

TAMIL NADU MERCANTILE BANK LTD. A

v.

STATE THROUH DEPUTY SUPERINTENDENT OF
POLICE AND ANR.

(Criminal Appeal No. 1958 of 2013 etc.)

NOVEMBER 20, 2013 B

[R.M. LODHA AND SHIVA KIRTI SINGH, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

s.482 - Quashing of criminal proceedings - Respondents-accused defrauding the Bank in collusion with Bank officials - Charge-sheet against respondents-accused and Bank officials for offences punishable u/ss 406, 409, 420 and 120-B IPC filed - High Court quashing criminal proceedings against non-bank officials-accused respondents - Held: High Court erred in interfering with criminal proceedings on the ground that bank could recover the loss caused by fraud through orders of Debt Recovery Tribunal or through the proceedings under the Negotiable Instruments Act or civil proceedings -- Even if the accused voluntarily at a later stage settles the monetary claim, that cannot be made a ground to quash the criminal proceedings unless the well established principles for exercise of power u/s 482 are made out -- Criminal proceedings can continue even if the allegation discloses a civil dispute also -- It is only when the dispute is purely civil in nature but still the party chooses to initiate criminal proceedings, criminal proceedings may be quashed - In the instant proceedings, it is not a case requiring interference in exercise of power u/s 482 -- The proceedings cannot be termed as an abuse of the process of court because the allegations if accepted in entirety are most likely to make out criminal offence alleged against accused-respondents -- The interest of justice is also not attracted in the instant case to warrant interference with the criminal

A *proceedings - Judgment of High Court set aside - Penal Code, 1860 - ss.406, 409, 420 and 120-B.*

B An FIR was registered against 10 accused persons for offences punishable u/ss 406, 409, 420 and 120B IPC. Accused nos. 1 to 5 were Managing Director/Managing Partner/Director/Proprietor of different private limited companies and partnership firms etc. and accused nos. 6 to 10 were Managers and officials of the appellant Bank. The allegations against the accused were that they defrauded the appellant Bank of Rs. 2.51 Crores. The modus operandi of the accused as alleged was that accused nos. 1 to 5 would present cheques drawn in their favour to the appellant Bank knowing well that the drawers of the said cheques did not have sufficient funds in their accounts. Thereafter the accused Branch Manager and other officials, in the garb of arrangement known as 'Local Bill Discounting' would credit the cheque amounts to the current accounts of the drawees who would immediately withdraw the amounts. The charge-sheet was filed against all the 10 accused. Accused nos. 1 to 5 filed petitions u/s 482 Cr P C and the High Court quashed the criminal proceedings against them holding, inter alia, that the dispute was of a civil nature, and the Bank could recover the loss through Debt Recovery Tribunal or through proceedings under Negotiable Instruments Act.

F Allowing the appeals, the Court

G HELD: 1.1 In A. Ravishanker Prasad & Ors., this Court reiterated the settled propositions of law which permit exercise of inherent power u/s 482 Cr.P.C. (i) to give effect to an order under the Code; (ii) to prevent abuse of process of the court and (iii) to otherwise secure the ends of justice. It was reiterated that such extraordinary power should be exercised sparingly and with great care and caution. [para 8] [418-B-D]

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CBI vs. A. Ravishanker Prasad & Ors. 2009(6) SCC 351 A
- relied on.

1.2 Criminal proceedings can continue even if the allegation discloses a civil dispute also. It is only when the dispute is purely civil in nature but still the party chooses to initiate criminal proceedings, the criminal proceeding may be quashed. For such purpose also the court, save and accept in very exceptional circumstances, would not look to any document relied upon by the defence. In the instant case, the High Court erred in interfering with criminal proceedings on the ground that the bank could recover the loss caused by fraud through orders of Debt Recovery Tribunal or through the proceedings under the Negotiable Instruments Act or civil proceedings. Even if the accused voluntarily at a later stage settles the monetary claim, that cannot be made a ground to quash the criminal proceedings unless the well established principles for exercise of power u/s 482 Cr.P.C. are made out.[para 9-10] [418-E-H; 419-A-B] B
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Monica Kumar (Dr.) vs. State of U.P. 2008 (9) SCR 943 E
= 2008 (8) SCC781 - relied on.

1.3 On going through the relevant facts, particularly, the charge- sheet, it is not a case requiring interference in exercise of power u/s 482 Cr.P.C. The proceedings cannot be termed as an abuse of the process of court because the allegations if accepted in entirety are most likely to make out criminal offence alleged against the accused-respondents. The interest of justice is also not attracted in the instant case to warrant interference with the criminal proceedings. [para 12] [419-E-G] F
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Rajeshwar Tiwari vs. Nanda Kishore Roy 2010 (10) SCR 444 = 2010 (8) SCC 442 - referred to. H

A 1.4 The High Court ought to have taken note of the fact that on two previous occasions the respondents accused failed to get any relief u/s 482 Cr.P.C. and they did not challenge the order passed by the High Court at the instance of the appellant bank for concluding the trial within a limited time. Therefore, the common judgment and order under appeal cannot be sustained in law and is set aside. [para 13-14] [419-G-H; 420-A-B]

Case Law Reference:

C 2009(6) SCC 351 relied on para 8
2008 (9) SCR 943 relied on para 10
2010 (10) SCR 444 referred to para 11

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1958 of 2013.

From the Judgment and Order dated 17.09.2009 of the High Court of Madras in Criminal Original Petition No. 12646 of 2007.

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WITH

Crl. A. No. 1959 of 2013.

F Indu Malhotra, ASG, Vivek Jain, Apoorva Bhumes, N. Kumar, N. Sood, Kush Chaturvedi, Vikas Mehta for the Appellant.

G Siddharth Dave, R. Anand Padmanabhan, Pramod Dayal, A. Santha Kumaran, M. Yogesh Kanna, Geetha Kovilan for the Respondents.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Leave granted.

H 2. By the common judgment and order dated 17.9.2009

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SUPERINTENDENT OF POLICE [SHIVA KIRTI SINGH, J.]**

in CRLOP No.12646/2007 and 18297/2009, the learned Single Judge of the Madras High Court has allowed two petitions both under Section 482 of the Code of Criminal Procedure (for brevity.P.C.) preferred by the respondents and quashed criminal proceedings against some of the accused in Criminal Case No. 462 of 2004 pending before the learned Magistrate-II Tiruppur for offences punishable under Sections 406, 409, 420 and 120(b) IPC.

3. Before granting relief to the five petitioners out of ten accused, the High Court noted the relevant facts in brief which disclose that out of ten accused in the charge-sheet dated 20th September 2004, the first five accused are Managing Director/Managing Partner/Director/Proprietor of different private limited companies, partnership firms/proprietary firms. Some of them are related to each other and some are family friends. Accused nos. 6 to 10 are Managers and Officials of Tamil Nadu Mercantile Bank Limited (hereinafter referred to as 'Bank'), Tiruppur alleged to have colluded with the respondents in perpetration of a fraud against the bank. They are not the parties before this Court.

4. Considering the stage of the proceedings, it is not necessary or desirable to go into the facts of the criminal case in detail. It is sufficient to notice that the respondents accused were operating current accounts with the bank from the year 2000. Allegedly a fraud was perpetrated by them in collusion with the Branch Manager of the appellant Bank and other accused during the period September, 2002 and May, 2003 to the tune of Rs.2.51 crores approximately. The fraud was discovered in June, 2003 after the erstwhile Branch Manager of the appellant Bank was transferred and a new Branch Manager took over. On discovering the fraud the new Branch Manager lodged a complaint with police station, Central Crime Branch, Coimbatore leading to First Information Report dated 20th June 2003 bearing Crime No.13 of 2003 against the accused respondents and concerned officers of the Bank.

A According to the allegations, the fraud was based upon a simple modus operandi. The accused presented cheques drawn in their favour to the Tiruppur Branch of the Bank for encashment knowing well that there was not enough balance in the accounts of the drawers because the cheques were
 B drawn by parties known to them. Thereafter, the Branch Manager, in the garb of understanding or arrangement known as 'Local Bill Discounting' credited the accounts of the accused presenting such cheques before they were sent to the drawee bank for clearance. Immediately on the account being credited
 C with the cheque amount, such amount was withdrawn. Later, when the cheques returned unhonoured on account of insufficient balance, the accused, for clearing the debt used to deposit similar cheques for even higher amounts. Against such cheques also the accounts of the accused were credited with
 D higher amounts and the money used to be withdrawn. Due to repeat of such trick several times, by the time the fraud was discovered, the Tiruppur Branch had been defrauded to the tune of approximately Rs.2.51 crores. According to the charge-sheet, accused Senthil Kumar presented 1278 cheques during the period, accused Sanjay presented 99 cheques, accused
 E Murugananthan presented 90 cheques, accused K.M.M. Murali presented 6 cheques and accused Mahamuni presented 3 cheques.

5. On the basis of FIR, Police initiated investigation and
 F ultimately filed a charge-sheet on 20th September, 2004 against ten persons as noted earlier. But prior to that, the accused respondent and some others filed a petition under Section 482 Cr.P.C. for quashing of the FIR. On filing of reply by the informant that petition filed on 7.6.2004 was withdrawn.
 G After the charge-sheet, on 18.10.2004 the accused respondents along with other accused filed another petition under Section 482 Cr.P.C for quashing of the FIR. That was dismissed on 9.2.2005 taking note of the charge-sheet already submitted. That order was not challenged. The concerned
 H petitions which have been allowed by the High Court were filed

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in the year 2007 and 2009 respectively seeking quashing of the entire criminal proceedings but without disclosing any fresh cause of action. In the petition of 2007, the High Court initially granted interim stay but the appellant bank intervened, got impleaded and succeeded in vacation of the stay order on 13.9.2007. Thereafter the appellant filed a criminal original petition No.28663 of 2007 seeking orders for expediting the trial of the criminal case No.462 of 2004. The High Court allowed that prayer on 20th September 2007 and directed to complete the trial within four months. This order was also not challenged by the accused respondents.

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6. A perusal of the judgment and order under appeal shows that the High Court has been persuaded to quash the criminal proceedings against the accused respondents mainly on the grounds that :

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(1) The dispute between the Bank and the accused respondent is of civil nature,

(2) Although some of the alleged fraudulent operations were performed by the accused in the name of a company viz. Shri Deepadharani Yarns Pvt. Ltd., the company has not been arrayed as an accused while three of its Directors are so arrayed, and

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(3) The bank has a remedy for recovering the money in question for which it has obtained an order of the DRT and can also take recourse to proceedings under Section 138 of the Negotiable Instruments Act or civil proceedings.

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7. On behalf of the appellant all the three aforesaid grounds for exercise of inherent power under Section 482 of the Cr.P.C have been seriously assailed. It has been contended by the learned counsel for the appellant that the practice of the bank to permit overdraft facility to credit worthy customers cannot be equated with simple civil contracts and agreements. In the latter case, a party may not be permitted to initiate criminal

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A proceedings only on breach of terms of the agreement by the other party, unless it can be shown that the guilty party acted with dishonest or fraudulent intentions since the conception of the contract or agreement. But in the former case, a customer of Bank committing fraud will stand on a different footing.

B 8. The aforesaid submission has merits. In the case of *CBI vs. A. Ravishanker Prasad & Ors.*,¹ the accused respondents who were customers of a nationalized bank sought to justify the fraudulent transactions on the basis of agreements evident from
 C letter of credit, open cash credit and also on the ground that loan had been repaid under a settlement and therefore, criminal proceedings on account of forgery, cheating, corruption etc. should not be permitted. This court set aside the order of the High Court interfering with a criminal proceeding and reiterated the settled propositions of law which permit exercise of inherent
 D power under Section 482 Cr.P.C. (i) to give effect to an order under the Code; (ii) to prevent abuse of process of the Court and (iii) to otherwise secure the ends of justice. It was reiterated that such extraordinary power should be exercised sparingly and with great care and caution.

E 9. This judgment also supports the other submission on behalf of the appellant that the High Court erred in interfering with criminal proceeding on the ground that bank could recover the loss caused by fraud through orders of Debt Recovery
 F Tribunal or through the proceedings under the Negotiable Instruments Act or civil proceedings. Even if the accused voluntarily at a later stage settles the monetary claim, that cannot be made a ground to quash the criminal proceedings unless the well established principles for exercise of power under Section 482 Cr.P.C. are made out.
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10. It is also a law settled by this Court and reiterated in the case of *Monica Kumar (Dr.) vs. State of U.P.*² that criminal

1. 2009 (6) SCC 351.

H 2. 2008 (8) SCC 781.

proceedings can continue even if the allegation discloses a civil dispute also. It is only when the dispute is purely civil in nature but still the party chooses to initiate criminal proceeding, the criminal proceeding may be quashed. For such purpose also the Court, save and accept in very exceptional circumstances would not look to any document relied upon by the defence.

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11. In reply, learned counsel for the respondent accused has placed reliance upon judgment of this Court in the case of *Rajeshwar Tiwari vs. Nanda Kishore Roy*³, wherein this Court quashed the criminal proceedings against the appellant which was initiated by private complainant by merely alleging that acting on behalf of the employer the appellant had deducted a particular amount wrongly as income tax from his monthly salary. This Court found that the employer was under statutory obligation to deduct income tax and the allegation did not make out a case for adjudication by the Magistrate on criminal side. In paragraph 29 of the report on which reliance has been placed, only the established law has been reiterated that when adequate materials are available to show that a proceeding is of civil nature or that it is an abuse of process of court, the High Court could be justified in quashing the same.

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12. On going through the relevant facts, particularly the charge- sheet, we find that it is not a case requiring interference in exercise of power under Section 482 Cr.P.C. The proceedings cannot be termed as an abuse of the process of court because the allegations if accepted in entirety are most likely to make out criminal offence alleged against the accused respondents. The interest of justice is also not attracted in the present case to warrant interference with the criminal proceedings.

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13. In our considered view, the High Court ought to have taken note of the fact that on two previous occasions the respondents accused failed to get any relief under Section 482

3. 2010 (8) SCC 442.

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A Cr.P.C. and they did not challenge an order passed by the High Court at the instance of the appellant bank for concluding the trial within a limited time.

B 14. For all the aforesaid reasons, we find and hold that the common judgment and order under appeal cannot be sustained in law and is fit to be set aside. We order accordingly.

C 15. Appeals are allowed with a direction to the learned Magistrate to conclude the trial expeditiously in accordance with law without being influenced by any observations made in this order.

R.P.

Appeals allowed.