

CASE NO.:
Appeal (crl.) 1327-1328 of 2007

PETITIONER:
Bank of Rajasthan

RESPONDENT:
Keshav Bangur & Another

DATE OF JUDGMENT: 03/10/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NOS. 1327-1328 OF 2007
(ARISING OUT OF S.L.P. (CRL.) NOS. 5566-5567 OF 2004)

W I T H

Crl. Appeal Nos 1329-1330 of 2007 arising out of SLP (Crl.) Nos.5568-5569 of 2004, Crl. Appeal Nos 1331-1332 of 2007 arising out of SLP (Crl.) Nos.5572-73 of 2004, T.P. (C) Nos.236-243/2002, T.P. (Crl.) Nos.387-388/2004 and T.P. (Crl.) No.82/2005
Crl. Appeal No 1333 of 2007 arising out of SLP (Crl.) No.634 of 2005,
Crl. Appeal No 1334 of 2007 arising out of SLP (Crl.) No.635 of 2005,
Crl. Appeal No 1335 of 2007 arising out of SLP (Crl.) No.781 of 2007,
T.P. (Crl.) No.104 of 2004

KAPADIA, J.

1. Leave granted.

2. Akhil Bhartiya Karamchari Sangh filed Writ Petition No.2094 of 1999 in the Rajasthan High Court alleging that Bangur Group ("Bangurs" for short) was responsible for siphoning off funds of the Bank of Rajasthan ("BOR" for short). As per the order dated 27.9.99, the CBI registered a preliminary enquiry. This was on 25.10.99. CBI submitted Interim Reports between 28.3.00 and 14.7.00. On 11.12.00, CBI submitted its Final Enquiry Report. Vide order dated 27.4.01 the Single Judge directed BOR to file criminal complaints. Against the said order dated 27.4.01, BOR filed special appeal before the Division Bench of Rajasthan High Court saying that since CBI had enquired into the whole matter it (i.e. CBI) should alone be directed to continue with the investigation. Vide Order dated 31.5.02, the Division Bench directed CBI to continue with the investigation. Pursuant to the said order dated 31.5.02 CBI registered sixteen cases and filed charge sheets as per details given below:

S.
No.
Case No.
Name of
the branch
Amount
involved in
Rs.
Name
of the
Court

where
the FIR
was
register
ed
Date of
filing
charge
sheet, if
any

Name of
the Court
where the
charge
sheet was
filed
Present status

1
RC
9/E/02-Kol
CBI/EOW
/Kol
3 crores
Ld. 3rd
Spl.
Judge,
Kol.
03.06.04
Ld. 3rd
Spl.
Judge,
Kolkata.
Cognizance has
since been taken
and further
progress is
pending awaiting
orders

2
RC
10/E/02/Kol

.
CBI/EOW
/Kol.

15.105
crores
Ld. 3rd
Spl.
Judge,
Kol.

25.11.04
Lrd. 3rd
Spl.
Judge,
Kolkata.

Charge sheet
filed in the Court
but further
progress is
pending awaiting
orders.

3
RC11/E/02-
Kol.
CBI/EOW

/Kol.
2 crores
Lrd. 3rd
Spl.
Judge,
Kol.
12.10.04
Ld. 3rd
Spl.
Judge,
Kolkata
Charge sheet
filed in the Court
but further
progress is
pending awaiting
orders.

4
RC 12/E/02-
Kol
CBI/EOW
/Kol.
46.50 lacs.
Lrd. 3rd
Spl.
Judge,
Kol.
02.04.04
Ld. 3rd
Spl.
Judge,
Kolkata.
Cog. Has since
been taken, but
further trial is
pending awaiting
orders

5
RC13/E/02-
Kol.
CBI/EOW
/Kol.
1,07,66,265/
-
Ld. 3rd
Spl.
Judge,
Kolkata

Ld. 3rd
Spl.
Judge,
Kolkata
Investigation
completed but
charge sheet not
accepted by the
Ld. 3rd Spl.
Judge, Kolkata
awaiting orders

6
RC14/E/02-
Kol.
CBI/EOW

/Kol.
498.82
lacs.
Ld. 3rd
Spl.
Judge,
Kol.
08.04.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance
taken by the
Court of the Ld.
3rd Spl. Judge,
Kolkata was
quashed by the
Hon'ble High
Court of Kolkata
and was further
investigated as
per the orders of
the Hon'ble
High Court.
Further
investigation has
been completed
but
supplementary
charge sheet is
ready to be filed
in the Ld. 3rd
Spl. Judge,
Kolkata
7
RC15/E/02-
Kol.
CBI/EOW
/Kol.
102 lacs
Ld. 3rd
Spl.
Judge,
Kol.
23.12.04
Ld. 3rd
Spl.
Judge,
Kolkata
Charge sheet
filed in the court,
trial pending
awaiting orders.
8
RC04/E/03-
Kol.
CBI/EOW
/Kol.
1,65,89,595/-
Ld. 3rd
Spl.
Judge,
Kol.

Ld. 3rd
Spl.
Judge,
Kolkata
Investigation has
since been
completed and
charge sheet is
ready to be filed.

9

RC06/E/02-

Mum.

CBI/EOW

/Mumbai

2 crores

Ld. 3rd

Spl.

Judge,

Kol.

30.12.03

Ld. Spl.

Judge for

CBI

cases,

Greater

Mumbai

Cognizance has

since been taken

but trial is

pending awaiting

order.

10

RC07/E/02-

Mum.

CBI/EOW

/Mumbai

2 crores

Ld. 3rd

Spl.

Judge,

Kol.

30.12.03

Ld.Spl.

Judge for

CBI

cases,

Greater

Mumbai

Cognizance has

since been taken,

but trial is

pending awaiting

order.

11

RC/SIA/02/

E/003

CBI/SIU-

X/BS&FC

/N.Delhi

9.5 crores

Ld. 3rd

Spl.

Judge,

Kol.

CS

forwarded
on
27.12.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

12
RC/SIA/02/
E/004
CBI/SIU-
X/BS&FC
/N. Delhi
5 crores
Ld. 3rd
Spl.
Judge,
Kol.

CS
forwarded
on
27.12.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

13
RC/SIA/02/
E/005
CBI/SIU-
X/BS&FC
/N. Delhi
5 crores
Ld. 3rd
Spl.
Judge,
Kol.
30.06.04
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

14
RC/BDI/02/
E/0003
CBI/BS&
FC/N.
Delhi
5 crores
Ld. 3rd
Spl.

Judge,
Kol.
CS
forwarded
on
28.12.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

15
RC/BDI/02/
E/0004
CBI/BS&
FC/N.
Delhi
5 crores
Ld. 3rd

Spl.
Judge,
Kol.
CS
forwarded
on
28.12.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

16
RC/BDI/02/
E/0005
CBI/BS&
FC/N.
Delhi
5 crores
Ld. 3rd

Spl.
Judge,
Kol.
CS
forwarded
on
28.12.03
Ld. 3rd
Spl.
Judge,
Kolkata
Cognizance has
not yet been
taken awaiting
orders.

3. In the meantime, one Navneet Baheti buys 500 shares of BOR during the period between 13.7.01 and 20.7.01.

4. On complaint being filed by Navneet Baheti under Section 156(3) Cr.P.C., the Chief Judicial Magistrate, Alipore, vide order dated 23.7.01, directed the officer-in-charge of Alipore Police Station to register and investigate under Section 156(3) Cr.P.C. after treating his complaint as FIR. Accordingly, on 25.7.01 Alipore Police Station registered FIR No.138 of 2001 against Bangurs under Section 120B, 406, 409, 420, 467, 468, 471 and 477A IPC. On 24.9.2001 BOR filed Writ Petition No.14491/2001 in Calcutta High Court challenging the registration of FIR No.138 of 2001. On 25.9.01 Navneet Baheti also filed Writ Petition No.14538/2001 in Calcutta High Court praying for expedition of the investigations by the State Police. In the meantime on 27.9.01 Bangurs filed an affidavit before the Division Bench of Rajasthan High Court in Special Appeal No.333 of 2001 in which they contended that since Alipore Police station had registered FIR No.138 of 2001 on 25.7.01, Information Report registered by CBI on 31.5.02 did not constitute an FIR in law. They accordingly prayed for the discontinuance of the process in the hands of CBI.

5. By order dated 3.10.01 in W.P. No.14491 of 2001 the Calcutta High Court directed the Alipore Police Station to proceed with the investigations in FIR No.138/01 in accordance with law.

6. On 28.11.01 Bangurs filed an application before the Rajasthan High Court in Writ Petition No. 2094/99 in which they contended that in view of FIR No.138/01 filed in Alipore Police Station, Calcutta, the directions passed by the single judge for investigations by CBI be set aside. That, the said Writ Petition No.2094/99 filed by the Akhil Bhartiya Karamchari Sangh be dismissed accordingly.

7. On 31.5.02, the Division Bench of Rajasthan High Court passed the following order in Special Appeal No.333 of 2001 which reads as follow:

"In our view, the directions issued by the learned Single Judge for the bank to prosecute the criminal proceedings by filing a private complaint in the criminal court is neither just nor fair nor proper and is not in accordance with the law. Considering the facts revealed in the report submitted by the CBI. Accordingly, we quash the directions given by the learned Single Judge in its order 27.4.2001 directing the bank to file a criminal complaint in regard to the facts revealed in the CBI report and instead thereof direct the CBI to continue, with the enquiry/investigation in accordance with the law and proceed further to take up the matter before the appropriate criminal court by taking appropriate steps."

8. On 12.7.02 a Closure Report was filed in Final Form in FIR 138/01 by Alipore Police Station stating that since investigation has been taken by CBI and since documents have been transferred to CBI, the said FIR 138/01 be ordered to be closed. That prayer was ultimately accepted by Sub Divisional Judicial Magistrate, Alipore, Calcutta. However, it may be noted that the said closure was not on merits.

9. On 27.11.03, Keshav Bangur filed Criminal Revision Application Nos.2545 and 2852 of 2003 under Section 482 Cr.P.C. for quashing the sixteen FIRs by CBI on the ground

that they were second FIRs, the first being FIR No.138/2001 arising from the complaints filed by Navneet Baheti. Vide interim order dated 13.9.04, the Calcutta High Court directed CBI to proceed with the investigations in all sixteen cases, however, it directed that cognizance should not be taken without prior permission from High Court. Similarly, by interim order 1.10.04 the Calcutta High Court stayed further proceedings pending before the Special Judge, CBI, Mumbai.

10. The above interim orders were challenged by BOR before this Court vide Special Leave Petitions. This Court vide order dated 3.12.04 stayed the interim orders of the Calcutta High Court.

11. By impugned judgment dated 23.12.04, the above two criminal revisions filed by Keshav Bangur came up for hearing when the Calcutta High Court vacated all interim orders and directed CBI to take up investigation of Alipore PS Case No.138/01. The High Court further observed that in course of investigation of Alipore PS Case No.138/01, it would be open to the CBI to take into consideration the said sixteen FIRs also. Thus, the investigation of FIR No.138/01 and the sixteen FIRs was ordered to be done by one common agency viz. CBI.

12. Aggrieved by the decision of the Calcutta High Court dated 23.12.04, BOR came to this Court vide two Special Leave Petitions. By order dated 8.3.07, this Court directed CBI to proceed with the investigation into FIR No.138/01 and submit its report in a sealed cover within six weeks which has been done.

13. In this batch of cases the controversy raised is as follows: "Whether registration of FIR No.138/01 by Calcutta Police constituted the first FIR and, if so, whether the process in the hands of CBI initiated at the instance of the Rajasthan High Court stood discontinued when the Calcutta Police registered the first FIR No.138/01."

14. The main contention raised in CrI. Appeal No\005\005. of 2007 arising out of SLP(CrI.) No.781/2007 - filed by Keshav Bangur is that the investigative power of the police in a cognizable offence originates from lodging of an FIR under Section 154 of Cr.P.C. and when an FIR is already pending registration of a series of FIRs in respect of the same cognizable offence would be a gross abuse of the process of the court.

15. The above question has now become academic for the following reasons. Firstly, in our order dated 8.3.07 we directed CBI to proceed with investigation into FIR No.138 of 2001 filed in P.S. Alipore, Calcutta. Under the said order we also directed CBI to submit their report under a sealed cover within six weeks. That Report has been placed before us. We have gone through that Report. We do not wish to discuss the contents of the Report at this stage. By the impugned judgment, the Calcutta High Court has directed CBI to take up the investigation of Alipore PS Case No.138/01 and has further directed that in the course of such investigation of the said Case No.138/01 it would be open to CBI to take into consideration the aforesaid sixteen FIRs, the period during which the alleged offence were committed and thereafter to decide the course of action to be taken in accordance with law. The learned Sub Divisional Judicial Magistrate was also directed to transmit the record of Alipore PS Case No.138/01

to the Third Special Judge, CBI, Calcutta. We agree with the said direction. The said direction of the Calcutta High Court contained in the impugned judgment read with our order dated 8.3.07 indicates that investigation into FIR No.138/01 as well as into sixteen FIRs have been entrusted to one single agency, namely, CBI. In the circumstances, the question of First FIR has become academic. That question no more survives. Consequently, two civil revision applications filed by Keshav Bangur in the High Court bearing Nos.2545 and 2852 of 2003 will not survive. They stand dismissed as infructuous. Secondly, on 12.7.02 a Closure Report in Final Form was drawn up in connection with FIR No.138/01 inasmuch as CBI had taken up the investigation. The hearing on the Final Report of Closure was concluded before Sub Divisional Judicial Magistrate, Alipore. It was allowed by Sub Divisional Judicial Magistrate. However, it may be clarified that the said Closure was not on merits of the case. The said Closure was only on account of the fact that the investigation stood transferred to CBI. Consequently, now the Alipore Police Station has no role to play. Lastly, in the case of Kari Choudhary v. Most. Sita Devi and others \026 AIR 2002 SC 441 at page 443, this Court has explained the legal position in case of FIRs being filed against the same accused in respect of the same case. This Court has held that when there are rival versions in respect of the same incident, they would normally take the shape of two different FIRs and investigation can be carried on under both by the same investigating agency. That, to set aside the proceedings merely on the ground that the final report has been laid in the first FIR is, to say the least, too technical as the ultimate object of every investigation is to find out whether the offences alleged have been committed and if so who has committed them. Even otherwise, the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under Section 173(2) on a previous occasion. We quote hereinbelow paragraphs 11 and 12 of the said judgment which read as follow:

"11. Learned counsel adopted an alternative contention that once the proceeding initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried on under both of them by the same investigating agency. Even that apart, the report submitted by the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court reading the new discovery made by the police during investigation the persons not named in FIR No. 135 are the real culprits. To quash the said proceeding merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under Sub-section (2) of Section 173 on a previous occasion. This is clear from Section 173(8) of the Code."

(emphasis supplied)

16. Applying the above test to the present batch of cases, in

our view, suffice it to state that since investigation has been done by CBI (common agency) the report submitted by it to this Court, pursuant to our order dated 8.3.07, would also be placed before the Third Special Judge, CBI, Calcutta and it would be for that court to decide whether the aspects covered in FIR No.138/01 stand covered by the report of CBI in the said sixteen FIRs or whether FIR No.138/01 deals with some aspect which is left out by CBI in the said sixteen cases. Accordingly, it would decide whether the sixteen cases cover all aspects including those falling under FIR No.138/01 or whether FIR No.138/01 has some aspects which do not fall in the sixteen cases and, accordingly, it would decide whether to accept the report submitted by CBI before us pursuant to our order dated 8.3.07. Similarly, it would be for that court to decide whether alleged siphoning off took place under same transaction or under separate transactions. Suffice it to state, all the above cases from Calcutta, Mumbai and Delhi shall be tried and disposed of in accordance with law by the Third Special Judge, CBI, Calcutta.

17. In Transfer Petition (Crl.) No.104 of 2004 filed by Keshav Bangur versus CBI, the applicant has prayed for transfer of Special Case No.97 of 2003 filed before the Court of Special Judge, CBI, Greater Mumbai, (City Sessions Court) be transferred to the Third Special Judge, CBI, Calcutta.

18. That, Transfer Petition (Crl.) No.104 of 2004 filed by Keshav Bangur accordingly stands allowed and consequently the Special Case No.97 of 2003 arising out of RC7/E/2002/Mumbai and RC6/E/2002/Mumbai shall stand transferred from the Court of Special Judge, CBI, Mumbai, (City Sessions Court) to the Third Special Judge, CBI, Calcutta.

19. We are informed that six cases filed before the Special Judge, Delhi, have already been transferred to the Third Special Judge, CBI, Calcutta.

CONCLUSION

20. We direct all the aforesaid sixteen cases to be tried and disposed of in accordance with law by the Third Special Judge, CBI, Calcutta. We direct the Third Special Judge, CBI, Calcutta, to proceed on day-to-day basis and complete the trial as expeditiously as possible.

21. Consequently, Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) Nos.5566-67 of 2004, Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) Nos.5568-5569 of 2004, Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) Nos.5572-73 of 2004, T.P. (C) Nos.236-243/2002, T.P. (Crl.) Nos.387-388/2004 and T.P. (Crl.) No.82/2005 shall stand dismissed as infructuous as they pertain to interim orders passed by the High Court.

22. Accordingly, our above judgment is delivered in Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) No.634 of 2005, Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) No.635 of 2005, Crl. Appeal No\005\005\005\005..of 2007 arising out of SLP (Crl.) No.781 of 2007, which are all disposed of in light of this judgment along with T.P. (Crl.) No.104 of 2004. In view of our aforesaid judgment, Writ Petition No.2094 of 1999 filed by the Akhil Bhartiya Karamchari Sangh in the Rajasthan

High Court also stands disposed of.

23. Accordingly, the above matters are disposed of with no order as to costs.

JUDIS