

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. (S). 438 OF 2015
(Arising out of SLP(CRL.)No.2471 of 2012)

TUSHAR BASU Appellant(s)

VERSUS

STATE OF ANDHRA PRADESH & ORS. Respondent(s)

WITH

CRIMINAL APPEAL NO. (S). 439 OF 2015
(Arising out of SLP(CRL.)No.2727 of 2012)

RAJESH BANU AND OTHERS Appellant(s)

VERSUS

STATE OF ANDHRA PRADESH & ORS. Respondent(s)

O R D E R

Leave granted.

These appeals arise out of a common order dated 27th January, 2012 passed by the High Court of judicature of State of Andhra Pradesh at Hyderabad whereby Criminal Petition No.7336 of 2009 filed by the appellants under Section 482 of the Code of Criminal Procedure have been dismissed while Criminal Petition No.6239 of 2010 filed by the foreign Directors of the appellant-company allowed.

It is, in our opinion, unnecessary to set out at length the factual matrix in which the controversy arises. All that we need say is that disputes in relation to a distributionship agreement having arisen

between the Charan Medical Device and Biotronik Medical Devices India (P) Ltd. the same were referred for adjudication to a sole arbitrator in terms of an arbitration clause contained in the said agreement. The Arbitrator entertained claims and counter-claims made by the parties in relation to the said disputes and published an award dated 18th April, 2010. The Award held a sum of Rs.60,00,000/- (Rupees Sixty Lakhs) to be payable by Biotronik Medical Devices India (P) Ltd. to Charan Medical Device, respondent no.2 in these proceedings. Both the sides being dissatisfied with the Award, petitions under Section 34 of the Arbitration and Conciliation Act, 1996 were filed by them which were registered as O.M.P. Nos.520 of 2010 and O.M.P. Nos.545 of 2010 before the Delhi High Court. These petitions are admittedly pending disposal before the Delhi High Court even at present. In the meantime Charan Medical Device-respondent no.2 appears to have lodged an FIR No.1201 of 2008 in Panjagutta Police Station in the District of Hyderabad for the alleged commission of offences punishable under Sections 406 and 420 of the Indian Penal Code. The said FIR has culminated in the filing of a charge-sheet against the appellants herein who happen to be Managing Director and employees of Biotronik Medical Devices India (P) Ltd. Although an earlier petition filed under Section 482 of the Cr.P.C. had been withdrawn, Criminal Petitions No.7336 of 2009 and Criminal Petition No.6239 of 2010 both under Section 482 of the Cr.P.C. were filed for quashing of the on-going proceedings pursuant to the said charge-sheet. A Single Judge of the High Court of Andhra Pradesh has by a common order dated 27th January, 2012 allowed Criminal

Petition No.6239 of 2010 filed by the foreign Directors of Biotronik Medical Devices India (P) Ltd but dismissed Criminal Petition No.7336 of 2009 filed by its Indian Promoters and employees. The present appeals assail the correctness of the said order as already noticed above.

When the matter came up before us for hearing on 10th March, 2015, Mr. Kapil Sibal, learned senior counsel appearing for the appellants, submitted that the appellants were ready and willing to finally settle the money claim made against Biotronik Medical Devices India (P) Ltd., which claim is currently pending disposal before the High Court. It was submitted by Mr. Sibal that even according to respondent no.2-company its claim was limited to a sum of Rs.80,00,000/- (Rupees Eighty Lakhs) apart from Rs.25,00,000/- (Rupees Twenty Five Lakhs) awarded by the sole arbitrator towards damages. It was urged that although the appellants and the company promoted by them has seriously disputed the validity of the claim before the High Court, the appellants were ready and willing to settle the same in order to give a quietus to the on-going controversy, not only at the High Court level but also in the present proceedings. It was urged by Mr. Sibal that the dispute between the parties leading to filing of an FIR and eventually to the filing of a charge-sheet, was essentially a civil dispute which was sought to be converted into a criminal charge that was wholly untenable and even tantamount to abuse of process of law. He submitted that with the the appellants satisfying the money claim made by respondent no.2-company, there should not be any difficulty in quashing the criminal proceedings instituted against them.

Mr. Parag Tripathi, learned senior counsel appearing for respondent no.2-complainant, had taken time to take instructions whether the complainant was ready and willing to accept a sum of Rs.80,00,000/- (Rupees Eighty Lakhs) over and above the amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) awarded in its favour towards damages in full and final settlement of all its claim. Mr. Tripathi today submitted, on instructions, that respondent no.2-company is willing to accept the offer made by the appellants and receive a total sum of Rs.1,00,00,000/- (Rupees one crore) in full and final settlement of all its outstanding claims, provided the appellants also give up all their claims and contentions against respondent no.2-company in relation to the distributionship agreement entered into between the parties. Mr. Tripathi further submitted that since the monetary part of the dispute has been amicably settled, this Court may take an appropriate view and quash criminal proceedings launched by the respondent-company against the appellants.

In the circumstances, therefore, and keeping in view the submissions made at the Bar and also keeping in view the fact that dispute between the parties does appear to be essentially a civil dispute which has led to the filing of an FIR and a charge-sheet, we are of the view that since the parties have buried the hatchet and settled amicably the money claims made by them on the terms, indicated earlier, there is no reason why these proceedings should not be given a quietus including the proceedings before the Delhi High Court filed under Section 34 of the Arbitration and Conciliation Act, 1996.

We accordingly allow these appeals, set aside the order passed by the High Court and quash FIR No.1201 of 2008 registered in Panjagutta Police Station in the District of Hyderabad and resultantly the charge-sheet filed against the appellants, subject to the appellants paying to respondent no.2-company a sum of Rs.1,00,00,000/- (Rupees one crore) in full and final settlement of all outstanding claims made by respondent no.2-company within a period of four weeks from today. In order to facilitate the timely payment and avoid any complication arising out of delay, we permit the appellants to hand over the bank draft for an amount of Rs.1,00,00,000/- (Rupees one crore) to learned counsel appearing for respondent no.2-company. Needless to say that in the light of the settlement, amicably arrived at between the parties, O.M.P. Nos.520 of 2010 and O.M.P. Nos.545 of 2010 filed by the parties before the Delhi High Court shall stand disposed off on the terms indicated above. Delhi High Court shall, however, be free to pass an independent order in tune with the order passed by us in the said cases. The appeals are on the above terms allowed and disposed of.

.....J
(T.S. THAKUR)

.....J
(R.K. AGRAWAL)

.....J
(R. BANUMATHI)

NEW DELHI
DATED 12th MARCH, 2015.

ITEM NO.1

COURT NO.2

SECTION II

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

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2471/2012

(Arising out of impugned final judgment and order dated 27/01/2012 in CRLP No. 7336/2009 passed by the High Court Of A.P. At Hyderabad)

TUSHAR BASU

Petitioner(s)

VERSUS

STATE OF A.P. & ORS.

Respondent(s)

(With appln.(s) for permission to place addl. documents on record and appln.(s) for stay and Office Report)

(For Final Disposal)

WITH SLP(Crl) No. 2727/2012

(With appln.(s) for permission to place addl. documents on record and appln.(s) for stay and Office Report)

Date: 12/03/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
(SLP 2471/12) Mr. Amit Kumar, Adv.
Mr. Ankit Rajgarhia, Adv.
Ms. Rekha Bakshi, Adv.

(SLP 2727/12) Mr. Amit Kumar, Adv.
Mr. Ankit Rajgarhia, Adv.
Ms. Rekha Bakshi, Adv.

For Respondent(s) Mr. Parag Tripathi, SR. Adv.
Mr. Atul Shankar Mathur, Adv.
Mr. Aseem Chaturvedi, Adv.
For M/s. Khaitan & Co.

Mr. Guntur Prabhakar, Adv.
Ms. Prerna Singh, Adv.

Mr. S. Udaya Kumar Sagar, Adv.
Mr. Krishna Kumar Singh, Adv.

Mr. D. Mahesh Babu, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, these appeals are allowed:

"We accordingly allow these appeals, set aside the order passed by the High Court and quash FIR No.1201 of 2008 registered in Panjagutta Police Station in the District of Hyderabad and resultantly the charge-sheet filed against the appellants, subject to the appellants paying to respondent no.2-company a sum of Rs.1,00,00,000/- (Rupees one crore) in full and final settlement of all outstanding claims made by respondent no.2-company within a period of four weeks from today. In order to facilitate the timely payment and avoid any complication arising out of delay, we permit the appellants to hand over the bank draft for an amount of Rs.1,00,00,000/- (Rupees one crore) to learned counsel appearing for respondent no.2-company. Needless to say that in the light of the settlement, amicably arrived at between the parties, O.M.P. Nos.520 of 2010 and O.M.P. Nos.545 of 2010 filed by the parties before the Delhi High Court shall stand disposed off on the terms indicated above. Delhi High Court shall, however, be free to pass an independent order in tune with the order passed by us in the said cases. The appeals are on the above terms allowed and disposed of."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)