$~3,4&5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.A. 856/2016

ANIL KUMAR MALHOTRA

..... Appellant

Represented by: Mr. Sudhir Nandrajog, Mr. Ajay Burman, Sr. Advs. with Mr. Prag Chawla, Ms. Sadhvi Gaur, Mr. Harsit Khurana, Mr. Amritesh, Mr. Karan, Advs.

versus

C B I

..... Respondent

Represented by: Mr. Sanjeev Bhandari, Spl. PP.

\+ CRL.A. 1030/2016

SATBIR SINGH KADIAN

..... Appellant

Represented by: Mr. Sidharth Luthra, Sr. Adv. with Mr. Devashish Chauhan, Mr. Dhruv Gautam, Mr. Naman Joshi, Mr. Nitin Saluja, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Mr. Sanjeev Bhandari, Spl. PP.

\+ CRL.A. 1037/2016

SUNIL GORAWARA

..... Appellant

Represented by: Mr. Girish Sharma, Adv.

versus

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C.B.I.

..... Respondent

Represented by: Mr. Sanjeev Bhandari, Spl. PP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% 11.01.2017

<u>Crl.M.B. Nos. 1621/2016 & 2058/2016 in CRL.A. 856/2016</u>
<u>Crl.M.B. 1943/2016 in CRL.A. 1030/2016</u>
<u>Crl.M.B. 1954/2016 in CRL.A. 1037/2016</u>

1. Appellants have been convicted for offences punishable under Sections 120-B read with Section 403/409 IPC and Sections 13(2) read with Section 13(1)(d) PC Act and awarded sentence of simple imprisonment for a period of 7 years with fine amount. The fine imposed on appellant Satbir Singh Kadian (A-1) is ₹40 lakhs, Anil Kumar Malhotra (A-4) is ₹21 lakhs and Sunil Gorawara (A-5) is ₹10 lakhs and in default all three have been directed to undergo simple imprisonment for 21 months.

2. According to the CBI the allegations proved against the appellants are that a total investment of ₹32.93 crores made by IFFCO with different Banks was at a lower interest rate thereby causing loss to IFFCO. The amount of ₹32.93 crores also included an investment of ₹6 crores to the Bank of India @ 12.6% per annum. The six transactions carried out are as under:

> *"i. Investment of ₹6 crores with Bank of India on 01.02.1991,*
>
> *ii. Investment of ₹5 crores with Indian Bank for 91 days on 25.02.1991,*
>
> *iii. Investment of ₹2 crores with Union Bank of India, Hissar for 46 days @ 8% on 07.03.1991 and its renewal on*

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23.04.1991 @ 13 ½ %,

iv. *Investment of ₹3 crores with Union Bank of India, Panipat Branch at 12.5% for 91 days on 27.03.1991 and ₹1 crore with New Bank of India, Bahadurgarh at 13% for 91 days on 26.03.1991,*

v. *Investment of ₹10 crores with IND Bank Merchant Banking Services, New Delhi @ 12% for 90 days on 05.04.1991, and*

vi. *Investment of ₹4 crores with UCO Bank on 26.02.1991 @ 12.6% for a period of 91 days."*

3. The prosecution case is that S.S. Kadian (A-1) unilaterally ignoring the competitively higher rates offered by the nationalized/ private bank orally directed M.K. Tandon to invest the amount with Bank of India. Though the appellant S.S. Kadian is concerned with all the transactions noted above, however the appellants Anil Malhotra and Sunil Gorawara are concerned with only transaction No.(vi) wherein IFFCO invested with the UCO Bank an amount of ₹4 crores for a period of 91 days at an interest of 12.60% per annum.

4. Learned counsel for Anil Malhotra contends that the only allegation in the transaction against Anil Malhotra is that the money which was invested with the UCO Bank, Parliament Street Bank was transferred to UCO Bank Bombay from where it was given to Harshad Mehta. Anil Kumar Malhotra's role in the entire transaction is that due to the transaction being of high value he identified PW-7 Mohan Das Khandelwal, the authorized representative of Harshad Mehta who had turned an approver and the entire prosecution case is based on his testimony. It is not disputed that the amount of ₹4 crores with the interest of 12.60% was returned after a period

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of 91 days as agreed to between the parties. Thus the only allegation is deposit at a lesser competitive interest. There is no allegation and no investigation revealing that any monetary benefit was received by Anil Kumar in the said transaction. Learned counsel also places reliance on (2003) SCC (Crl.) 869 *Ram Narayan Popli Vs. Central Bureau of Investigation* wherein the Hon'ble Supreme Court in the appeal arising from the main FIR relating to the security scam issue after upholding the convictions of the appellants, released them on the period already undergone which was for a period of few months besides the fine amount which was directed to be paid, in absence whereof default sentence had to be undergone. This judgment was followed later on in number of other cases and appeals before the Hon'ble Supreme Court appellants therein were released on the period already undergone and fine amount.

5. Learned counsel for appellant S.S. Kadian states that the appellant was the chairman of IFFCO at the relevant time and as per the charge framed there are two sets of allegations, however on the face of it, the second set of allegation is not fortified. No sanction was obtained before prosecuting the appellant. Further the conviction is based on the statement of the appellant recorded under Section 313 Cr.P.C. The transactions were in fact not approved by S.S.Kadian as Chairman but by the Managing Director or the members of the Board. Further PW-7 the approver and authorized representative of Harshad Mehta does not say that he ever met appellant S.S. Kadian or performed any action at his instance.

6. Learned counsel for the appellant Sunil Gorawara states that the voucher which was prepared at the UCO Bank Parliament Street was counter-signed by PW-3 the approver Mahavir Singh, the Assistant General

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Manager who was responsible for the transaction, being chief of the Branch and the only officer competent to counter-sign the voucher. The transaction was beyond the competence of the appellant as he was an officer subordinate to PW-3. However, PW-3 Mahavir Singh was only dealt with departmentally and demoted from Scale V to Scale IV officer whereas the appellant has been convicted and sentenced as above.

7. Learned counsels further submit that since all other similarly placed accused in similar transactions have been let off on the period undergone which ranges from 3 to 5 months, the appellants be released on the period already undergone or in the alternative their sentences be suspended pending hearing of the appeal because they would be entitled to be released on the period already undergone.

8. Learned Spl. PP for the CBI opposing the bail applications for suspension of sentence submits that in a subsequent decision of the Supreme Court titled as '*Vinayak Narain Deosathali Vs. CBI*' CRL.A.No. 335/2005 decided on 12th January, 2015 the Supreme Court upheld the conviction and substantive sentence of imprisonment.

9. A perusal of the judgment of the Supreme Court in *Vinayak Narain Deosthali* reveals that the appellant therein was sentenced to rigorous imprisonment for a period of one year and directed to pay a fine amount of ₹25,000/-. The amount in the said decision related to investment worth ₹20 crores as security with different nationalized banks.

10. Having considered the rival contentions of the parties and the fact that the appellants have already undergone nearly 5 months imprisonment, similarly placed accused have been released on the period already undergone and in the decision of the Supreme Court in *Vinayak Narain*

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Deosathali the sentence awarded was one year and the fact that the appeals are likely to take some time for hearing, this Court deems it fit to suspend the sentence of the appellants pending hearing of the appeal.

11. Consequently, the sentences of the appellants are suspended pending hearing of the appeal on their furnishing a personal bond in the sum of ₹50,000/- each with two sureties each of the like amount subject to the satisfaction of the learned Trial Court further subject to the condition that the appellants will not leave the country without the prior permission of this Court and in case of change of address the same will be duly informed to this Court by way of affidavit.

12. Applications are disposed of. Order dasti.

MUKTA GUPTA, J.

JANUARY 11, 2017
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