

II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No.618 OF 2005

(From the judgement and order dated 29/11/2004 in CRR No. 2095/2003
of HIGH COURT OF CALCUTTA)

MAIKAAL FIBRES LTD. & ANR.

Petitioner

(s)

VERSUS

ICICI BANK LTD. & ORS.

Respondent

(s)

(With appln(s) for ex-Parte stay)

WITH S.L.P(Cr1) NO. 807 of 2005

(With ex-Parte stay,permission to place addl. documents on record)

(With office report)

Date: 11/02/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Petitioner(s)

Mr. U.U. Lalit, Sr. Adv.

SLP 618/05

Mr. Amar Dudhwewala, Adv.

Mrs V.D. Khanna, Adv.

In SLP 807/05

Mr. K. Parasaran, Sr. Adv.

Mr. Pradeep Ranjan Tiwary, Adv.

Mr. Atishi Dipankar

For Respondent(s) ./

Mr. Pradip Ghosh, Sr. Adv.

Caveator(s)

Mr. Pinaki Addy, Adv.

Mr. Sanjiv Saxena, Adv.

Mr. R.C. Kohli, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(J.S.Rawat)

(Kanwal Singh)

Court Master

Court Mas

ter

(Signed order is placed on the file)

(Copy, if applied for, be given today itself)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 287 OF 2005
(arising out of SLP(CRL) No. 618/2005)

Maikaal Fibres Ltd. & Anr.

Appellant (s)

Versus

ICICI Bank Ltd. & Ors.

Respondent (s)

With

Criminal Appeal No. 276 of 2005
(Arising out of SLP(Crl) No. 807/2005)

Dinjoye Tea Estate Pvt. Ltd. & Anr.

Appellant (s)

Versus

ICICI Bank Ltd. & Ors.

Respondent (s)

O R D E R

Leave granted.

Heard the counsel for the appellants as well as the respondent-bank, who appears on caveat.

These appeals are directed against the judgment and order passed by a Single Judge of the High Court of Judicature at Calcutta wherein the High Court has set aside the order of the Metropolitan Magistrate, VIIIth Court, Calcutta, dismissing the complaint filed under Sections 406, 420 and 120B IPC by the respondent-bank.

The Metropolitan Magistrate vide his order dated 2nd of September, 2003 dismissed the complaint in a perfunctory manner without recording any reasons for the same.

The High Court, after recording the finding that the order of the Magistrate is cryptic and non-speaking, proceeded to determine as to whether a case under Sections 406, 420 and 120B IPC was made out against the appellants or not. After recording a finding that a case

under the afore-mentioned provisions is made out, the High Court directed the Magistrate to take cognizance of the offences, issue process and proceed with the trial.

Without going into the merits of the case, we are inclined to agree with the counsel for the appellants that the order passed by the High Court is unsustainable. If the High Court was of the opinion that the order passed by the Magistrate dismissing the complaint was cryptic or without reasons, the High Court should have remitted back the case to the Magistrate for re-decision with a direction to apply his mind and decide the matter in accordance with law. Counsel for the respondents, who is on caveat, has no objection to this recourse being adopted.

While agreeing with the High Court that the order passed by the Magistrate is cryptic and without much reasons, we are inclined to set aside the impugned order of the High Court insofar as it determines the dispute on merits.

Accordingly, the order passed by the High Court is set aside and the cases are remitted back to the Metropolitan Magistrate, VIIIth Court, Calcutta for fresh decision in accordance with law by passing a speaking order without being influenced by any of the findings recorded by the High Court.

All contentions are left open to the parties.

The appeals are allowed to the extent indicated above.

.....J.

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(ASHOK BHAN)

.....J.
New Delhi;
February 11, 2005.

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(Dr. AR. LAKSHMANAN)