a staff related account and Pandey Arun Kumar Srivastava was not entitled to sanction any advance/OD limit to this account. From 26.10.1999, the petitioner-Sindhu Ratna Kul Bhaksar started obtaining the overdraft and within a month i.e. by 20.11.99 she obtained Rs.2,56,980/. On 22.11.99 even this unauthorized OD limit was



crossed as petitioner - Visakha Sindhu further withdrew Rs. 2,50,375/- and Pandey Arun Kumar Srivastava allowed this withdrawal. He kept on allowing withdrawal from the said account beyond the sanctioned OD limit and petitioner- Visakha Sindhu kept on withdrawing the money. On 14.03.2000 when the debit balance of this account soared up to Rs.28,71,782/- Pandey Arun Kumar Srivastava enhanced the OD limit in the computer to Rs.27.9 Lakh without actually processing and sanctioning any such fresh limit as a sinister design to hide the previous repeated illegal overdrawing. The phenomena of allowing illegal over drawings remained unchecked and the debit balance of the said account rose to Rs. 46,19,506/- by withdrawal of Rs.11,02,250/- by petitioner- Visakha Sindhu on 03.07.2000. This also was allowed by Pandey Arun Kumar Srivastava. Thus, it is established that Pandey Arun Kumar Srivastava in conspiracy with petitioner- Vishakha Sindhu disposed of the Bank's property in violation of the direction of his Bank and this was done against the interest of the Bank and for providing wrongful gain to petitioner-Vishakha Sindhu, wife of petitioner- Sindhu Ratan Kul Bhaskar.

39. After completion of investigation, two separate charge-sheets were filed on 08.07.2004, Charge Sheet



No.16/2004 against Sindhu Ratan Kul Bhaskar, Pandey Arun Kumar Srivastava, Vineet Kumar Verma and Qamber Hasnain and Charge Sheet No.17/2004 against Sindhu Ratan Kul Bhaskar, Pandey Arun Kumar Srivastava and Vishakha Sindhu.

40. It has also been submitted that even otherwise the case is of the year 2001 and the discharge applications of the petitioners were rejected in the year 2015 itself. Further, in this case, charges have already been framed by the Court below. The stage of the case has also changed. Therefore, considering the aforesaid facts and subsequent developments, these applications may be dismissed.

41. Learned counsel for the C.B.I. has placed reliance on the following judgments of the Hon'ble Supreme Court :-

(i) ***State of Odisha vs. Devendra Nath Padhi*** reported as ***(2005) 1 SCC 568***, wherein it has been held that defence cannot be looked at the time of cognizance or framing of charge.

(ii) ***CBI vs. Aryan Singh & Ors.*** reported as ***(2023) 18 SCC 399***, wherein it has been held that at the stage of discharge and/or quashing of the criminal proceedings, while



exercising the powers under Sec, 482 of the Cr.P.C., the Court is not required to conduct a mini trial.

(iii) *P. Vijayan vs. State of Kerela & Anr.*

reported as *(2010) 2 SCC 398* wherein it has been held that the Court while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities, which is really the function of the Court after the trial starts.

42. I have considered the submissions of the parties and perused the materials available on record.

43. From the perusal of the records of the case, *prima facie* it appears that the accused persons, i.e., petitioner - Vishakha Sindhu, Director of M/s. Sidhi Export Private Limited in conspiracy with petitioner - Sindhu Ratan Kul Bhaskar and one Pandey Arun Kumar Srivastava obtained loan/funds fraudulently from 26.10.1999 to 09.09.2000. The accused



Pandey Arun Kumar Srivastava without any power and without any authorization had given the overdraft to the firms and funds were accordingly transferred from the bank to the O.D. account of the firms. Huge amount to the tune of Rs.148 Lakhs were transferred to the bank account of the firm namely, M/s. Sidhi Exports Private Limited for wiping out the fraudulent overdrafts and providing easy money to the firm. The accused Pandey Arun Kumar Srivastava is accused of sanctioning pre-shipment advances illegally and beyond his lending power to the firms in conspiracy with them and thereafter wiped out the aforesaid pre-shipment advance of packing credit account. The accused public servant wrongfully caused loss to the Central Bank of India to the tune of Rs.241.56 Lakh.

44. Further, petitioner - Sindhu Ratan Kul Bhaskar worked as Scale-II officer on temporary posting at Dak Bungalow Branch of the Central Bank of India and at the relevant period the firm was having a current account in the same branch. The overdrafts facility was sanctioned by the accused Pandey Arun Kumar Srivastava, the then Senior Branch Manager. This O.D. account was singly operated by the petitioner- Vishaka Sindhu, wife of Sindhu Ratna Kul Bhaskar and therefore, it was a staff related account. Pandey Arun



Kumar Srivastava was not authorized to grant any advance OD limit to this account, yet an overdraft of Rs.2,56,980/- was obtained by the firm. On 20.11.1999 after crossing the OD limit petitioner - Vishaka Sindhu further withdrew Rs.2,50,375/- which was allowed by Pandey Arun Kumar Srivastava.

45. It is apparent that Pandey Arun Kumar Srivastava has acted beyond his power and has sanctioned amount beyond the O.D. limit though the account was a staff related account and the accused persons have used the funds of the bank illegally for the business expenditure of the firm. Illegal overdrawing of the said amount has been done to the tune of Rs.46,19,506/-.

46. The present petitioners have challenged the order of dismissal of their discharge applications by invoking section 482 of the Cr.P.C. The law on this subject is well settled. The Court while considering an application for discharge has a limited scope of only considering whether sufficient grounds are available for proceeding with the criminal case or not. The Court, in such cases, cannot conduct a mini trial or roving enquiry to evaluate the defence of the accused as well as to weigh the evidences.

47. From the judgments referred by the



petitioners, as discussed above, it is clear that this Court can exercise its inherent power under section 482 of the Cr.P.C. only when there is no criminality involved in the case and the dispute arises out of a purely contractual matter or civil dispute. Merely because the loan has been repaid by way of compromises and the parties i.e. the Bank and the firm have entered into a compromise before the D.R.T. Patna will not be a ground for setting aside the impugned order by which the discharge applications filed by the petitioners had been rejected.

48. The Hon'ble Supreme Court in the case of *Central Bureau of Investigation vs. Jagjit Singh* reported as **(2013) 10 SCC 686** in paragraph nos. 14 to 16 held has as under:-

“14. In the present case, the specific allegation made against the respondent-accused is that he obtained the loan on the basis of forged document with the aid of officers of the Bank. On investigation, having found the ingredients of cheating and dishonestly inducing delivery of property of the Bank (Section 420 IPC) and dishonestly using as genuine a forged document (Section 471 IPC), charge-sheet was submitted under Sections 420/471 IPC against the accused persons.

15. The debt which was due to the Bank was recovered by the Bank pursuant to an order



passed by the Debts Recovery Tribunal. Therefore, it cannot be said that there is a compromise between the offender and the victim. The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well-being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court nor anything on record to suggest that the offenders were entitled to secure the order in the ends of justice.

16. In the instant case, the High Court has not considered the above factors while passing the impugned order [Criminal Revision No. 719 of 2010, decided on 31-3-2010 (Cal)]. Hence, we are of the opinion that the High Court erred in addressing the issue in right perspective.” (emphasis supplied)

49. In an another decision, the Hon’ble Supreme Court in the case of ***Anil Bhavarlal Jain & Anr. vs. The State of Maharashtra & Ors.*** reported as **2024 SCC OnLine SC 3823** in paragraph no.14 to 18 has held as under:-

“14. This Court in *Gian Singh (supra)* has dealt with



the powers of the High Court under Section 482 r/w Section 320 of the CrPC and the consequent authority of the High Court to quash criminal proceedings, FIRs or complaints under its inherent jurisdiction as in contradistinction to the power with criminal courts for compounding offenses under Section 320 of the CrPC. The High Court observed that quashing was dependent on the unique circumstances of each case and though no fixed category can be established, heinous and severe offences should not be quashed even if the parties have settled. However, this Court in Gian Singh (supra) categorically made an observation that:

“61. The offences of mental depravity under the Penal Code, 1860 or offences of moral turpitude under special statutes like Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all.”

15. *In the light of above, the facts of the present case are distinguishable from the facts that came for consideration before this Court in the above case relied on by the appellants herein.*
16. *Another reference can be made to the judgment of this Court in Parbatbhai Aahir vs. State of Gujarat wherein it was observed that, economic*



offenses involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.

17. *A profitable reference in this regard can be made to the judgment in State v. R Vasanthi Stanley, wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:*

“15.A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when



the matter has been settled it should be quashed to avoid the head on the system. That can never be an acceptable principle or parameter, for that would amount to destroying stem cells of law and order in many a realm and further strengthen the marrow of unscrupulous litigations. Such a situation should never be conceived of.

18. *In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs.6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings.” (emphasis supplied)*

50. In the present case, the offence, as alleged in the F.I.R. involves defrauding the financial system of the country by the persons who are responsible officer bearers of



the Bank. The Hon'ble Supreme Court in the aforesaid decisions has held that such offences caused adverse ripple effect in the society and are in the nature of moral turpitude. When an offence of cheating, fraud etc. has been committed by the borrower after weaving a conspiracy with the Bank officials, as alleged in the F.I.R., would not make a case suitable for interference by this Court.

51. Moreover, this Court at this stage, will not go into the merits of the case and examine threadbare the defence of the accused persons if a strong *prima facie* case for trial is made out particularly offences affecting the financial and economic system. In the present case, the petitioners have failed to make out a case that the allegations are totally groundless and therefore, the criminal case should not proceed against them.

52. The Hon'ble Supreme Court in the case of *State of Gujarat vs. Dilipsinh Kishoresinh Sao* reported as (2023) 17 SCC 688 has held as under:-

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts



emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. *This Court in State of T.N. v. N. Suresh Rajan adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)*

29. *We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would*



not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. *The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency."*

53. In the present case, based on the materials produced by the prosecution the Court below was of the opinion that there are sufficient materials to proceed with the criminal case and it is settled law that documents/material



produced by the accused cannot be considered at the stage of discharge.

54. Considering the aforesaid discussions and also the fact that there is no illegality or irregularity in the impugned order by which the discharge applications of the petitioners have been rejected, I do not find any merit in these applications.

55. In view of the above, these applications have to fail and therefore, the same are dismissed. The impugned order dated 28.09.2015 passed by the learned Special Judge, C.B.I.-I, Patna is hereby affirmed.

(Sandeep Kumar, J)

pawan/

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