

M/S. B.FINE ART AUCTIONEERS PVT. LTD. & ORS. A

v.

C.B.I. & ANR.

(Criminal Appeal Nos. 1235-1237 of 2007)

JANUARY 25, 2011 B

**[B. SUDERSHAN REDDY, AND
SURINDER SINGH NIJJAR, JJ.]**

CONSTITUTION OF INDIA, 1950 :

Articles 226 and 136 – Jurisdiction under – Two paintings seized by A.S.I. – F.I.R. registered by CBI for offences punishable u/s 120-B IPC and u/s 25 read with s.3 of Antiquities and Art Treasures Act, and charge-sheet filed – Writ petition before High Court seeking to quash the FIR and the charge-sheet–Held : After registration of FIR, CBI made detailed investigation in the matter and also filed charge-sheet – Trial court having taken cognizance of offences has framed charges against all concerned – High court rightly refused to exercise its discretion under Article 226 –On facts and in the circumstances, it is not possible at this stage to quash the FIR and the Court is not inclined to exercise discretion under Article 136 – Trial court would proceed to consider as to whether the paintings in question are antiquities as alleged by prosecution –Antiquities and Art Treasures Act, 1972 –ss. 3 and 25 –Penal Code, 1860 –s. 120-B C D E F

Two paintings auctioned by the appellant company and purchased by two foreign nationals were seized by Archaeological Survey of India, as it found the same to be antique in nature. A complaint was made to the CBI, which prima facie found the commission of offence u/s 3 punishable u/s 25(1) of the Antiquities and Art Treasures Act, 1972, and registered an FIR on 29.1.2004 for offences punishable u/s 120-B IPC and s.25(1) read with s.3 of the Act, and after investigation filed charge- G

A sheet on 28.4.2004 against the appellants and the two foreign nationals. Thereafter the appellants filed Writ Petition No. 16598 of 2004 in the High Court challenging the report of the Director General, ASI and confiscation of the said two paintings under the Customs Act. In the writ petition neither the CBI was made a party nor was the FIR/charge sheet challenged. The writ petition was disposed of by a consent order dated 24.3.2005 directing the competent authority to pass a fresh order. Again Writ Petitions (Crl.) Nos. 2103-05 of 2005 were filed seeking to quash the FIR mainly on the ground that the basis of the FIR, i.e. the earlier report of the ASI had been rendered redundant in view of the decision of the Division of the High Court made on 24.3.2005. The High Court dismissed the writ petition. Aggrieved, the auctioneers filed the appeals.

Dismissing the appeals, the Court

HELD:

1.1 It is pertinent to note that in the instant writ petition, the relief prayed for is to quash the FIR and not the order passed by the trial Court refusing to discharge the appellants from the criminal case filed by the CBI. The writ petition is mainly based on the ground that the basis of the FIR i.e. the earlier report of Archaeological Survey of India has been rendered redundant in view of the decision rendered by the Division Bench of the High Court by order dated 24.3.2005. There is no explanation whatsoever forthcoming from the appellants as to why they did not implead the CBI in Writ Petition (C) No. 16598 of 2004 and challenge the FIR though they were aware of the same. [Paras 7, 8, 10] [568-G-H; 569-B, E]

1.2 It cannot be said that the basis of the FIR does not survive in view of the judgment of Delhi High Court in Writ Petition (C) No. 16598 of 2004. The High Court

mainly observed that in view of the consensus arrived at A
between the parties thereto, it will not be necessary for
the parties to give effect to the earlier report and "if a new B
report is passed, the earlier report will not be given effect
to". The earlier report has not been set aside by the High C
Court and obviously to continue its operation, a new
order is to be made by the Director General, ASI which B
has not so far been passed. At any rate, all these pleas
may be advanced, if at all, available to the appellants, in
the pending criminal case. The observation made by the
High Court that it will not be necessary for the parties to C
give effect to the earlier report binds only the parties to
the proceedings and, admittedly, the CBI has not been
impleaded as party respondent in that writ petition.
[paras 10] [569-G-H; 570-A-C]

1.3 The jurisdiction of the High Court under Article D
226 to issue appropriate writs is extra-ordinary, equitable
and discretionary. Prerogative writs mentioned therein
may be issued only for doing substantial justice. No
person is entitled to claim relief under Article 226 of the
Constitution as a matter of course. The High Court rightly E
refused to exercise its discretion under Article 226 in
favour of the appellants. On the facts and circumstances,
this Court is not inclined to exercise discretion under
Article 136 of the Constitution of India to grant any relief
to the appellants. [para 11] [571-D-E] F

1.4 It is evident from the record that after registration
of the first information report, the CBI made detailed
investigation in the matter and filed charge sheet for the
offence punishable u/s 25 (1) read with s. 3 of the Act. The
trial court having taken cognizance of offences framed G
charges against all the concerned. The appellants have
even filed discharge application before the trial court on
21.8.2006. It is not clear from the averments made in the
writ petition as to the result of the said application. On the
facts and in the circumstances and keeping in view the H

A progress made in the case, it is not possible at this stage to quash the very first information report. [paras 12-13] [570-F-H]

B 1.4 It is made clear that it is for the trial court to consider as to whether the paintings in question are antiquities as alleged by the prosecution, uninfluenced by the observations made in the impugned order of the High Court and as well as the observations made, if any, in the instant order. [para 15] [571-D-E]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1235-1237 of 2007.

From the Judgment and Order dated 09.07.2007 of the High Court of Delhi at New Delhi in Writ Petition (Crl.) No. 2103-05 of 2005.

D Tasneem Ahamdi, Sudhir Kumar Gupta, Manish Gupta and Anuj Kumar Ranjan for the Appellants.

A. Mariarputham, T.A. Khan, P.K. Dey, Arvind Kumar Sharma and B.V. Balaram Das for the Respondents.

E The Judgment of the Court was delivered by

F B. SUDERSHAN REDDY, J. 1. These appeals are directed against the order of Delhi High Court whereby the High Court dismissed the Writ Petition filed by the appellants and refused to quash the FIR bearing No. RC SID 2004 E 001 registered by the CBI against the appellants.

G 2. In order to appreciate as to whether the impugned order suffers from any infirmity, few relevant facts leading to filing of these appeals may have to be noticed.

RELEVANT FACTS

H 3. The appellant No. 1—M/s Bowrings Fine Art Auctioneers Pvt. Ltd. had auctioned a number of paintings on 20th November, 2002. Two paintings titled "Reconciled" by

Frederico Andreotti and "The kill" by George D. Rowlandson were purchased by M/s Tony Haynes of England. The said two paintings were to be exported. The Customs authorities had detained these paintings on the suspicion that the said paintings were antiques within the meaning of the provisions of the Antiquities and Art Treasures Act, 1972 (hereinafter referred to as 'the Act'). The said paintings were examined by Deputy Superintendent, Archaeology Customs), Archeological Survey of India on 7.1.2003 and having opined that the paintings were antiques, referred the matter to the Director General, Archaeological Survey of India for final opinion under Section 24 of the Act. The said paintings were seized by the Department. This was followed by a complaint dated 6.1.2004 by Superintendent, Archaeologist (Ant.) DG/ASI (addressed to the Superintendent of Police, CBI) in which it is inter alia stated that after examination of the said two paintings, they were found to be antique in nature. After receiving the complaint, further verification was conducted by the CBI. On verification of facts, the CBI found prima facie the commission of offence under Section 3 of the Act punishable under Section 25(1) of the said Act. The CBI accordingly registered the FIR on 29.1.2004 under Section 120B, IPC read with Section 25(1) read with Section 3 of the Act. The CBI has after investigation filed the charge sheet against the appellants company and two foreign nationals who purchased the said paintings in the auction.

4. Be it noted that after the filing of charge sheet, the appellants filed Writ Petition (Civil) No. 16598 of 2004 in Delhi High Court challenging the report of Director General, ASI and for directing the Customs authorities not to proceed in the matter on the basis of the order dated 22.9.2004 passed by the Adjudicating Authority directing confiscation of the said two paintings under the Customs Act. In the said Writ Petition, the petitioner clearly admitted the factum of CBI registering FIR and copy of the said FIR was also made available for the perusal of the Court. It may be noted that by the time the said Writ Petition came to be filed, CBI had filed its charge sheet on

A 24.08.2004 yet the petitioner had not chosen to challenge the FIR and the charge sheet filed by the CBI. The said Writ Petition was disposed of by a consent order directing the competent authority to pass a fresh order on the basis of fresh report submitted by a fresh Committee. It was agreed by the B Archaeological Survey of India in that Writ Petition to reconstitute a Committee for the examination of the paintings and to pass a fresh order in regard to the matter in controversy. It may also be noted that CBI was not even impleaded as a party respondent in the Writ Petition.

C 5. That in compliance of the order dated 24.03.2005, a Committee consisting of six members was constituted to examine the said paintings. The Committee gave a fractured verdict due to which the competent authority could not give a final opinion.

D 6. The appellants again moved another Writ Petition (Civil) No. 5656 of 2006 before Delhi High Court seeking appropriate directions against the ASI so as not to give effect to undated minutes of meetings dated 26.7.2005, 2,5 & 16.08.2005 on various grounds with which we are not concerned for the present in these appeals.

F 7. The High Court vide order dated 28.4.2006, disposed of the Writ Petition directing the Director General, ASI to pass an order in terms of the decision of the Division Bench dated 24.3.2005 and granted stay of the prosecution till expiry of 30 days after the fresh determination/decision of Director General, ASI. Thereafter Writ Petition (Crl.) Nos. 2103-05 of 2005 have been filed resulting in the impugned order. It is interesting to note that in the present Writ Petition, the relief prayed for is to quash the FIR and not the order passed by the trial Court refusing to discharge the appellants from the criminal case filed by the CBI. The Writ Petition is mainly based on the ground that the basis of the FIR *i.e.* the earlier report of Archaeological Survey of India has been rendered redundant in view of the

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decision rendered by the Division Bench of the High Court vide order dated 24.3.2005. The High Court dismissed the Writ Petition. Hence this appeal.

8. Ms. Tasneem Ahamdi, learned counsel for the appellants strenuously contended that the FIR registered by the CBI based on the earlier report of Archaeological Survey of India has been rendered redundant. The basis of the FIR does not survive in view of the order of the High Court dated 24.3.2005 and therefore, there cannot be any prosecution on the basis of the earlier report of the ASI.

9. Shri A. Mariarputham, learned senior counsel appearing on behalf of the CBI submitted that the conduct of the appellants disentitles them for grant of any relief in these appeals. It was submitted that on the date when the FIR was lodged, there was sufficient basis and information based on which the FIR has been registered and ultimately, resulting in filing of the charge sheet by the CBI which cannot be quashed at this stage.

10. A short question that arises for our consideration is as to whether the appellants are entitled for the relief to quash the very first FIR registered by the CBI. There is no explanation whatsoever forthcoming from the appellants as to why they did not implead the CBI in Writ Petition (C) No. 16598 of 2004 and challenge the FIR though they were aware of the same as is evident from their own affidavit filed in the High Court in support of Writ Petition (C) No. 16598 of 2004. It is not the case of the appellants that the FIR has been registered by the CBI without any proper intimation from the Archaeological Survey of India. The contention that the basis of the FIR does not survive in view of the judgment of Delhi High Court in Writ Petition (C) No. 16598 of 2004 appears to be untenable and unsustainable. A bare reading of the judgment of the High Court does not support the submission made by the learned counsel for the appellants. The High Court mainly observed that in view of the consensus arrived at between the parties thereto, it will not be

A necessary for the parties to give effect to the earlier report and
 "if a new report is passed, the earlier report will not be given
 effect to". The earlier report has not been set aside by the High
 Court and obviously to continue its operation, a new order is
 to be made by the Director General, ASI which according to
 B the learned counsel for the appellants is not so far passed. At
 any rate, all these pleas may be advanced, if at all, available
 to the appellants, in the pending criminal case. It is not
 necessary to restate that the observation made by the High
 Court that it will not be necessary for the parties to give effect
 C to the earlier report binds only the parties to the proceedings
 and admittedly, the CBI has not been impleaded as party
 respondent in that Writ Petition.

11. On the facts and circumstances, we are not inclined
 to exercise our discretion under Article 136 of the Constitution
 D of India to grant any relief to the appellants. We are of the
 opinion that the High Court rightly refused to exercise its
 discretion under Article 226 of the Constitution of India in favour
 of the appellants. The jurisdiction of the High Court under Article
 226 of the Constitution to issue appropriate writs is extra-
 E ordinary, equitable and discretionary. Prerogative writs
 mentioned therein may be issued only for doing substantial
 justice. No person is entitled to claim relief under Article 226
 of the Constitution as a matter of course.

12. It is evident from the record that after registration of
 the first information report the CBI made detailed investigation
 in the matter and filed charge sheet for the offence punishable
 under Section 25 (1) read with Section 3 of the Act. The trial
 court having taken cognizance of offences framed charges
 F against all the concerned. The appellants have even filed
 discharge application before the trial court on 21.8.2006. It is
 G not clear from the averments made in the Writ Petition as to
 the result of the said application.

13. On the facts and in the circumstances, it is not possible
 H at this stage to quash the very first information report, since

much water has flown after registration of the FIR by the CBI. A

14. Before parting with the judgment it is necessary to state that the learned senior counsel – Shri A. Mariarputham based on the Minutes of the Expert Committee dated 12.04.2010 and the order of Director General, ASI suggested that the prosecution of the appellants may be confined only with regard to the painting “Reconciled” which alone held to be antiquity. It was a fair suggestion but the learned counsel for the appellants expressed her reservation as regards the very validity of said minutes and order of Director General and wanted the question to be left open. We accordingly express no opinion as regards the validity of the minutes and order dated 12.4.2010 of Director General, Archaeology. In the circumstances, we wish to express no opinion on the same except to observe that the defence of the appellants based on the present report during the course of the hearing of these appeals is left open. B
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15. We, however, make it clear that it is for the trial court to consider as to whether the paintings in question are antiquities as alleged by the prosecution. The said question may have to be decided by the trial court upon appreciation of the evidence that may be brought on record. The trial court shall consider the same uninfluenced by the observations made in the impugned order of the High Court and as well as the observations made, if any, in this order. E

16. For the aforesaid reasons, we do not find any merit in these appeals. They are accordingly dismissed. F

R.P.

Appeals dismissed.