



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal Nos. _____ of 2024
(@Special Leave Petition (Crl.) Nos. 12344-12345/2022)

CBI BS AND FC MUMBAI

APPELLANT (s)

VERSUS

MANOJDEV GOKULCHAND
SEKSARIA AND ANR.

RESPONDENT(s)

K.V. Viswanathan, J.

1. Leave granted.
2. The present appeals arise out of the judgement and order dated 05.01.2022 passed by the Learned Single Judge of the High Court of Judicature at Bombay in Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020. In view of the fact that we propose to set aside the judgement and remand the Writ Petitions to be heard a Division Bench of the High Court, only a brief reference to the facts of the case is being made hereinbelow.

3. The appellant-Central Bureau of Investigation (hereinafter referred to as the 'CBI'), on 20.02.2006, registered a Criminal Case No. RC3(E)/2006/BS&FC/Mumbai against 19 accused persons on the basis of a written complaint made by R. Ravichandran, Chief General Manager, Securities and Exchange Board of India (hereinafter referred to as the 'SEBI'). The allegation was with regard to certain fraudulent activities committed in the Initial Public Offering (IPO) of the shares of Yes Bank Ltd., which opened for subscription from 15.06.2005 to 21.06.2005.

4. On 21.02.2006, the CBI registered another criminal case being Criminal Case No. RC4(E)/2006/CBI/BS&FC/Mumbai against 26 accused persons on the basis of a similar complaint. This time, it pertained to the fraudulent activities committed in the Initial Public Offering (IPO) of the shares of Infrastructure Development Finance Company Ltd. (IDFC), which opened for subscription from 15.07.2005 to 22.07.2005. In this First Information Report (hereinafter referred to as the 'FIR'), the respondent was specifically named.

5. On 29.09.2007, a chargesheet was filed in Criminal Case No. RC4(E)/2006/CBI/BS&FC/Mumbai after completion of investigation vide Special Case No. 47 of 2007 against 22 accused persons including the first respondent herein for offences punishable under Section 120-B read with 420, 467, 468 and 471 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 68-A of The Companies Act, 1956. A supplementary chargesheet was also filed in Criminal Case No. RC4/E/2006/BS&FC Mumbai which was numbered as Special Case No. 74 of 2014 and further 21 accused persons were added with the Original 22, totaling 43 accused.

6. Similarly, on 19.10.2007, with regard to Criminal Case No. RC3(E)/2006/BS&FC/Mumbai, a chargesheet was filed vide Special Case No. 48 of 2007 against 16 accused persons including the first respondent under Section 120-B read with 420, 467, 468 and 471 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 68-A of The Companies Act, 1956. Similarly, a supplementary chargesheet was also filed in Criminal Case RC3/E/2006/BS&FC/Mumbai which was numbered as Special

Case No. 22 of 2014 and further 9 accused were added, totaling the number of accused to 25.

7. On 10th March, 2008, on the basis of the charge-sheet and material produced before the Special Court CBI, the said Court took cognizance against the accused persons including the respondent for the offences mentioned above in Special Case No. 47 of 2007. Similarly, on 19.03.2008, on the basis of the charge-sheet and material produced by the CBI, the Special Court CBI took Cognizance against the accused persons including the respondent for the offences mentioned above in Special Case No. 48 of 2007.

8. In the meantime, the respondent approached SEBI for a consent order in terms of SEBI Circular No. EFD/ED/Cir-1/2007 and on 04.09.2009, the High-Powered Advisory Committee of SEBI in terms of the Circular directed the respondent to pay Rs. 2,05,18,968/- being the unjust profit made by the respondent and Rs. 20,51,897/- being a percentage of the disgorged amount towards settlement charges. The respondent paid the said amount. On 07.12.2009, SEBI

passed the consent order disposing of the proceedings under Section 11(4) and 11B of the SEBI Act, 1992.

9. It is at this stage that the respondent approached the High Court by filing Writ Petition No. 406 of 2018 under Article 226 read with Section 482 Cr.P.C. The said Writ Petition was disposed of by the Division Bench on 27.02.2018 by passing the following order:

“1. The above Writ Petition has been filed for quashing of the chargesheet dated 02.03.2009 (sic.) filed pursuant to the FIRs being numbers RC3(E)/2006/BS&FC/Mumbai dated 20/03/2006 and RC4(E)/2006/BS&FC/Mumbai dated 21/02/2016 for the offences punishable under Sections 420, 467, 468 and 471 read with 34 of the IPC. The said FIRs have been lodged by the SEBI. The gravamen of the allegations is relating to the cornering of the shares meant for the retail investors in the IPO of YES Bank. The above petition has been filed in January 2018 challenging the chargesheets which have been filed on 02/03/2009. The learned Counsel for the Petitioner endeavoured to demonstrate to us that there is no complicity of the Petitioner in the offences alleged. In our view, it is not possible to accept the said contention at this stage.

2. Having regard to the facts as aforestated, we do not deem it appropriate to exercise our writ jurisdiction under Article 226 of the Constitution of India. The Writ Petition is accordingly dismissed. Needless to state that the Trial Court would try the case in question on its own merits and in accordance with law.”

(Emphasis supplied)

10. Aggrieved by the above order, the first respondent filed a Special Leave Petition (Crl.) No. 3495 of 2018 before this Court. On 07.01.2020, this Court, while permitting the petitioner to withdraw the Special Leave Petition, passed the following order:

“After some arguments, Mr. Mukul Rohatgi, learned Senior Counsel appearing for the petitioner, prays for withdrawal of this petition with liberty to raise the question of effect and legal consequences of Order dated 07.12.2009 passed by the Securities and Exchange Board of India (SEBI), before the High Court.

Prayer is allowed.

Accordingly, the special leave petition is dismissed as withdrawn with the liberty aforesaid.”

11. Thereafter, the first respondent filed Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020 praying for the following reliefs:

“Writ Petition No. 245 of 2020:

(a) That this Hon’ble Court be pleased to quash and set aside the Criminal proceedings i.e. Impugned order dated 10.03.2008 and 19.03.2008 concerning FIR No. RC 3 1 of 2006, and FIR No. RC 4 I of 2006 registered with CBI/BS&FC, Mumbai for the alleged offences punishable under sections 420, 467, 468 & 471 read with 120-B of Indian Penal Code. And Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 and section 68 (A) of The Companies Act, 1956 filed against the Petitioner, in exercise of the extraordinary powers vested with this Hon'ble Court;

(b) Pending hearing, admission and final disposal of this Petition, be pleased to stay further proceedings of CBI Spl. Case 47 of 2014 and CBI Spl. Case 47 of 2014 pending adjudication before the Ld. Sessions Court, Mumbai qua the Petitioner, in the interest of justice;

Writ Petition No. 730 of 2020:

(a) That this Hon'ble Court be pleased to quash and set aside the Criminal proceedings i.e. impugned order dated 19.03.2008 concerning FIR No. RC 3 (E) of 2006, registered with CBI/BS&FC, Mumbai for the alleged offences punishable under sections 420, 467, 468 & 471 read with 120-B of Indian Penal Code and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 68(A) of the Companies Act, 1956 filed against the petitioner, in exercise of the extraordinary powers vested with this Hon'ble Court.

(b) Pending hearing, admission and final disposal of this Petition, be pleased to stay further proceedings of CBI Spl. Case 48 of 2014 pending adjudication before the Ld. Sessions Court, Mumbai, in the interest of Justice;”

(Emphasis supplied)

12. In the body of the Writ Petition dealing with the prayers in the earlier Writ Petition No. 406 of 2018, the following averment was made:

“9. In pursuance to the said consent order passed by the SEBI, the Petitioner being aggrieved by the filing of Charge-sheet dated 02.03.2009 and 03.04.200 (sic.) and alleged commission of offences under Sections 120-B r/w 420, 467, 468 and 471 of the IPC and under Sections 13(2) r/w 13(1)(d) of the PC Act, 1988 and under Section 68-A of the Companies Act, 1956 filed a Writ Petition under Article 226 of the Constitution of India read with

Section 482 of the Code of Criminal Procedure, 1973 before the Hon'ble High Court of Judicature at Bombay being Criminal Writ Petition No. 406/2018 seeking quashing of the FIR No. RC 3I 2006/BS&FC and FIR No. RC 4I 2006/BS&FC/Mumbai and the resultant Charge sheets dated 02.03.2009 and 03.04.2009.”

13. It will be noticed that even though the first Writ Petition was filed in 2018 after the cognizance orders of 10.03.2008 and 19.03.2008, the respondent did not make a specific prayer challenging the cognizance orders. The respondent merely challenged the FIR and the charge-sheet. It is quite inexplicable why no challenge was made to the cognizance orders. That matter, namely, Writ Petition No. 406 of 2018 was placed before the Division Bench in accordance with Part 1 Chapter I of the High Court Rules applicable to the High Court of Judicature at Bombay which sets out the jurisdiction of Single Judges and Benches of the High Court. Rule 2(II)(h), reads as under:-

“(h) All applications under section 482 of the Code of Criminal Procedure including applications challenging an Order for issuing process in a private complaint, except:-

- i) Applications seeking review, modification or setting side of any order passed by a Division Bench;
- ii) Applications for quashing an F.I.R., C.R., Charge Sheet or order directing investigation under section 156(3) of the Cr.P.C. irrespective of whether such applications have been filed under

section 482 simpliciter or read with Article 226 and/or Article 227 of the Constitution.”

(Emphasis supplied)

14. It will be seen that under the Rules of the High Court, applications for quashing of an FIR and Chargesheet are outside the jurisdiction of Single Judge and are to be heard by the Division Bench. It is by virtue of that Rule that the matter went before the Division Bench and with the dismissal of the Writ, the matter travelled to this Court and liberty was given to withdraw the Special Leave Petition so as to enable the respondent to raise the question of the effect and legal consequence of order dated 07.12.2009 passed by SEBI.

15. In the fresh petitions filed, namely, Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020, as is clear from the prayers extracted hereinabove, there was no challenge to the FIR and charge-sheet as was made in the first proceeding. However, there was a challenge to the cognizance orders.

16. The learned Single Judge quashed the criminal proceedings and passed the following operative order:

“39. For all the aforesaid reasons stated herein-above, in my studied view, the present are the fit cases in which the Court can exercise its inherent power under Section 482 of the Cr.P.C. and as also under Article 227 of the Constitution of India. I, therefore, conclude that the continuation of the proceedings in Special CBI Case No. 47 of 2007 and Special CBI Case No. 48 of 2007 pending on the files of the Special Judge (CBI), Greater Mumbai, qua the Petitioner herein shall be an abuse of process of Court, therefore, the same is hereby ordered to be quashed and set aside in order to meet the ends of justice.”

17. Mr. Alabhaya Dhamija, learned counsel for the CBI contends that ordinarily when the matter was permitted to be withdrawn with liberty to file a fresh petition afresh, the matter should have been placed before the Division Bench. According to the learned counsel, the respondent resorted to a clever device by deleting the prayers for quashment of FIR and charge-sheet and incorporated fresh prayers challenging the cognizance orders of 10.03.2008 and 19.03.2008, which two orders were not expressly challenged in the first round. According to the learned counsel for the appellant, this was in order to have the matter heard by the Single Judge in view of Rule 18(4) of Part 1 Chapter I of the High Court Rules. Rule 18(4) reads as under:-

“18(4) The orders and decisions of the Courts constituted under the Code of Criminal Procedure, except the application for

quashing an F.I.R., C.R. Charge Sheet or an order directing investigation under Section 156(3) of the Cr.P.C. irrespective of whether such applications have been filed under Section 482 simpliciter or read with Article 226 and/or Article 227 of the Constitution.”

On merits, the learned counsel for the appellant submits that mere settlement before the SEBI on the adjudication side would not absolve a party from the criminal proceedings and that on the facts of the present case the allegations are of such a nature which warrant the criminal trial to proceed, irrespective of the outcome of the adjudication proceedings.

18. Mr. Siddharth Dave, learned senior counsel for the respondent contends that after the petition for special leave was withdrawn, prayers were incorporated challenging the cognizance orders and there was nothing sinister in deleting the prayer for challenging the FIR and charge-sheet. On merits, the learned senior counsel pleaded for the dismissal of the Civil Appeals.

19. We have considered the submissions of the learned counsels for the parties and perused the record. The first round of proceedings arising out of Writ Petition No. 406 of 2018 was heard and disposed

of by the Division Bench, with the Division Bench rejecting the contention of the respondent and dismissing the Writ Petitions. When the matter travelled to this Court, the respondent withdrew the Special Leave Petition with liberty to file a fresh petition.

20. We feel that on the facts of this case considering the earlier order of the Division Bench and the order of this Court granting liberty to file a fresh petition, the present case in the second-round ought to have been heard by the Division Bench. We are refraining from pronouncing on the aspect whether there was any clever manipulation of the prayers to clutch at jurisdiction since anything said would prejudice the case of the parties. We say nothing more on this at this stage.

21. The Learned Single Judge, who heard Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020, took the view that in view of the consent terms passed by SEBI, it would not be in the interest of justice to continue with the criminal proceedings as it would tantamount to an abuse of the process of the law.

22. Considering the course of action we have now adopted, we are refraining from commenting on the contentions of the parties with regard to the merits of the matter.

23. As to whether the respondent had made out a case for quashing the proceedings will be independently decided by the Division Bench which will now hear the matter on remand. The Division Bench will not be influenced by the observations of the previous Division Bench in Writ Petition 406 of 2018, the order of this Court dated 07.10.2020, the order of the Single Judge in Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020 and also by the present order which we have now passed. The Division Bench will independently decide the matter on its own merits and in accordance with law.

24. Considering that the FIR was registered in 2006, we request the Division Bench to take up the matter and dispose of the two Writ Petitions expeditiously and, in any event, not later than three months from today.

25. Since we are remitting the matter, we are inclined to grant an interim stay of further proceedings in Special Case No. 47 of 2007

and Special Case No. 48 of 2007 pending before the Special Judge (CBI), Greater Mumbai for a period of four weeks from today. Parties are at liberty to approach the Division Bench hearing the matter for appropriate extension/modification of this interim order and the Division Bench shall after hearing the parties make such order as it deems fit.

26. In view of what we have held above, the impugned order dated 05.01.2022 in Writ Petition 245 of 2020 and Writ Petition No. 730 of 2020 is set aside and the matter is remitted to the High Court of Judicature at Bombay. On such remand, let the papers be placed before the learned Chief Justice of the High Court of Judicature at Bombay, for placing the same before an appropriate Division Bench.

The appeals are allowed in the above terms.

.....J.
[**B.R. GAVAI**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
22nd August, 2024.