

(2003) 06 JH CK 0003

Jharkhand High Court

Case No: ABA No"s. 54, 58 and 63 of 2003

Ramesh Gandhi, Rajesh Gandhi
and Sati Nath Bhattacharjee

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: June 12, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 120B, 420
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

Citation: (2004) CriLJ 1037 : (2003) 3 JCR 245

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: Dipankar Gupta, in ABA 54/03 and M.M. Banerjea, in ABA 58/03 and 63/03, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.

Heard the parties.

2. ABA Nos. 54, 58 and 63 of 2003 arise from R.C. 2(A)/96 (D) and as such they are disposed of by this order.

3. All the petitioners are being prosecuted for the offence punishable under Sections 120B and 420, IPC as well as under Sections 13(2) read with 13(1)(d) of the P.C. Act, 1988. The petitioners, namely, Ramesh Gandhi and Rajesh Gandhi are the Directors of M/s Continental Transport and Construction Corporation, Dhanbad (in short "CTCC") and petitioner S.N. Bhattacharjee was the officiating Branch Manager of Vijaya Bank, Dhanbad on 19.3.1994 in the absence of Senior Branch Manager Ratnakar Hegde B got the 4th running account bill dated 3.3.1994 of the said firm

discounted on that day and the said bill was for Rs. 22,40,106/-. The allegation is that Ratnakar Hegde B, the Senior Branch Manager, Vijaya Bank, Dhanbad (who is not sent up for trial) during the period of 1992 to 1994 entered into a criminal conspiracy with the Directors of M/s CTCC and in pursuance of the same dishonestly and fraudulently by abusing his official position allowed credit facilities to M/s CTCC beyond his delegated powers and the established norms of the Bank and issued Bank guarantees in excess of the financial limits and also allowed payments to the tune of Rs. 20,16,086.72 paise against the bill discounted of M/s CTCC and allowed the Directors of M/s CTCC to realize the bill proceeds directly from BCCL which was encashed and deposited in the different account at S.B.I., Ramgarh Cantt of M/s CTCC thereby caused wrongful loss of the said amount to the Bank and corresponding wrongful gain to themselves. It is alleged that M/s CTCC is a private company and petitioners, Ramesh Gandhi and Rajesh Gandhi are the Directors of the said Company which is doing a contract job for installation of one Feeder Breaker Complex at Golakdih Open Cast Project, Bastacolla Area, BCCL, Dhanbad and in course of execution of work the 4th running account bill was prepared in the office of Area Civil Engineer, Bastacolla Area, BCCL, Dhanbad and it was passed for Rs. 22,40,106.72 paise by co-accused M.P. Sinha, the then Dy. Finance Manager, Bastacolla Area, BCCL, Dhanbad on 19.3.1994. The prosecution case further is that petitioner S.N. Bhattacharjee, the then officiating Branch Manager of Vijaya Bank, Dhanbad, on 19.3.1994 has intentionally, fraudulently and dishonestly discounted the said bill under Supply Bills Purchase Overdraft (SBPOD) No. 19/94 for Rs. 20,14,576.72 paise by way of crediting its amount in the account of M/s CTCC and he has also sent a letter on that very day to the Area Finance Manager, Bastacolla Area, BCCL, Dhanbad informing about the same and requesting him to make arrangement to pay the amount of the bill through cheque drawn in Dhanbad at an early date. The further allegation is that the cheque against the 4th running account bill in question was prepared in favour of M/s CTCC instead of Vijaya Bank, Dhanbad and the said cheque was deposited in the account of M/s CTCC in the S.B.I., Ramgarh Cantt. Lastly it is alleged that the petitioners have caused wrongful gain to themselves and wrongful loss to Vijaya Bank intentionally and fraudulently.

4. It has been submitted by Mr. Dipankar Gupta, learned Sr. Advocate for the petitioner Ramesh Gandhi that it is a case of commercial transaction in which as per the norms the bills are discounted by the Bank under SBPOD and accordingly the 4th running bill amounting to Rs. 22,40,106/- was discounted by Vijaya Bank and the said amount was credited in the account of M/s CTCC and the officiating Branch Manager i.e., petitioner S.N. Bhattacharjee informed the Area Finance Manager, Bastacolla Area, BCCL, Dhanbad regarding the discounting of the said bill and also requested him to pay the amount of the bill through cheque drawn in favour of Vijaya Bank, Dhanbad but the Area Finance Manager, Bastacolla Area, BCCL, Dhanbad committed an irregularity in drawing the cheque of the discounted 4th running account bill in the name of M/s CTCC which was collected by M/s CTCC and

deposited in its account at SBI Ramagarh Cantt. It has also been submitted that when the said irregularity was detected the entire amount under the 4th running account bill was deposited in the Vijaya Bank, Dhanbad not only along with interest but also with penal interest several years prior to the institution of the FIR. It has also been submitted that now nothing is due of Vijaya Bank against M/s CTCC in respect of the discounted 4th running account bill aforesaid and annexure-5 which is the letter of Vijaya Bank shows that nothing is due of the Bank in respect of the 4th running account bill as the entire amount has been paid between 1.10.1994 to 22.11.1994 and M/s CTCC had themselves deposited the said amount and after this date no amount remained payable by M/s CTCC to the Bank against the said bill purchased under SBPOD limits of the said firm. The said letter, annexure-5, further discloses that the credit limit of M/s CTCC, Dhanbad is Rs. 824.95 lakhs out of which SBPOD limit is Rs. 50.00 lakhs. The said letter, annexure-5, further shows that the total fixed deposit of M/s CTCC as on 19.3.1994 with the said Bank is amounting to Rs. 85,69,564/-. It has further been submitted that in view of annexure-5 there is no question of any wrongful loss to Vijaya Bank, Dhanbad in the facts and circumstances of this case as the entire amount stands reimbursed not only with interest but with penal interest. Therefore, the irregularity, if any, lacks any culpable intentional and mens rea on the part of the petitioners in the facts and circumstances of this case. It has also been contended that para 14 of the impugned order of the learned Court below shows that Sri Rajendra Singh, Spl. P.P. has admitted that the amount in question was paid back to the Bank by the petitioner's Company. It has also been contended for the petitioners that after the submission of the charge sheet the prosecution has obtained a letter from Vijaya Bank that the said Bank has still revenue loss of Rs. 44,340/- on re-calculation of the interest and the said letter has now no bearing in view of annexure-5 aforesaid but, however, the petitioner is ready to deposit that amount also, if ordered by the Court. It has also been contended for petitioner Ramesh Gandhi that he is a public figure and the recipients of several awards for television programmes/feature films which includes two national awards conferred upon him by his by His Excellency the President of India for production of T.V. serials such "Kichu Sanglap Kichu. Pratap" and "Dekha". It has been submitted that this petitioner is also suffering from several diseases and he annually pays around Rupees two crores as income tax. Lastly it has been contended that charge sheet has been submitted and there is no question of tampering with the evidence or fleeing from Justice and in a similar case he has been enlarged on anticipatory bail by the Hon'ble Apex Court vide annexure-15.

5. Mr. M.M. Banerjea, learned counsel appearing for petitioner Rajesh Gandhi has adopted the contention put forward on behalf of petitioner Ramesh Gandhi except his status. He has submitted further that due to the mistake by the officers of the BCCL cheque was issued in the name of M/s CTCC and when the irregularity came to the notice of the petitioner, the entire amount was deposited along with penal interest and, therefore, there is no question of any wrongful loss and the

prosecution of this petitioner along with petitioner Ramesh Gandhi is the result of sheer vendetta and considering all the aspects of the matter a Bench of this Court had stayed the arrest of the petitioners vide order dated 14.2.2003.

6. Mr. M.M. Banerjea, learned counsel has further submitted on behalf of petitioner S.N. Bhattacharjee, officiating Branch Manager, that as per the rules and the norms petitioner S.N. Bhattacharjee had discounted the 4th running account bill under SBPOD on 19.3.1994 and on the same day he informed the Area Finance Manager, Bastacolla Area, BCCL, Dhanbad about the same requesting him to make payments of bill through the cheque drawn at Vijaya Bank, Dhanbad and, as such, no wrong has been committed by the petitioner in this matter and no case is made out against him in the facts and circumstances of this case and his prosecution is nothing but an abuse of the process of law.

7. Learned Spl. P.P. has submitted that M/s CTCC was granted facility of SBPOD only for a period of one year which did lapse on 26.9.1993 and it was not extended thereafter but in spite of that the 4th running account bill dated 3.3.1994 was discounted by petitioner S.N. Bhattacharjee, the officiating Branch Manager and, therefore, the 4th running account bill was wrongly and fraudulently discounted on 19.3.1994 and this prima facie shows the connivance of both the petitioners with petitioner S.N. Bhattacharjee and thereafter the cheque of the said 4th running account bill was issued not in the name of Vijaya Bank, Dhanbad but in the name of M/s CTCC which was credited in its account at SBI, Ramgarh Cantt. It has also been submitted that the petitioners had intentionally taken the cheque of the 4th running account bill in the name of M/s CTCC and dishonestly got it credited in its account at Ramgarh Cantt. It has also been submitted that para 5 of the bail application petitioner Ramesh Gandhi shows that since the funds were immediately required at Ramgarh for ongoing business and, as such, the cheque was deposited in the Bank account of M/s CTCC, Ramgarh and this clearly shows the active complicity of the petitioners in defrauding the Vijaya Bank.

8. There is no denying the fact that M/s CTCC was doing the contract job for installation of one Feeder Breaker Complex at Golakdih Open Cast Project, Bastacolla Area, BCCL, Dhanbad during the period September. 1993 and in course of execution of work the 4th running account bill was prepared for Rs. 22,40,106/- which was passed by the then Dy. Finance Manager, Bastacolla Area, BCCL, Dhanbad on 3.3.1994 which was discounted under SBPOD on 19.3.1994 and the amount of the discounted bill was credited in the account of M/s CTCC. Petitioner, S.N. Bhattacharjee, the officiating Branch Manager sent a letter on that very day to the Area Finance Manager, Bastacolla Area about discounting of the said bill requesting him to pay the amount of the said bill through cheque drawn on Vijaya Bank, Dhanbad. It appears that the then Dy. Finance Manager, Bastacolla Area, BCCL, Dhanbad has drawn the cheque not in favour of Vijaya Bank, Dhanbad but in favour of M/s CTCC, Dhanbad which was collected by it and deposited in its account

at SBI, Ramgarh Cantt. Here the irregularity has been committed by the then Dy. Finance Manager, Bastacolla Area and due to inadvertence at the instance of M/s CTCC and its Directors, the petitioners, the said amount was credited in its account at Ramgarh Cantt. It further appears from the materials on the record that when this irregularity was detected M/s CTCC reimbursed the entire amount not only along with interest but also with penal interest to Vijaya Bank several years prior to the institution of the FIR. Annexure-5, which is the letter of Vijaya Bank, shows that no wrongful loss has been caused to the Vijaya Bank in the facts and circumstances of this case. It further appears that facility of SBPOD in favour of M/s CTCC was initially sanctioned for a period of one year only with the review date being 26.6.1993 and as per the norms in practice during the period when the review is on the process and the renewal of the facility was under consideration of the credit facilities/limits all were allowed in the past as per earlier sanction do not expire and it is allowed to continue on ongoing basis unless specifically withdrawn, amended or modified prior to the review date and pursuant to the review done by the Bank all the limits sanctioned earlier were renewed by the Board of Directors of Vijaya Bank on 6.6.1995 which amounts to credit of a formal post facto sanction for continuance of all the facilities and limits already allowed in the past to M/s CTCC during the entire period from 27.6.1993 to 5.6.1995 and in this view of the matter it cannot be said that there was any irregularity either on the part of the petitioners or officiating Branch Manager on discounting the 4th running account bill. Therefore, in the facts and circumstances of this case an irregularity has been committed by the then Dy. Finance Manager, Bastacolla Area in issuing the cheque of 4th running account bill in the name of M/s CTCC which was credited in its account at Ramgarh Cantt and when this irregularity was detected M/s CTCC and its Directors, the petitioners, reimbursed the amount in Vijaya Bank along with interest and penal interest and, therefore, question of causing any wrongful loss to Vijaya Bank does not arise and the said Bank as per annexure-5 has in the most clear and unequivocal terms stated that no wrongful loss has been caused to the said Bank. Subsequently, after the submission of the charge sheet it has transpired that on recalculation a sum of Rs 44,340/- is still outstanding against the said 4th running account bill payable to the Vijaya Bank. However, the petitioners are willing and ready to deposit the said amount, if directed, but under protest.

9. Considering all the pros and cons of the matter and no wrongful loss having been caused to Vijaya Bank in the facts and circumstances of this case and in another case petitioner Ramesh Gandhi has been enlarged on anticipatory bail by the Apex Court vide Annexure-15 of his bail application, I am inclined to admit petitioners, namely, Ramesh Gandhi, Rajesh Gandhi and S.N. Bhattacharjee on anticipatory bail on the condition that petitioner, Ramesh Gandhi must deposit Rs. 44,340/- in the Vijaya Bank and on submission of the receipt of the said deposit before the learned Court below, they shall be enlarged on anticipatory bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the

satisfaction of the learned Court below in RC 2(A)/96 (D) in the event of their arrest/surrender subject to the conditions contained u/s 438 Cr.PC.