2024 INSC 807

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____OF 2024
[Arising out of Special Leave Petition (Criminal) No.8906 of 2022]

HDFC BANK LTD. ...APPELLANT(S)

VERSUS

THE STATE OF BIHAR & ORS. ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the judgment and order dated 8th June, 2022 passed by the learned Single Bench of the High Court of Judicature at Patna in Criminal Writ Jurisdiction Case No. 1375 of 2021 wherein the learned Single Judge dismissed the Writ Petition preferred by the present appellant, HDFC Bank[1], to

[1] Hereinafter referred to as the 'appellant-bank'.

quash the First Information Report[2] being Case No. 549 of 2021 registered at Gandhi Maidan Police Station, Patna on 22nd November, 2021, against certain officials of the appellant-bank working at its Exhibition Road Branch, Patna for the offences punishable under Sections 34, 37, 120B, 201, 206, 217, 406, 409, 420 and 462 of the Indian Penal Code, 1860[3].

3. The facts which give rise to the present appeal are as under:-

3.1 In October, 2021, Smt. Priyanka Sharma, Deputy Director of Income Tax (Investigation), Unit-2(2), Respondent No. 5 in the present proceedings, conducted a search and seizure operation in the case of several income-tax assessees including Shri Sunil Khemka (HUF), Smt. Sunita Khemka and Smt. Shivani Khemka at the third floor of Khataruka Niwas, South Gandhi Maidan, Patna. The said search and seizure operation was conducted on the basis of warrants of authorization issued under Section 132(1) of the Income Tax Act, 1961[4]. During the course of the search, it was

[2] 'FIR' for short.
[3] 'IPC' for short.
[4] 'IT Act' for short.

found that Smt. Sunita Khemka held a bank locker bearing No. 462 in the appellant-bank at its Exhibition Road Branch, Patna.

3.2 On the basis of the said operation, on 5th October, 2021, an order under Section 132(3) of the IT Act was served upon the Branch Manager of the appellant-bank at its Exhibition Road Branch, Patna by the concerned Authorized Officer, thereby directing the said branch of the appellant-bank to stop the operation of any bank lockers, bank accounts and fixed deposits standing in the names of Shri Sunil Khemka (HUF), Smt. Sunita Khemka and Smt. Shivani Khemka, among several other individuals and entities, with immediate effect. It was further clarified that contravention of the order would render the Branch Manager liable under Section 275A of the IT Act and the same would result in penal action.

3.3 In compliance of the aforesaid order, the appellant-bank stopped the operation of the bank accounts, bank lockers and fixed deposits of the individuals/entities mentioned in the order. Further, on 7th October,2021, the appellant-bank

blocked the bank accounts of the income-tax assesses named in the order and also sealed the bank locker bearing No. 462 belonging to Smt. Sunita Khemka.

3.4 Subsequently, on 1st November, 2021, Respondent No. 5 issued an order to the Branch Manager of the appellant-bank at its aforementioned branch thereby directing the appellant-bank to revoke the restraint put on the bank accounts of Smt. Sunita Khemka and three other persons, in view of the restraining order dated 5th October, 2021 passed under Section 132(3) of the IT Act. Accordingly, the said persons, including Smt. Sunita Khemka, were to be allowed to operate their bank accounts. The said order was received by the concerned Branch Manager of the appellant-bank of 8th November, 2021 at 4:00 p.m. However, on 2nd November, 2021 at 11:24 a.m., an email was sent to the Branch Manager which contained the same order.

3.5 Thereafter, on 9th November, 2021, the concerned branch of the appellant-bank allowed Smt. Sunita Khemka to operate her bank locker bearing No. 462 and proper entries

recording the operation of the said locker were made in the bank's records.

3.6 Subsequently, on 20th November, 2021, Respondent No. 5 conducted a search and seizure operation at the aforementioned bank locker in the concerned branch of the appellant-bank wherein it was found that Smt. Sunita Khemka had operated her bank locker with the assistance of the concerned officers of the appellant-bank. This was validated by the entry made in the bank's records and the CCTV footage of the bank. Resultantly, the concerned officials of the aforementioned branch of the appellant-bank were found to have breached the restraining order dated 5th October, 2021.

3.7 Accordingly, on 20th November, 2021, Respondent No. 5 issued summons under Section 131(1A) of the IT Act to Abha Sinha-Branch Manager, Abhishek Kumar-Branch Operation Manager and Deepak Kumar-Teller Authoriser being the concerned officials of the appellant-bank at its aforementioned branch.

3.8 The aforementioned officials attended the office of Respondent No. 5 and their statements were recorded wherein Abha Sinha and Abhishek Kumar stated that there had been an inadvertent error on the part of the bank officials and they had misinterpreted the order dated 1st November, 2021. Since the said order pertained to the bank accounts of the concerned individuals including Smt. Sunita Khemka, the bank officials had misread the order to understand /assume that the revocation of the restraint extended to the bank lockers as well. Having misunderstood the order, the bank officials under a bona fide assumption that bank locker had been released as well, allowed Smt. Sunita Khemka to operate the same.

3.9 The statement of Smt. Sunita Khemka had also been recorded wherein she stated that her accountant Surendra Prasad, after speaking with Deepak Kumar, had informed her that the restraint on the aforementioned bank locker had been revoked and she could operate the said locker. This was specifically denied by Deepak Kumar in his statement.

3.10 Dissatisfied with the said explanations, Respondent No. 5 submitted a written complaint to the SHO, Gandhi Maidan Police Station seeking to register an FIR against Smt. Sunita Khemka and the concerned bank officials on the ground that the order dated 5th October, 2021 had been violated owing to the unlawful operation of the aforementioned locker.

3.11 On the basis of the said complaint, on 22nd November, 2021, an FIR being Case No. 549 of 2021 came to be registered against Smt. Sunita Khemka and the staff of the appellant-bank at its aforementioned branch for the offences punishable under Sections 34, 37, 120B, 201, 207, 217, 406, 409, 420 and 462 of the IPC at the Gandhi Maidan Police Station, Patna.

3.12 Aggrieved by the registration of the FIR, the appellant-bank preferred a Criminal Writ Jurisdiction Case thereby invoking the inherent power of the High Court under Section 482 of the Code of Criminal Procedure, 1973[5] for

[5] Hereinafter referred to as 'Cr.P.C.'

the quashing of the FIR. The High Court vide the impugned order dismissed the writ petition finding it to be devoid of merit.

3.13 Being aggrieved thereby, the present appeal.

4. We have heard Mr. Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the appellant and Mr. Manish Kumar, learned Advocate-on-Record appearing for the respondent Nos. 1 to 4 and Mr. Venkataraman Chandrashekhara Bharathi, learned counsel appearing on behalf of the respondent No.5.

5. Shri Neeraj Kishan Kaul, learned Senior Counsel submits that taking the FIR at its face value, it does not disclose any *mens rea* of the officials of the appellant-bank and it also fails to disclose the commission of any offence. He further submits that the complaint also does not disclose any specific allegation with regard to collusion between the unnamed staff of the appellant-bank with Ms. Sunita Khemka. The only allegation against the unnamed staff members of the appellant-bank is that while the Prohibitory Order dated 5th October 2021 was in force in relation to the bank locker No.462, Ms. Sunita Khema, customer of the

appellant-bank, was permitted to operate the said bank locker.

6. The learned Senior Counsel submits that taking the allegations at their face value, they do not disclose commission of the alleged offences of Sections 420, 409, 406, 462, 206, 217, 201, 34, 120B and 37 of the IPC. It is submitted that it is settled law that the High Court while considering a petition under Section 482 of the Cr.P.C. for quashing the FIR must examine as to whether prima facie the ingredients of the offence have been made out in the FIR or not. In this regard, a reference is placed on the judgment of this Court in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra and others***[6] and in the case of ***Delhi Race Club (1940) Ltd. and others v. State of Uttar Pradesh and another***[7].

7. Shri Kaul, relying on the judgments of this Court in the case of ***State of Haryana and others v. Bhajan Lal and others***[8], submits that the continuation of the prosecution of the appellant-bank and/or its staff under IPC would amount to undue hardship and miscarriage of justice.

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[6] (2021) 2 SCC 427
[7] 2024 SCC OnLine SC 2248
[8] 1992 Supp. (1) SCC 335

8. Shri Manish Kumar, learned counsel appearing on behalf of the respondents Nos. 1 to 4, on the contrary, submits that the High Court while exercising powers under Section 482 Cr.P.C. cannot conduct a mini trial. It is submitted that this Court in the case of ***R. Venkatkrishnan v. Central Bureau of Investigation***[9] has held that though a bank or a financial institution may not suffer ultimate loss but if the money has been allowed to be used by another person illegally for illegal purposes, the ingredients of Section 405 IPC would be attracted.

9. It is submitted that access of the bank locker given to Ms. Sunita Khemka in violation of Section 132(2) of the IT Act would attract the offence under Section 409 read with Section 405 of the IPC.

10. It is submitted that the High Court has rightly, relying on various judgments of this Court including ***Neeharika Infrastructure Private Limited v. State of Maharashtra and others***[10], held that the High Court cannot thwart any investigation into a cognizable offence, which is the statutory

[9] (2009) 11 SCC 737
[10] (2021) 19 SCC 401

right and duty of the Police under the relevant provisions of the Cr.P.C.

11. He further submits that it is equally settled that the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

12. With the assistance of the learned counsel for the parties, we have scrutinized the record. It will be relevant to refer to the Prohibitory Order issued by the Authorized Officer on 5th October 2021, which reads thus:

> "**Sub**: Order under 132(3) of the Income- Tax Act, 1961 in respect of bank Accounts, Lockers, Fixed Deposits etc.- regarding,
>
> Sir,
>
> In connection with search operation conducted under sub-section (1) of section *132* of the Income-Tax Act, 1961, in the office/residential/business premises of the under noted
> person, you are directed to STOP OPERATION, immediately, of Bank Lockers, Bank Accounts and Fixed Deposits, if any, standing in the below mentioned names(s) either singly or jointly, in terms of provisions of sub section (3) of section 132 of the Income-Tax Act, 1961.

Sl. No.	Name & Address of the person	Detail of Bank Lockers/ Accounts/ Deposits
1.	Sunil Kumar Khemka	
2.	Sunil Kumar Khemka (HUF)	
3.	Sunita Khemka	
4.	Saloni Khemka	
5.	Shivani Khemka	
6.	Sharda Devi Khemka	
7.	Sharda Tradelinks Pvt. Ltd.	
8.	Gravity Sales Agency Pvt. Ltd.	
9.	Sparsh Tie Up Pvt. Ltd.	
10.	S.S. Biolife Pvt. Ltd.	
11.	NCL Synthetic Pvt. Ltd.	
12.	Green Engicon Pvt. Ltd.	
13.	Gulmohar Vyapaar Pvt. Ltd.	
14.	Lord Dealcom Pvt. Ltd.	
15.	Paramount Financial Management	
16.	Maa Jagdamba Seva Samiti Trust	

2. The contravention of this order shall render you liable, under section 275A of the Income-Tax Act, 1961, to punishment of rigorous imprisonment which may extend to two years and also render you liable to fine.

3. You are requested to intimate the balance

> standing in these accounts **IMMEDIATELY** to the bearer of this letter and send a statement of the said accounts since the opening of the accounts along with copy of account opening form to this office within 7 (seven) days of receipt of this order."

13. It will also be relevant to refer to the Revocation Order dated 1st November 2021, issued by the Deputy Director of Income-Tax (Inv.) Unit-2(2), Guwahati, which reads thus:

> "Sub: Revocation of order under section 132(3) of the Income Tax Act, 1961 in respect of Bank Accounts, Lockers, Fixed Deposits, etc.-reg.
>
> Ref:- This office's letter No.DIN/AC/DDIT/U 2(2)/GHY/2021-22, dated 05.10.2021.
>
> In this connection this is to state that, restrain order u/s 132(3) of the Income Tax Act, 1961, were put on the following bank accounts of the persons as stated below. The restrain order put on the following bank accounts only may be revoked by your kind self and they may be allowed to operate these accounts.

Sl. No.	**Name of Account Holder**	**Account No.**
1.	Sunil Kumar Khemka (HUF)	01861000049315
2.	Sunil Kumar Khemka	01861530001080
3.	Sunita Khemka	01861530001097
4.	Shivani Khemka	01861460006152

14. It could thus be seen that though vide order dated 5th October 2021, a restraint order was imposed in respect of Bank Lockers, Bank Accounts and Fixed Deposits, the Revocation Order dated 1st November 2021 only refers to the Bank Accounts.

15. In the statements of the Officers of the appellant-bank, it is stated that the bank locker was inadvertently permitted to be operated, by misinterpreting the Revocation Order dated 1st November 2021.

16. In the present case, we are only considering the FIR registered for the offences punishable under the different provisions of the IPC.

17. The FIR is registered on the basis of the complaint lodged by the Deputy Director of Income-Tax (Inv.) Unit-2(2), Guwahati, respondent No.5 herein. The only statement/allegation in the complaint with regard to the bank and its officers is thus:

> "However, it has come to the light, that the restraint order imposed under section 132(3) dated 05.10.21 has been breached and violated. During the course of execution of search & seizure operation on the Bank Locker no 462 under warrant of authorization dated 20.11.21, it is found that Smt Sunita Khemka has operated the

> bank Locker no-462 on 09.11.21. The bank locker register maintained at the HDFC bank states that the Smt Sunita Khemka has operated the Bank Locker at 11.53 am. The CCTV footage was has validated the fact that Smt Sunita Khemka aided by the HDFC Bank Exhibition Branch, Patna has breached the order under section 132(3) of the Income Tax Act, 1961 and has unlawfully operated her Bank locker no 462 in the HDFC Bank."

18. It will be relevant to refer to the following observations of this Court in the case of ***Arnab Manoranjan Goswami*** (supra):

> "**62.** Now in this backdrop, it becomes necessary to advert briefly to the contents of the FIR in the present case. The FIR recites that the spouse of the informant had a company carrying on the business of architecture, interior design and engineering consultancy. According to the informant, her husband was over the previous two years "having pressure as he did not receive the money of work carried out by him". The FIR recites that the deceased had called at the office of the appellant and spoken to his accountant for the payment of money. Apart from the above statements, it has been stated that the deceased left behind a suicide note stating that his "money is stuck and following owners of respective companies are not paying our legitimate dues". Prima facie, on the application of the test which has been laid down by this Court in a consistent line of authority which has been noted above, it cannot be said that the

appellant was guilty of having abetted the suicide within the meaning of Section 306 IPC. These observations, we must note, are prima facie at this stage since the High Court is still to take up the petition for quashing. Clearly however, the High Court in failing to notice the contents of the FIR and to make a prima facie evaluation abdicated its role, functions and jurisdiction when seized of a petition under Section 482 CrPC. The High Court recited the legal position that the jurisdiction to quash under Section 482 has to be exercised sparingly. These words, however, are not meaningless incantations, but have to be assessed with reference to the contents of the particular FIR before the High Court. If the High Court were to carry out a prima facie evaluation, it would have been impossible for it not to notice the disconnect between the FIR and the provisions of Section 306 IPC. The failure of the High Court to do so has led it to adopting a position where it left the appellant to pursue his remedies for regular bail under Section 439. The High Court was clearly in error in failing to perform a duty which is entrusted to it while evaluating a petition under Section 482 albeit at the interim stage.

63. The petition before the High Court was instituted under Article 226 of the Constitution and Section 482 CrPC. While dealing with the petition under Section 482 for quashing the FIR, the High Court has not considered whether prima facie the ingredients of the offence have been made out in the FIR. If the High Court were

> to have carried out this exercise, it would (as we have held in this judgment) have been apparent that the ingredients of the offence have not prima facie been established. As a consequence of its failure to perform its function under Section 482, the High Court has disabled itself from exercising its jurisdiction under Article 226 to consider the appellant's application for bail. In considering such an application under Article 226, the High Court must be circumspect in exercising its powers on the basis of the facts of each case. However, the High Court should not foreclose itself from the exercise of the power when a citizen has been arbitrarily deprived of their personal liberty in an excess of State power."

19. In the present case, the FIR does not show that the appellant-bank had induced anyone since inception.

20. For bringing out the offence under the ambit of Section 420 IPC, the FIR must disclose the following ingredients:

(a) That the appellant-bank had induced anyone since inception;

(b) That the said inducement was fraudulent or dishonest; and

(c) That *mens rea* existed at the time of such inducement.

21. The appellant-bank is a juristic person and as such, a question of *mens rea* does not arise. However, even reading the FIR and the complaint at their face value, there is nothing to show that the appellant-bank or its staff members had dishonestly induced someone deceived to deliver any property to any person, and that the *mens rea* existed at the time of such inducement. As such, the ingredients to attract the offence under Section 420 IPC would not be available.

22. Insofar as the provisions of Section 409 IPC is concerned, the following ingredients will have to be made out:

(a) That there has been any entrustment with the property, or with any dominion over property on a person in the capacity of a public servant or banker, etc.;

(b) That the said person commits criminal breach of trust in respect of that property.

23. For bringing out the case under criminal breach of trust, it will have to be pointed out that a person, with whom entrustment of a property is made, has dishonestly misappropriated it, or converted it to his own use, or dishonestly used it, or disposed of

that property.

24. In the present case, there is not even an allegation of entrustment of the property which the appellant-bank has misappropriated or converted for its own use to the detriment of the respondent No.5. As such, the provisions of Section 406 and 409 IPC would also not be applicable.

25. As already discussed hereinabove, since there was no entrustment of any property with the appellant-bank, the ingredients of Section 462 IPC are also not applicable.

26. Likewise, since the offences under Section 206, 217 and 201 of the IPC requires *mens rea,* the ingredients of the said Sections also would not be available against the appellant-bank.

27. The FIR/complaint also does not show that the appellant-bank and its officers acted with any common intention or intentionally cooperated in the commission of any alleged offences. As such, the provisions of section 34, 37 and 120B of the IPC would also not be applicable.

28. It will be relevant to refer to the following observations of this Court in the case of ***Bhajan Lal and others*** (supra):

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the

evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

> **103.** We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

29. We find that the present case would squarely fall within categories (2) and (3) of the law laid down by this Court in the case of ***Bhajan Lal and others*** (supra).

30. We are of the considered view that the continuation of the criminal proceedings against the appellant-bank would cause undue hardship to the appellant-bank.

31. In the result, we pass the following order.

(i) The appeal is allowed.

(ii) The impugned judgment and order dated 8th June 2022 passed by the learned Single Bench of the High Court of Judicature at Patna in Criminal Writ Jurisdiction Case No. 1375 of 2021 is quashed and set aside.

(iii) The First Information Report being Case No. 549 of 2021 registered at Gandhi Maidan Police Station, Patna on 22nd November, 2021, against certain officials of the appellant-bank working at its Exhibition Road Branch, Patna for the offences punishable under Sections 34, 37, 120B, 201, 206, 217, 406, 409, 420 and 462 of the Indian Penal Code, 1860 is also quashed and set aside qua the appellant-bank

.....J
(B.R. GAVAI)

.....J
(K.V. VISWANATHAN)

NEW DELHI;
OCTOBER 22, 2024.