(2013) 12 CAL CK 0008

Calcutta High Court

Case No: C.R.R. 2688 of 2013

A. Bhaskaran @ Arunacholam Bhaskaran		APPELLANT
	Vs	
Central Bureau of Investigation and Another		RESPONDENT

Date of Decision: Dec. 2, 2013

Citation: (2014) 1 CALLT 493 : (2014) 3 CCR 85

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Krishnendu Bhattacharyya, for the Appellant; Himangshu De and Mr. Mrityunjoy Chatterjee for the CBI, for the Respondent

Final Decision: Disposed Off

Judgement

Joymalya Bagchi, J.

Order dated 27.06.2013 passed by learned 14th Metropolitan Magistrate, Calcutta Proceeding in G.R. Case No. 1665/95 pending before the learned Metropolitan Magistrate, 14th court, Calcutta arising out of R.C. Case No. 12/EOW/86 under sections 120B /420 /468 of the Indian Penal Code read with sections 5(i)(d) and 5(2) of the Prevention of Corruption Act, 1947 refusing to discharge the petitioner from the aforesaid case has been assailed. The prosecution case, as alleged, is that a criminal conspiracy was hatched between one Pawan Kumar Ruia, and his associates on one hand and one Charles Solomon, the then Calcutta Branch Manager of Tamilnad Mercantile Bank Ltd., the petitioner and others on the other hand to the effect that from January 1985 to September 1985 the then Calcutta Branch Manager of Tamilnad Mercantile Bank Ltd. on the other hand and pursuant thereto the latter misused his official position and committed fraud in a pre-planned manner and cheated the bank and wrongfully issued unauthorized overdrafts to the tune of Rs. 3,19,41,727/-, extended unauthorized credit through clearing cheques of outstanding account to the tune of Rs. 422.80 lakhs, permitted illegal drawings

against clearing to the tune of Rs. 62,60,471/- and made illegal book transfers to the tune of Rs. 12,35,07,000/-, and thereby enabled accused Pawan Kumar Ruia to illegally float 94 public limited companies and falsely showed that the Bank had collected a sum of Rs. 15 against each company in such public issue of equity and also failed to collect commission charges as Banker to such issue causing wrongful loss to the tune of Rs. 24,18,470,000/- and wrongful gain to the group of companies controlled by one Pawan Kumar Ruia. It is further alleged that the petitioner, as the supervisor in the branch, played a key role in the conspiracy and wrote vouchers and other documents relating to the accounts maintained in respect of the aforesaid fictitious forms created by Pawan Kumar Ruia and also helped in passing of instruments unauthorizedly enabling illegal transfer of funds for the purpose of conspiracy.

2. In conclusion of investigation, charge sheet was filed on 10.07.1995 under sections 120B /419 /420 /467 /468 /471 /477A of the Indian Penal Code against the petitioner and six other accused persons.

3. Proceeding against Pawan Kumar Ruia was quashed by this Court primarily on the premise that the controversy had been amicably resolved by and between the bank and various companies. Such order was affirmed by the Apex Court in its judgement and order dated 15.07.1998.

4. Prayer for discharge was made by the petitioner claiming parity with Pawan Kumar Ruia, as aforesaid. However, such prayer was turned down by the trial court on 31.07.2010 and was affirmed by this Court in Criminal Revision No. 234 of 2010. Again the trial Court turned down the same prayer on 22.03.2012. Similar prayer for discharge was again preferred and turned down by the trial Court on 27.06.2013 which is challenged in this proceeding. In course of this proceeding, supplementary affidavit has been filed and additional prayer has been made to quash the proceeding on the ground of inordinate delay.

5. Mr. Bhattacharyya, learned counsel appearing for the petitioner, submitted that the proceeding was quashed so far as it is related to the principal accused, Pawan Kumar Ruia as the bank had amicably resolved the dispute. Accordingly, he prayed that the impugned proceeding may also be quashed against the petitioner on parity. He further submitted that the matter is pending for more than two decades and in view of the fact that the dispute has been amicably resolved and the proceeding having been quashed in respect of the co-accused, continuation of the same against the petitioner would be an abuse of the process of Court and the same ought to be quashed in view of his fundamental right for speedy trial under Article 21 of the Constitution of India. He relied upon Pankaj Kumar Vs. State of Maharashtra and Others, and an unreported decision dated 09.07.2013 of the Apex Court in Appeal No. 888 of 2013 (Lokesh Kumar Jain v. State of Rajasthan) to buttress his submission to quash the proceeding on the ground of delay.

6. Mr. De, learned senior counsel appearing for the CBI, submitted that the in view of the law declared in Smt. Rumi Dhar Vs. State of West Bengal and Another, , and Gian Singh Vs. State of Punjab and Another, , the proceeding ought not to be quashed against the petitioner. He admitted that the proceeding has been quashed against Pawan Kumar Ruia but, he submitted that prayer for discharge on such score was turned down by this Court in Criminal Revision No. 234 of 2010. He also submitted that similar relief may not be extended to the petitioner in the light of the law as subsequently enunciated by the Apex Court in the aforesaid cases. He also submitted that the petitioner, as a supervisor of the Bank, did not stand on the same footing as Pawan Kumar Ruia. He further submitted that delay in disposal of the proceeding was not at the behest of the prosecution. The accused persons had been absconding for a protracted period of time and hence the trial could not be proceeded in the instant case. He submitted that the petitioner had been preferring applications for discharge one after another on the self-same issue and thereby contributing to the delay in the commencement of the trial. In this regard, he referred to Santosh De and Another Vs. Archna Guha and Others,

7. Firstly, let me examine as to whether the proceeding is entitled to be quashed on the principle of parity as such relief had been extended to Pawan Kumar Ruia. The petitioner was an employee of Tamilnad Mercantile Bank and was working as a supervisor of the branch wherein the co-accused Charles Solomon was the Branch Manager. Various accounts of various companies belonging to Pawan Kumar Ruia were opened in the said branch. Some of those companies were fictitious and non-existent. The petitioner, as the supervisor of the branch, being a member of criminal conspiracy and in pursuance thereof, played a key role by creating and falsifying entries in the said accounts and unauthorisedly passing instruments in respect of such accounts. One of the principal issues which had weighed with this Court while quashing the proceeding against Pawan Kumar Ruia was that he was not an employee of the company and, therefore, the allegations of forgery and falsification of accounts of the banking company did not arise against him. It may be profitable to refer to the relevant portions of the said judgement in this regard. In paragraph 18 of the said judgement it has been observed as follows:

18. It has been rightly contended on behalf of the petitioner that there is no allegation against the accused petitioner Ruia, that he used as genuine any document which he knew or had reason to believe to be a forged document.

8. It has further been observed in paragraph 20 of the judgement as follows:

20. ...Sri Roy has also submitted that the accused Pawan Kumar Ruia was not an employee of the Tamilnad Mercantile Bank Ltd. and as such the documents of the Bank were not in his custody, or within his reach and as such the question of falsification of accounts by the accused Ruia does not arise at all to which Sri Talukdar, appearing for the C.B.I. concedes. It is, therefore, clear that the prosecution has failed to the establish the offences under sections 419, 420, 467,

468, 471 or 477 of the I.P.C. against P.K. Ruia in any of the four cases filed against him.

9. On the other hand, the petitioner was the supervisor of the branch and in such capacity he had played "a role in creating and/or writing the fictitious accounts and unauthorisedly passing instruments in respect of such account". In this backdrop, it is difficult for me to come to a conclusion that there is no allegation of forgery or falsification of accounts against the petitioner like that in the case of Pawan Kumar Ruia. That apart, this issue had fallen for decision while considering his earlier prayer for discharge and had been decided against the petitioner in Criminal Revision No. 234 of 2010. There is no provision to review such decision and reopen such issue afresh which, according to me, has been rightly decided against the petitioner. In Smt. Rumi Dhar Vs. State of West Bengal and Another, the bank had entered into a settlement with the accused persons in respect of its dues and the collateral criminal proceeding was sought to be quashed on such score. The Apex Court held as follows:--

14. 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.

15. 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 Evidence Act, 1872. The judgment in the civil proceedings will be admissible in evidence only for a limited purpose.

16. 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. CBI has not filed any application for withdrawal of the case. Not only a charge sheet has been filed, charges have also been framed.

10. In Gian Singh Vs. State of Punjab and Another, the question as to whether the proceeding can be quashed u/s 482 Cr.P.C. in respect of non-compoundable offences when settlement has been arrived by and between the parties fell for decision. The Apex Court after considering all the previous authorities in that regard, inter alia, came to the following finding:

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court u/s 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc, or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R. if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

11. From the aforesaid ratio it is clear that in cases involving serious offences or offences of mental depravity or moral turpitude a settlement between the parties

would not obliterate a criminal prosecution. It is only in cases that have overwhelmingly and predominantly civil flavour arising from commercial transactions or offences arising from matrimonial dispute, a settlement between the parties may give justification to quash the criminal proceeding as continuation of such criminal proceeding in the backdrop of an amicable settlement inter se would defeat the ends of justice.

12. Prosecution in the instant case had been launched in the backdrop of a large scale fraud wherein the officers of the bank had conspired with others to permit unauthorised transactions in accounts created and maintained on behalf of the fictitious companies. Petitioner was the then supervisor of the branch and abused his official position and thereby prepared false and fabricated entries in accounts of such fictitious companies, unauthorisedly cleared instruments in respect of such accounts to facilitate the conspiracy. Quashing was permitted in respect of the accused who controlled the fictitious firms, namely Pawan Kumar Ruia primarily on the ground that the bank had resolved the dispute with him in civil forum and had withdrawn allegations against him. The allegations per se are most grave and involves moral turpitude so far as the petitioner, an employee of the company, is concerned. Its impact is far reaching and does not only does affect the business interest of the bank alone. A banking company in the course of its business received deposits from its customers and/or constituents. Financial fate of such customers and/or constituents are intrinsically entwined with the proper management of the business of such banking company. When the officers of such a bank indulge in fraudulent trading they not only cause irreparable damage to the banking company itself but also betray the fiduciary relationship with their customers/constituents and adversely affect the financial prospect of such customers/constituents who had reposed in them. The factual matrix of the instant case therefore by no stretch of imagination can be said to have arisen from a simple commercial relationship between two individuals who have not amicably put to a hiatus to their dispute. The effects of fraud allegedly perpetrated by the petitioner and others, officers of the Bank in the instant case is of far reaching consequence which in view of law declared in Gian Singh (supra) cannot be one which falls in the species of cases involving private commercial transactions between individuals where criminal prosecution may be quashed by settlement between the said individuals.

13. That apart, the petitioner being an employee of the bank stands on a different fiduciary relationship with the bank and/or its customers/constituents unlike Pawan Kumar Ruia. In such capacity, he had control and dominance over relevant documents and records of the bank, which authority he abused to allegedly fabricate documents and falsify accounts in a wanton manner to commit the fraud. These allegations, as it appears from the observations in the aforesaid judgement in Pawan Kumar Ruia''s case, is significantly absent so far as the latter is concerned. Hence, I am unable to extend the relief of quashing to the petitioner on the ground of parity as the impugned proceeding had been quashed in respect of co-accused

Pawan Kumar Ruia.

14. The other issue on which the proceeding has been challenged is inordinate delay in disposal of the case. It has been argued that the proceeding has been pending since 1995 when charge-sheet was filed. Hence, the same ought to be quashed on the ground of delay alone.

15. I have perused the materials on record and I find a part of the delay in the instant case is attributable to systematic causes and infrastructural reasons, e.g. absence of judicial personnel, etc. Such delay cannot be attributed to the prosecution in any manner whatsoever.

16. Another major contributing factor to the delay is the abscondence of co-accused persons which has significantly contributed to the slow progress in the instant case. Although it is strenuously argued on behalf of the petitioner that he did not abscond, one cannot lose sight of the fact that the failure of co-accused persons to attend the proceeding cannot be a ground to quash the same by attributing such delay to the prosecuting agency. I also find that the petitioner has in a covert manner attempted to stultify the progress of trial in the instant case by repeatedly taking out applications for discharge almost on self-same issues. Firstly, his prayer for discharge was turned down on 11.07.2010 which was affirmed by this Court in Criminal Revision No. 234 of 2010. Thereafter, he again prayed for discharge on similar grounds which was turned down on 22.03.2012. Presently, again he has prayed for discharge on similar grounds which was turned down by the impugned order dated 20.07.2013. Such repeated prayers for discharge by the petitioner on the self-same grounds cannot be said to be bonafide and clearly demonstrates that such process of law is being abused by him as a subterfuge to engender delay.

17. In similar circumstances the Apex Court in Santosh De (supra) lamented as follows:--

15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 Cr.P.C. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is

able to keep the law at bay. That would mean the failure of the very system.

18. The factual matrix of the instant case is clearly different from that in the cases relied upon by the petitioner, namely, Lokesh Kumar Jain v. State of Rajasthan and Pankaj Kumar (supra). In both the aforesaid reports the delay was primarily due to the indolence of the prosecution and no part of delay was attributable to the conduct of the accused persons.

19. In Shri Sudarshanacharaya Vs. Shri Purushottamacharya and Another, , the Apex Court held that although accused has a right to speedy trial, quashing of proceeding on the ground of delay cannot be permitted when the prosecution was not negligent or casual and the accused persons were majorly responsible for the delay. Advocating a stricter parameter in cases dealing with corruption, embezzlement, fraud and forgery, the Apex Court in Niranjan Hemchandra Sashittal and Another Vs. State of Maharashtra, , held as follows:--

16. In Abdul Rehman Antulay v. R.S. Nayak, a proponement was advanced that unless a time limit is fixed for the conclusion of the criminal proceedings, the right to speedy trial would be illusory. The Constitution Bench, after referring to the factual matrix and various submissions, opined that there is a constitutional guarantee of speedy trial emanating from Article 21 which is also reflected in the Code of Criminal Procedure. Thereafter, the Court proceeded to state as follows:-

83. But then speedy trial or other expressions conveying the said concept-are necessarily relative in nature. One may ask-speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind.

20. After so stating, the Court gave certain examples relating to a murder trial where less number of witnesses are examined and certain trials which involve large number of witnesses. It also referred to certain offences which, by their very nature, e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public officials, take longer time for investigation and trial. The Court also took note of the workload in each court, district, region and State-wise and the strikes by the members of the Bar which interfere with the work schedules. The Bench further proceeded to observe that in the very nature of things, it is difficult to draw a time limit beyond which a criminal proceeding will not be allowed to go, and if it is a minor offence, not an economic offence and the delay is too long, not caused by the accused, different considerations may arise but each case must be left to be decided on its own facts and the right to speedy trial does not become illusory when a time-limit is not fixed.

(emphasis supplied)

21. It concluded:--

24. It is to be kept in mind that on one hand, the right of the accused is to have a speedy trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re- trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective.

22. In the factual matrix of the instant case, as discussed hereinabove, I am unwilling to quash the impugned proceeding merely on the ground of delay.

23. Mr. Bhattacharyya has finally raised the issue that copies of documents which have been supplied by the prosecution u/s 207 Cr.P.C. are illegible.

24. In view of such submission, I dispose of this application directing that the petitioner shall indicate to the trial Court within seven days from the communication of this order particulars of the documents supplied, which according to him, are illegible. Trial Court upon due consideration of such fact shall supply to the petitioner legible copies of such documents (if necessary) within a fortnight thereof. The proceeding in the instant case shall be conducted on a day to day basis and be concluded at an early date. With the aforesaid directions, the revisional application is disposed of.