

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on : 15<sup>th</sup> September, 2011  
Judgment pronounced on : 19<sup>th</sup> September, 2011

+ CRL.M.C. 6743-46/2006

AMIT CHATURVEDI & ORS. .... Petitioners

Through: Mr.Rakesh Mukhija and  
Mr.Babanjit Singh, Advocates.

versus

STATE & ORS. ....Respondents

Through: Mr.Pawan Sharma, Standing Counsel  
(Crl.) with Mr.Harsh Prabhakar,  
Advocate for R-1.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.**

1. Petitioners Amit Chaturvedi, Sanjay Chaturvedi, Sumit Chaturvedi and their father H.V.Chaturvedi pray to this Court that FIR No.702/2004 be quashed. They allege that they have compromised the matter with the persons who had deposited various amounts with companies floated by them and rely upon a Memorandum of Settlement. Justifying their plea that the complainants are only 30 in number, whom they have impleaded as R-2 to R-31 in the above captioned petition, they rely upon the list of witnesses filed along with the charge-sheet

filed by the Investigating Officer before the learned Metropolitan Magistrate.

2. Order sheet of this Court in the instant petition would reveal that from time to time an attempt was made to verify from R-2 to R-31 whether they have compromised the matter and received the amounts invested by them with the companies floated by the petitioners and those of whom could be contacted, as recorded in the various orders passed, have affirmed that they have received the money which they had invested in the companies floated by the petitioners.

3. In a nutshell, the basis on which the accused desire the FIR to be quashed is the purported settlement with the investors.

4. I begin by highlighting that merely because 30 investors are listed as witnesses by the prosecution, apart from other official witnesses, does not mean that only said 30 persons had invested money in the companies floated by the petitioners and indeed the charge-sheet shows that number of persons duped are not in a few hundred but in thousands.

5. There is no law that merely because a complainant or a few out of many complainants compromise the matter with the accused pertaining to a non-compoundable cognizable offence, the FIR in question needs to be quashed on said sole ground. I remind myself that the process of criminal law in India treats cognizable non-compoundable offences as an offence against the State and the complainants have the status of a victim. The victim may settle, but the State may continue the prosecution and whether or not a decision of the State is justified would be gone into by a Court.

6. I ignore the conflicting decisions of the Supreme Court, some of which have held that non-compoundable offences resulting in FIRs are capable of being settled and inherent power of a Court under Section 482 Cr.P.C. can be resorted to, to quash the FIRs and the decisions which hold to the contrary, for the reason from the contents of the charge-sheet filed against the accused, which would be soon herein after would be noted by me, I am of the opinion that the FIR need not be quashed.

7. As the nation fights corruption by the servants of the public the other form of the evil of corruption i.e. cheating the innocent population of this country by the organized syndicate in the private domain also needs to be fought with equal strength and resolve.

8. I reproduce now, relevant extracts from the charge-sheet filed after investigation was completed in FIR No.702/2004 for offences punishable under Section 406/409/420/120B IPC. They read as under:-

“XXXXXXXXXXXXXXXX

During investigation, various documents have been seized from different sources including investor witnesses, banks etc. These documents includes fix deposit receipts of the three companies, unpaid cheques, bounced cheques of the investors with reports of the bankers, correspondence made by the investors with the directors of the company. The banks including ICICI, Indian Overseas Bank, Ratnakar Bank Ltd. etc. have also provided accounts opening forms of the accused companies, details of authorized signatories, board resolution of the three companies, specimen signatures, memorandum & article of association, bank statements etc. List of investors of the three companies (1) Shamkeen Multifab Ltd. (2) Shamkeen Cotsyn Ltd. and (3) Shamkeen Spinners

Ltd., annual reports of different years of the three companies, CLB order dt. 06.09.04 in the matter No.2511/04/CLB giving schedule of repayments etc. documents have been obtained.

During investigation, a large number of investors have been examined, most of them are aged, lonely and retired persons and are small investors. These investors have reported that they have been induced by the directors of the company by showing them rosy pictures of good returns and timely repayments of interest and principal amount on their small investments. They have invested in fixed deposit schemes of the company after being so induced. The borrower company issued post dated cheques for the interest and the principal amount. The company has failed in its commitment and assurances to repay back the FD as well as its interest made by the investors on maturity. The post dated cheques issued by it have already been dishonoured of the investors. The management has indulged in deceitful and fraudulent means to prolong the repayment and has even managed to get back the original cheques from the investors on the pretext of revalidating the same and have not made any actual efforts to repay back the money of the investors with malafide intentions.

#### COMMON DIRECTORS OF GROUP COMPANIES

During investigations, on perusal of various documents as well as from examination of various witnesses, it has been revealed that the Shamken Group of Companies consisting of (1) Shamken Multifab Ltd., (2) Shamkeen Cotsyn Ltd. and (3) Shamkeen Spinners Ltd. & (4) Dwarkadhish Spinners Ltd. Though the companies are incorporated as limited companies duly registered with the ROC but are managed and controlled by majority directors of one and the same family. The common directors in all these companies are Mr.H.B Chaturvedi, his sons Amit Chaturvedi, Sanjay Chaturvedi and Sumit Chaturvedi, all directors. Mr.Sumit Chaturvedi is Jt.M.D. in Shamken Cotsyn Ltd. and Director in Shamken Multifab Ltd. other 3 are common directors in all companies. The other common director with them is

Mr.Parvin Juneja who is appointed as Director-Corporate Finance in all these companies. The father-sons team are the promoter directors and Mr.Parvin Juneja is their long time associate. The first three companies namely (1) Shamken Multifab Ltd.(SML), (2) Shamkeen Cotsyn Ltd. (SCL) and (3) Shamkeen Spinners Ltd.(SSL) are listed companies whose shares are reportedly listed in the stock exchange. They invited fixed deposits from the public. The corporate headquarters of these companies is common and located at Shamken House, B-1/A-20, Block B-1, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi. The flagship company is Shamkeen Multifab Ltd. which was incorporated on 10.11.86.

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During investigation, it has been revealed that in pursuance of the said conspiracy, the accused directors of all the three companies namely (1) Shamkeen Multifab Ltd., (2) Shamkeen Cotsyn Ltd. and (3) Shamkeen Spinners Ltd. floated three fixed deposit schemes inviting fixed deposits from small investors/public. They advertised the schemes through their printed publicity material dt. 27.06.02 and 29.06.02. It offered effective interest rate upto 12.28% p.a., 13.66% pa and 13.66% pa, respectively. It offered three schemes in the FDs in scheme, A, B & C offering cumulative deposit plan, quarterly income plan and monthly income plan respectively. They have shown rosy pictures about their group companies and future profitability. They declared that the company is a profit making and dividend paying for the last 15 years. They also assured higher rate of interest than the prevailing bank rate and further assured timely repayment of interest and principal amount. They assured that the deposits were to be used for the operations of the company. The public was convinced with their assurances and promises and invested in large scale in their schemes. The company has received investment from the public under their fixed deposit schemes in all three companies and have issued fixed deposit printed receipts as well as post dated cheques to the investors for the principal as well as the interest amounts. The Co. did not honour its

commitment to give timely interest as well as return of the principal amount to its FD holders. The post dated cheques issued to the FD holders have been dishonoured by the banks when presented by the FD holders. The victims made complaints to the accused persons who have mere assurances. The FD holders are continuously visiting and meeting the directors of the company but they are not being paid their dues. No cogent reason has been given for not giving back the money to the investors. Even the post dated original cheques of some of the FD holders including PN Mehndiratta, Sh.TK Chaudhary etc. have also been taken back by the officials of the company on the pretext of issuing fresh cheques, which were not given. If given to some investors, these were again bounced in the banks because no efforts were made to facilitate its passing. The company directors have no intention to repay back the principal as well as interest to the FD holders. They did not provide details of investments made from FDs, as they asserted, was used to day to day requirements of the company and that no particular assets were purchased from this money.

The accused directors of the company while inviting FDs from public concealed the fact that the income tax authorities have conducted raids on their premises on 30.01.02 and seized various documents. This was done intentionally or the investors would not have invested with them.

#### FIXED DEPOSITS

The details of FD deposits by small investors in the Shamken Group of Companies is as under as on 31.03.04:-

| <i>S.N.</i> | <i>Name of the Co.</i> | <i>F.D.</i>         | <i>No.of Depositors</i> |
|-------------|------------------------|---------------------|-------------------------|
| 1.          | Shamken Spinners Ltd.  | ₹253.01 Lacs        | 1244                    |
| 2.          | Shamken Multifab Ltd.  | ₹354.02 Lacs        | 1898                    |
| 3.          | Shamken Cotsyn.Ltd.    | <u>₹218.99 Lacs</u> | <u>1073</u>             |
|             |                        | ₹826.02 Lacs        | 4215                    |

These details have been provided by the accused directors of the company to the Hon'ble Company Law Board (CLB) and the details are mentioned in the CLB order dt. 30.09.04.

The details of fixed deposits received from public as provided by Mr.Sanjay Chaturvedi, Jt.Managing Directors, Shamken Multifab Ltd. vide his undated reply as on 30.09.03 are as under:-

| <i>S.N.</i> | <i>Name of the Co.</i> | <i>F.D.</i>         | <i>No.of Depositors</i> |
|-------------|------------------------|---------------------|-------------------------|
| 1.          | Shamken Spinners Ltd.  | ₹268.24 Lacs        | 1207                    |
| 2.          | Shamken Multifab Ltd.  | ₹410.83 Lacs        | 1979                    |
| 3.          | Shamken Cotsyn.Ltd.    | <u>₹237.16 Lacs</u> | <u>1073</u>             |
|             |                        | ₹916.23 Lacs        | 4259                    |

The company has stated that they have accepted public deposits u/s 58 A of the Companies Act in order to meet their long term working capital requirements. But the company has not provided the details of expenditures made on working capital arrangements through these funds.”

9. I have underlined, to highlight what I think of, and hence opine to be of relevance to justify FIR not to be quashed.

10. The investigation would reveal that most of the investors were aged, lonely and retired persons and were small investors. Four companies were floated by the accused and the amount deposited by the investors was secured by issuing post-dated cheques, all of which were dishonoured. The cheques which were replaced were also dishonoured. The advertisements inviting deposits, made false declarations that the companies receiving the deposits were profit making companies and were paying dividends for the last 15 years. Petitioners concealed from the investors that Income Tax Authorities have raided the companied floated by the accused and had seized various documents. An order passed by the Company Law Board on

30.9.2004 would reveal that the number of investors were 4215 and this I must clarify may not be the actual figure for the reason there is a grave apprehension that the accused have fudged the records. The accused had, as per their reply dated 30.9.2003 filed before the Company Law Board, disclosed the number of investors to be 4259.

11. The most incriminating part of the sordid episode brazenly executed by the accused is that the deposits were accepted under the Companies Act to meet the long term working requirements of the companies, but there was no evidence on working capital arrangements through these funds.

12. The brazen and the depraving life-style of a few citizens of India who do no productive job, often makes the common man wonder as to the source of their extravagant life-style, and the instant case opens the window to somewhat understand as to what is happening.

13. I pen no more but would once again highlight that the basis on which quashing of the FIR has been sought for is factually incorrect. There are not 30 persons who invested in the companied floated by the accused. The number of investors taken for a ride are much more and merely because the accused have settled the dispute with 30 investors, whose names were entered in the list of witnesses filed along with the charge-sheet, and observing that if the accused have bought over the 30 witnesses, the prosecution has a right to produce other witnesses and further that the case does not rest on the testimony of the investors alone as there is documentary evidence, on the strength of which, the prosecution seeks to prove its case; the magnitude of the money involved and the prima facie false assurances held out to the investors, I am of

the opinion that justice would be polluted if the FIR is quashed and the stream of justice would flow if the FIR is permitted to be taken to its logical conclusion.

14. The petition is dismissed imposing costs in sum of ₹1,00,000/- (Rupees One Lakh only) to be deposited with the Welfare Fund established by the Delhi Police and each petitioner is directed to contribute equally to the same and if not deposited within a month from today I direct that the same shall be recovered by such appropriate coercive process by the Investigating Officer and deposited with the Welfare Fund.

15. Interim stay granted is vacated.

(PRADEEP NANDRAJOG)  
JUDGE

SEPTEMBER 19, 2011  
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