

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1235-1237 OF 2007

M/S B.FINE ART AUCTIONEERS
PVT. LTD. & ORS.

... APPELLANTS

VERSUS

C.B.I. & ANR.

... RESPONDENTS

JUDGMENT

B. SUDERSHAN REDDY, J.

1. These appeals are directed against the order of Delhi High Court whereby the High Court dismissed the Writ Petition filed by the appellants and refused to quash the FIR bearing No. RC SID 2004 E 001 registered by the CBI against the appellants.

2. In order to appreciate as to whether the impugned order suffers from any infirmity, few relevant facts leading to filing of these appeals may have to be noticed.

RELEVANT FACTS

3. The appellant No. 1—M/s Bowrings Fine Art Auctioneers Pvt. Ltd. had auctioned a number of paintings on 20th November, 2002. Two paintings titled “Reconciled” by Frederico Andreotti and “The kill” by George D. Rowlandson were purchased by M/s Tony Haynes of England. The said two paintings were to be exported. The Customs authorities had detained these paintings on the suspicion that the said paintings were antiques within the meaning of the provisions of the Antiquities and Art Treasures Act, 1972 (hereinafter referred to as ‘the Act’). The said paintings were examined by Deputy Superintendent, Archaeology Customs), Archeological Survey of India on 7.1.2003 and having opined that the paintings were antiques, referred the matter to the Director General, Archaeological Survey of India for final opinion under Section 24 of the Act. The said paintings were seized by the Department. This was followed by a complaint dated 6.1.2004 by Superintendent, Archaeologist (Ant.) DG/ASI (addressed to the Superintendent of Police, CBI) in

which it is inter alia stated

that after examination of the said two paintings, they were found to be antique in nature. After receiving the complaint, further verification was conducted by the CBI. On verification of facts, the CBI found prima facie the commission of offence under Section 3 of the Act punishable under Section 25(1) of the said Act. The CBI accordingly registered the FIR on 29.1.2004 under Section 120B, IPC read with Section 25(1) read with Section 3 of the Act. The CBI has after investigation filed the charge sheet against the appellants company and two foreign nationals who purchased the said paintings in the auction.

4. Be it noted that after the filing of charge sheet, the appellants filed Writ Petition (Civil) No. 16598 of 2004 in Delhi High Court challenging the report of Director General, ASI and for directing the Customs authorities not to proceed in the matter on the basis of the order dated 22.9.2004 passed by the Adjudicating Authority directing confiscation of the said two paintings under the Customs Act. In the said Writ Petition, the petitioner clearly admitted

the factum of CBI registering

FIR and copy of the said FIR was also made available for the perusal of the Court. It may be noted that by the time the said Writ Petition came to be filed, CBI had filed its charge sheet on 24.08.2004 yet the petitioner had not chosen to challenge the FIR and the charge sheet filed by the CBI. The said Writ Petition was disposed of by a consent order directing the competent authority to pass a fresh order on the basis of fresh report submitted by a fresh Committee. It was agreed by the Archaeological Survey of India in that Writ Petition to reconstitute a Committee for the examination of the paintings and to pass a fresh order in regard to the matter in controversy. It may also be noted that CBI was not even impleaded as a party respondent in the Writ Petition.

5. That in compliance of the order dated 24.03.2005, a Committee consisting of six members was constituted to examine the said paintings. The Committee gave a fractured verdict due to which the competent authority could not give a final opinion.

6. The appellants again moved another Writ Petition (Civil) No. 5656 of 2006 before Delhi High Court seeking appropriate directions against the ASI so as not to give effect to undated minutes of meetings dated 26.7.2005, 2,5 & 16.08.2005 on various grounds with which we are not concerned for the present in these appeals.

7. The High Court vide order dated 28.4.2006, disposed of the Writ Petition directing the Director General, ASI to pass an order in terms of the decision of the Division Bench dated 24.3.2005 and granted stay of the prosecution till expiry of 30 days after the fresh determination/decision of Director General, ASI. Thereafter Writ Petition (Crl.) Nos. 2103-05 of 2005 have been filed resulting in the impugned order. It is interesting to note that in the present Writ Petition, the relief prayed for is to quash the FIR and not the order passed by the trial Court refusing to discharge the appellants from the criminal case filed by the CBI. The Writ Petition is mainly based on the ground that the basis of the FIR *i.e.* the earlier report of Archaeological Survey of India has been rendered

redundant in view of the

decision rendered by the Division Bench of the High Court vide order dated 24.3.2005. The High Court dismissed the Writ Petition. Hence this appeal.

8. Ms. Tasneem Ahamdi, learned counsel for the appellants strenuously contended that the FIR registered by the CBI based on the earlier report of Archaeological Survey of India has been rendered redundant. The basis of the FIR does not survive in view of the order of the High Court dated 24.3.2005 and therefore, there cannot be any prosecution on the basis of the earlier report of the ASI.

9. Shri A. Mariarputham, learned senior counsel appearing on behalf of the CBI submitted that the conduct of the appellants disentitles them for grant of any relief in these appeals. It was submitted that on the date when the FIR was lodged, there was sufficient basis and information based on which the FIR has been registered and ultimately, resulting in filing of the charge sheet by the CBI which cannot be quashed at this stage.

10. A short question that

arises for our consideration is as to whether the appellants are entitled for the relief to quash the very first FIR registered by the CBI. There is no explanation whatsoever forthcoming from the appellants as to why they did not implead the CBI in Writ Petition (C) No. 16598 of 2004 and challenge the FIR though they were aware of the same as is evident from their own affidavit filed in the High Court in support of Writ Petition (C) No. 16598 of 2004. It is not the case of the appellants that the FIR has been registered by the CBI without any proper intimation from the Archaeological Survey of India. The contention that the basis of the FIR does not survive in view of the judgment of Delhi High Court in Writ Petition (C) No. 16598 of 2004 appears to be untenable and unsustainable. A bare reading of the judgment of the High Court does not support the submission made by the learned counsel for the appellants. The High Court mainly observed that in view of the consensus arrived at between the parties thereto, it will not be necessary for the parties to give effect to the earlier report and "if a new

report is passed, the earlier report will not be given effect to". The earlier report has not been set aside by the High Court and obviously to continue its operation, a new order is to be made by the Director General, ASI which according to the learned counsel for the appellants is not so far passed. At any rate, all these pleas may be advanced, if at all, available to the appellants, in the pending criminal case. It is not necessary to restate that the observation made by the High Court that it will not be necessary for the parties to give effect to the earlier report binds only the parties to the proceedings and admittedly, the CBI has not been impleaded as party respondent in that Writ Petition.

11. On the facts and circumstances, we are not inclined to exercise our discretion under Article 136 of the Constitution of India to grant any relief to the appellants. We are of the opinion that the High Court rightly refused to exercise its discretion under Article 226 of the Constitution of India in favour of the appellants. The jurisdiction of the High Court under Article 226 of the Constitution to issue appropriate

writs is extra-ordinary, equitable and discretionary. Prerogative writs mentioned therein may be issued only for doing substantial justice. No person is entitled to claim relief under Article 226 of the Constitution as a matter of course.

12. It is evident from the record that after registration of the first information report the CBI made detailed investigation in the matter and filed charge sheet for the offence punishable under Section 25 (1) read with Section 3 of the Act. The trial court having taken cognizance of offences framed charges against all the concerned. The appellants have even filed discharge application before the trial court on 21.8.2006. It is not clear from the averments made in the Writ Petition as to the result of the said application.

13. On the facts and in the circumstances, it is not possible at this stage to quash the very first information report, since much water has flown after registration of the FIR by the CBI.

14. Before parting with the judgment it is necessary to state that the learned senior counsel – Shri A. Mariarputham based on the Minutes of the Expert Committee dated 12.04.2010 and the order of Director General, ASI suggested that the prosecution of the appellants may be confined only with regard to the painting “Reconciled” which alone held to be antiquity. It was a fair suggestion but the learned counsel for the appellants expressed her reservation as regards the very validity of said minutes and order of Director General and wanted the question to be left open. We accordingly express no opinion as regards the validity of the minutes and order dated 12.4.2010 of Director General, Archaeology. In the circumstances, we wish to express no opinion on the same except to observe that the defence of the appellants based on the present report during the course of the hearing of these appeals is left open.

15. We, however, make it clear that it is for the trial court to consider as to whether the paintings in question are antiquities as alleged by the prosecution. The said question

may have to be decided by
the trial court upon appreciation of the evidence that may be
brought on record. The trial court shall consider the same
uninfluenced by the observations made in the impugned
order of the High Court and as well as the observations
made, if any, in this order.

16. For the aforesaid reasons, we do not find any merit in
these appeals. They are accordingly dismissed.

.....J.
.....J.

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(B. SUDERSHAN REDDY)

NEW DELHI,
JANUARY 25, 2011.

.....J.
(SURINDER SINGH NIJJAR)

