THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.5778 of 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners-accused 1 to 5 requesting to quash the charge sheet in C.C.No.16 of 2014 on the file of the Court of the learned Principal Special Judge for CBI cases, Nampally, Hyderabad.

2. I have heard the submissions of *Sri P. Vishnuvardhan Reddy,* learned counsel for the petitioners-A1 to A5, *Sri K. Surender,* learned Special Public Prosecutor representing the 1st respondent-State; and of *Sri Ambadipudi Satyanarayana,* learned counsel for the 2nd respondent. I have perused the material record.

3. To begin with, it is necessary to note the details of the accused arraigned in the aforesaid Calendar Case.

A1, K. Suresh Kumar, is the Proprietor of M/s. PDM Industries. A2, K. Rajendra Kumar, is the father of A1 and the President of M/s.P.S. Educational Society. A3, K. Bharathi Devi, is the wife of A2 and Vice-President of M/s.P.S.Educational Society. A.4, K. Pallavi, is the wife of A1 and Treasurer of M/s.P.S. Educational Society. A.5 is M/s.P.S. Educational Society. A6 is J. Srinivas, the then Chief Manager/Branch Manager, Indian Bank, Osmangunj Branch, Hyderabad. A.7 is Dr.V. Rajagopal Reddy, the then Branch Manager (Sr.Manager), Indian Bank, Osmangunj Branch. A8 is N.G.Sai Kumar Naidu, the then Assistant Manager, Indian Bank, Osmangunj Branch.

4. The allegations made against the present petitioners-A1 to A5 in the chare sheet verbatim read as under:

> *A1-Suresh Kumar, sole proprietor of M/s. Sirish Traders has availed OCC Limit of Rs.15 lakh from Indian Bank, Osamagunj Branch, Hyderabad, during September, 2001. The name of the Proprietorship*

was changed as M/s. PDM Industries and the firm is engaged in processing of Uradh Dhall. The limits were enhanced periodically in the form of OCC (Open Cash Credit). Finally limit was enhanced by the branch on 06.02.2009 for Rs.450 lakh. Apart from that Indian Bank, Osmangunj Branch, Hyderabad, had also sanctioned (i) two term loans aggregating to Rs.2.25 Crore to M/s P.S. Educational Society where K. Suresh Kumar (A1) and K. Rajendra Kumar (A2) are the General Secretary and President respectively (ii) Ind Mortgage/Term Loan of Rs.50 Lakh to M/s. Sri Sakthi Constructions and M/s. Suryodaya Constructions, represented by its Managing Partner, Shri K. Suresh Kumar (A1) and Shri Rajendra Kumar (A2) respectively and also (iii) Housing loan of Rs.40 lakh was sanctioned to A1 & A2. All the above said loans were secured by collateral security executed by Rajendra Kumar (A2), Smt. K. Bharathi Devi (A3), W/o.Shri Rajendra Kumar, Shri K. Suresh Kumar (A1), Smt. K. Pallavi (A4), W/o Shri Suresh Kumar and the properties were mortgaged in the name of the bank. Shri K. Madhu, Smt. K. Sarita Rani, W/o.Shri K. Madhu and Shri J. Krishna also extended their personal guarantee to the above said limits sanctioned by the bank. The borrowers have failed to service the interest and dues and thus the account was declared as NPA on 31.03.2010. The net outstanding due as on 04.09.2010 was Rs.7.18 Crore.

A1 with an intention to cheat Indian Bank, Osmangunj Branch colluded with A7, Dr.V. Rajagopal Reddy and in pursuance of the said criminal conspiracy, he submitted loan application for sanction of Open Cash Credit (OCC) limit of Rs.15 lakhs in the name of M/s. Sirish Traders during September, 2011, along with the legal opinion, dated 05.09.2001, of D. Jagdishwar Rao, panel advocate of the immovable property stands in the name of A2, K. Rajendra Kumar (release deed document No.2352/2001, dated 07.08.2001) to be offered as collateral security against the limits to be sanctioned……. A1 prepared a fake/forged title deed document no.2351/2001 dated 07.08.2001 and submitted the same to Indian Bank, Osmangunj as collateral security and A2 stood as guarantor for the limit.

During August, 2002, A1, K. Suresh Kumar, had submitted an application for advance to Traders for enhancement of OCC limit of Rs.15 lakhs to Rs.50 lakhs under Trade Finance "Trade well" along with the financial statements, Assets & liability statement of borrowers/guarantors, legal opinion, dated 23.07.2002, of Shri D. Jagadeshwar Rao, Panel Advocate of immovable properties to be offered as collateral security and valuation report of the properties, dated 06.08.2002, of Shri Ch. Venkateswara Rao of M/s.E.S. Associates…….For the limits, A1 has offered the fake/forged title deed *documents of immovable properties viz., doc.no.8698/95, dated 23.03.1995 in the name of A2; Doc.no.8699/95, dated 23.03.1995, in the name of A3; Doc.No.140/94, dated 23.012.1993 on his name and Doc.no.141/94, dated 23.12.1993, in the name of A3 in addition to the existing Equitable Mortgage as collateral security. A2 & A3 stood as guarantors of the account and the borrower/guarantors executed the loan documents and Bank created EM over the properties on 28.08.2002.*

For sanction of above said limits, A1 with criminal intention to cheat Indian bank, Osmangunj Branch has fraudulently/dishonestly offered fake/forged title deeds of immovable properties which stand jointly in his name and in the names of A2 (doc.no.5136/03), A3(doc.no.3353/2000) and K. Pallavi (doc.no.3354/2000) and in his own name (doc.no.3355/2000) to the Indian Bank, Osmangunj Branch in addition to the EM already existing with them as collateral security knowing fully well that the said title deed documents are fake/forged one and were already mortgaged with Jammu & Kashmir Bank Ltd., Hyderabad, in July, 2002, against the OCC limit availed in the name of M/s.Sirish Industries. He also submitted legal opinion, dated 16.08.2003, of Shri D. Jagadishwar Rao, Panel Advocate and valuation report, dated 06.08.2002, of Shri K. Parthasarathi (since expired) of M/s.Rao Associates, Panel Valuer of said properties to A7 Dr.V. Rajagopal Reddy along with enhancement proposal……. A2, A3 & A4 having been fully aware that the title deed documents are fake/forged as encumbrances are already existing against them, offered the same as collateral security and also stood as guarantors of the limits and executed the loan/security documents to Indian Bank, Osmangunj Branch, Hyderabad.

Investigation further revealed that in furtherance of the criminal conspiracy, A1 has again submitted an application for enhancement of OCC limit of Rs.200 lakhs from the existing limit of Rs.70 lakhs in February, 2005…….. For the said limit, the EM already existing with Indian Bank, Osmangunj Branch was extended and in addition to that A1 had also submitted fake/forged title deed document of constructed housing property situated at Door no.3-5-1015 & 3-5-1016, Narayanaguda, Hyderabad, stands in the name of A2 and on his name. A2 to A4 stood as guarantors.

A1 further submitted a loan application, on 22.01.2007, for enhancement of OCC limit of Rs.300 lakh from the existing limit of Rs.150 lakh along with its enclosures to the Branch manager, Indian Bank, Osmangunj Branch. He also submitted false assets & liability statement of his own and other accused persons, A2 to A4 by forging *the seal and signature of Bachu Srinivas, Chartered Accountant of M/s. BSAB & Co., to Indian Bank, Osmangunj branch, Hyderabad.*

A1 in criminal conspiracy with A2 to A4 and with an intention to cheat Indian Bank, Osmangunj Branch fraudulently and dishonestly submitted a loan application for sanction of enhancement of OCC limit of Rs.600 lakhs from the existing limit of Rs.300 lakhs to the Branch Manager, Indian Bank, Osmangunj Branch, along with false financial statements, stock statements, list of debtors of M/s PDM Industries, fake/forged assets & Liability statement and net worth certificates of borrower/guarantors purportedly issued by M/s.BSAB & Co., Chartered Accountants.

A1 with criminal intention to cheat Indian Bank, Osmangunj branch submitted fake/forged net worth certificate of his own and other accused persons and guarantors viz., A2 to A4 and guarantors K. Saritha Rani, K. Madhu & J. Krishna and Auditors certificate on Book debts, dated 07.02.2007, 07.07.2008 & 06.10.2008 of M/s PDM Industries by forging the letter head, seal and signature of Bachu Srinivas, Chartered Accountant of M/s. BSAB & Co. A1 also forged the title deeds and submitted fake/forged title deed documents to Indian Bank, Osmangunj branch as collateral security.

Investigation revealed that the sanctioned OCC proceeds were credited into the CC A/c.No.404726422 (Earlier A/c.No.3012) of M/s.PDM Industries. A1 in criminal conspiracy with the other accused persons with an intention to cheat Indian Bank, Osmangunj Branch had fraudulently and dishonestly withdrawn the entire proceeds from the OCC A/c by way of cash withdrawal, transferring to his sister concerns M/s P.S.Corporation, M/s Somson Corporation, M/s.Sirish Traders at Syndicate Bank, M/s.Sirish Industries at J & K Bank, M/s.Hanuman Traders at the A.P. Mahes Co-op.Urban Bank, Hyderabad, by issuing cheques and from there he withdrew the amounts and used for his personal use for which it was not sanctioned.

Investigation further revealed that A1 issued '&Co." cheques from the account of M/s.PDM Industries to M/s.Sri Lakshmi Sai Trading Co M/s.Sri Datta Trading Co., M/s.Sachin Trading Co., and M/s.Shiva Sai Trading Co. apart from the cheques issues in the name of his sister concerns of M/s.Sirish Traders, M/s.Hanuman Traders, M/s.Somson Corporation and M/s.P.S. Corporation.

Investigation revealed that these firms are not existing. A1 after issuing the cheques in the name of the above said firms he affix the seal of the firms which he prepared and endorsed to his sister concerns viz., M/s. Sirish Traders, M/s. Hanuman Traders, M/s. Somson Corporation and M/s. P.S. Corporation for credit and from there he *withdrew the amounts. All these cheques were issued to route the funds and to show the high turnover of M/s.PDM Industries thereby A1 managed to get continuous enhancements from Rs.15 lakh to Rs.450 lakhs for a trading business.*

Investigation revealed that in furtherance of the criminal conspiracy and with an intention to cheat Indian Bank, Osmangunj Branch, Hyderabad, A2 and A1 have applied for sanction of Housing Loan of Rs.50 Lakh in July, 2003, for construction of house at No.3-5-1015 & 3-5-1016, Narayanaguda, Hyderabad. A1 & A2 again submitted fake/forged estimation for the proposed house for Rs.82,00,800/- purportedly issued by Shri Vishnuvardhan of V.V Associates on 01.07.2003, false assets & liability statement of borrowers and guarantors of A3 and K. Pallavi along with the housing loan application….. Further, for the limits to be sanctioned, A1 & A2 (borrowers), A3 & K. Pallavi (guarantors) have submitted fake/forged title deed documents of immovable properties standing on their names viz., Doc.No.2352/2001, 734/2003, 3353/2000, 3354/2000, 3355/2000 and 5134/2003 to Indian bank, Osmangunj Branch, Hyderabad, as collateral security along with the legal opinion and valuation report of the panel advocate/panel engineer.

Investigation further revealed that the sanctioned amount of housing loan of Rs.40 lakh was credited into the borrower account vide A/c.No.123 and subsequently the amount was transferred to their SB A/c.no.6965 maintained at the same branch. From the SB Account A1 had fraudulently withdrawn the amount by way of cash and transferred to his own account of M/s.PDM Industries, M/s.P.S. Corporation etc., and from there he withdrew the amount and used it for his personal use and diverted it from the purpose for which it was sanctioned.

Investigation revealed that in furtherance of criminal conspiracy, A1 had availed Rs.50 Lakh under Ind mortgage loan in the name M/s. Sri Sakthi Constructions and M/s. Sri Suryodaya Constructions from Indian Bank, Osmangunj Branch, Hyderabad, for payment of Construction Fee (Permit Fee) to Hyderabad Urban Development Authority (HUDA) by submitting fake/forged documents viz., Partnership Deed dtd.16.12.2003, copy of registration of form in the name of M/s.Sri Sakthi Constructions, Building Permission letter No.15913/Plg.P4/HUDA/2006 dtd.12.11.2006 and No. 15911/Plg.P4/HUDA/2006 dtd 12.11.2006 both in the name of M/s.Sri Sakthi Constructions for payment of free purportedly issued by Vice Chairman, HUDA, Hyderabad etc. The loan was secured by way of immovable property as collateral security and the title deed documents submitted by the borrower are genuine and bank can realise the *amount by way of auctioning the property. Hence, prosecution was not recommended against the borrowers in this particular instance……*

Investigation further revealed that in furtherance of the criminal conspiracy A1 had submitted loan application along with fake/forged invoices purportedly issued by various suppliers to Indian bank, Osmangunj Branch for sanction of Medium Term Loan (MTL) of Rs.300 lakhs in the name of A5 M/s.P.S.Educational Society for improvement of infrastructure of Sri International School, Narayanaguda, Hyderabad, being run by A5….

Investigation revealed that the limits were secured by way of primary security of hypothecation of stocks i.e. electrical fittings, ACs, computers, furniture & fixtures going to be purchased at a cost of RS.236.99 lakhs collateral security of extension of EM of properties already mortgaged to the bank and personal guarantee of A1. A2 to A4 and K. Saritha Rai and J. Krishna (whose property was offered as additional collateral security).

Investigation revealed that A1 has conspired with A6 and in furtherance of the said criminal conspiracy and with an intention to cheat Indian Bank, Osmangunj Branch, Hyderabad, had submitted an application for reimbursement of term loan of Rs.60. lakhs and Rs.165 lakhs as if he has already purchased the items from his own source.

Investigation revealed that A1 has not purchased any item from the suppliers mentioned in the invoices submitted by him along with the term loan proposal. He had prepared false invoices purportedly issued by various suppliers in the forged letter head and also forged the signatures of so called suppliers and submitted to the bank along with the term loan application with the intention to cheat the bank. The oral evidence of so called suppliers was clearly established the said facts.

A1 with an intention to cheat Indian bank, Osmangunj Branch conspired with A2 and A6 and in pursuance of the said criminal conspiracy he fraudulently and dishonestly withdrawn the entire sanctioned term loan amount i.e. TL-I of Rs.60 lakh and TL-II of Rs.165 lakh from the current Account No.715579121 of M/s.P.S. Educational Society maintained at Indian Bank, Osmangunj Branch by way of issuing cheques favouring various firms purportedly raised the invoices for supply of items. These cheques were endorsed as "& Co." and further endorsed by A1 to his own firm M/s. Hanuman Traders maintained at A.P. Mahesh Co-op Bank, Hyderabad, from where he withdrew the money for his personal use. The details of cheques issued from the CA.No.715579121 maintained at Indian Bank, Osmangunj Branch are as under:

	Cheque No.	Date	Amount	Favouring
1	712626	13.06.07	380,000	Gopathi Interriyar Decors
2	712630	13.06.07	275,000	Sugna Motors
3	712629	13.06.07	350,000	Varun Technotec
4	712628	13.06.07	475,000	Saigal Enterprises
5	712627	13.06.07	240,000	Amar Deep Furnitures
6	712631	14.06.07	450,000	Indigo
7	712636	15.06.07	375,000	Amar Deep Furnitures
8	712635	15.06.07	350,000	Saigal Enterprises
9	712633	15.06.07	250,000	A.D.U.Com
10	712632	15.06.07	350,000	Compag
11	712634	15.06.07	490,000	Gopathi Interriyar Decors

Out of the crime proceeds of above mentioned term loans, A1 had purchased three landed properties situated at Bahadurguda village under LB Nagar Municipality, Ranga Reddy District in the name of A5, M/s.P.S. Educational Society vide sale deed Doc.No.5498/2007, 5499/2007 and 5502/2007 all dated 07.11.2007 and got registered with SRO, Saroor Nagar. The total sale consideration of all the three properties is around Rs.1.60 Crores.

In furtherance of the criminal conspiracy, A1 to A4 conspired together and submitted the same documents to Indian Overseas Bank, Koti branch, Syndicate Bank, M.J. Road Branch, Jammu & Kashmir Bank, J.N. Road, Abid Branch and The Agrasen Co-operative Urban Bank Ltd., Siddiam Bazar Road Branch, Hyderabad, which were already mortgaged with Indian Bank, Osmangunj Branch as collateral security against the limits availed by them for the account of M/s.PDM Industries, Housing Loan and Term loans.'

Thus, it is revealed that all the accused including the petitioners-A1 to 5 dishonestly and fraudulently conspired together to cheat the Indian Bank, Osmangunj Branch, Hyderabad, by way of committing forgery, forgery for the purpose of cheating, using forged documents as genuine, criminal misconduct and criminal breach of trust etc., and thereby caused a wrongful loss of Rs.7,17,96,555/- to Indian Bank, Osmangunj Branch, Hyderabad and a corresponding wrongful gain to themselves.

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4. The case of the petitioners-accused in support of the request for quashing the proceedings against them, in brief, is as follows:

They are falsely implicated in the crime. They are innocent. They did not commit any offences which they were alleged to have committed. A1 paid an amount of Rs.7,78,25,143/- to the Indian Bank towards various loan accounts. The complainant Bank has also auctioned and sold five properties offered as collateral security and recovered an amount of Rs.1,08,00,000/-. In all the complainant bank recovered an amount of Rs.8,86,25,143/- towards the amount outstanding and due. While the matter stood thus, the 1st accused being the principal debtor of the complainant bank approached for One Time Settlement (OTS) with the complainant bank and its top management. After much persuasion and proposals of OTS payment by A1, the complainant bank agreed to settle the issue amicably by OTS subject to terms and conditions. The said proposal of the accused for OTS for Rs.380 Lakhs was approved, on 14.09.2015, by Settlement Advisory Committee. The management committee of the Bank at the corporate office, in the meetings held on 23.09.2015 & 03.11.2015, also approved the OTS payment towards full and final settlement of the account and against the total balance amount outstanding/due and payable to the complainant bank. The said approval was accorded vide reference letter dated 19.11.2015. As per the agreed terms and conditions on behalf of A.1, M/s.Vasantha Engineers, who are investors of the borrowers, paid an amount of Rs.25.00 Lakhs, on 30.12.2014, and Rs.325.00 lakhs, on 29.09.2015. In all, A1 paid Rs.350.00 lakhs to the complainant bank in A/c.No.720422763. The complainant bank issued OTS letter, dated 20.11.2015 to A1, for payment of the balance amount and thereby agreed to withdraw all the criminal and civil cases filed against the accused on receipt of the balance payment. Accordingly, A1 paid balance of Rs.30.00 lakhs, on 21.11.2015, to the complainant bank. After receipt of the said amounts, the complainant bank acknowledged the receipt of total amount of Rs.3.80 Crores, vide letter, dated 21.11.2015. The complainant bank also agreed to withdraw all the proceedings (civil and criminal) and also OA.No.253 of 2010 pending before the

Debt Recovery Tribunal, Hyderabad. The said OA was also referred to Lok Adalat in terms of compromise for withdrawal. In similar circumstances, the Supreme Court quashed criminal prosecution against similarly placed accused in similar cases. The complainant bank has also issued no due certificate, dated 21.11.2015, duly acknowledging the receipt of total amount of Rs.3.80 crores as OTS and it clearly certified that there are no further dues payable by the petitioner and further issued a statement showing 'nil' dues. A compromise affidavit is already filed before the DRT in the afore-said OA and the OA was not pressed by the Bank as there are no further dues to the Bank. In the circumstances, more particularly in the light of the compromise entered into between the complainant bank and the accused/petitioners herein, it is necessary to quash the above Calendar Case.

5. Learned counsel for the petitioners made submissions in line with the aforesaid case of the petitioners. He has drawn the attention of this court to the proposals of OTS by the bank, dated 10.06.2015, 25.07.2015 and 28.09.2015, and also the material documents showing that the certain of the properties offered as collateral security were auctioned and an amount of Rs.1,08,00,000/- was recovered. He further submitted that a compromise memo was also filed by the bank before the DRT and that after OTS payments the issues were settled finally. He placed reliance on the copy of the full satisfaction memo where under payment of Rs.3.80 Crores was acknowledged pursuant to the OTS.

6. Per contra, the learned Special Public Prosecutor submitted as follows:

The petitioners-accused having conspired with the bank officials concerned and others availed the loan and other facilities and got extended the open cash credit limits from a small amount to a huge amount from time to time by producing fake and fraudulent documents and cheated the complainant bank and caused loss to the public exchequer to the extent of several crores of rupees. The petitioners-accused intentionally cheated the bank. The investigation clearly established that out of 17 property documents, 11 documents were fake and forged and that the petitioners-accused particularly A1 & A2 are having knowledge that the documents are forged documents. The loan due to the bank in a huge sum was not discharged despite filing an OA before the DRT and the matter was dragged upon by raising some defence or the other, which is untenable. Ultimately, after finding no way out, a proposal was made for OTS and instead of paying whole huge amount due and payable to the Bank a part of the amount in a sum of Rs.3.80 Crores only was paid towards full and final settlement on the approval of the proposal of OTS by the authorities of the bank concerned. Only on the ground that part of the loan amount was paid under OTS, the accused-petitioners are seeking to quash the proceedings against them. Such a course is impermissible under law. No compromise was recorded in the civil proceedings. The civil proceeding/OA was simply not pressed by the bank concerned. Hence, the criminal petition may be dismissed.

7. Learned counsel for the complainant bank only stated that the matter is settled between the borrowers and the Bank after accepting the proposal for OTS and that the amount due and payable to the Bank under the said OTS was paid and that the Bank issued full satisfaction memo and also filed a compromise memo before the DRT for withdrawal of the OA pending before the said Tribunal and that the said OA was withdrawn.

8. I have given detailed and thoughtful consideration to the facts and submissions. At the very outset, this Court has given a detailed narration of the allegations related to charges against the petitioners-accused. The petitioners are charged with criminal conspiracy and other offences punishable under the provisions of the Indian Penal Code. Petitioners 1 to 4 are also charged with the substantive offence of 471 IPC. In this background now the

short question that falls for consideration is – “Whether, on payment of the amount arrived at under OTS by the parties to the loan/credit transactions with the Bank, the criminal proceedings against them can be quashed by exercising power under Section 482 of the Code?’

9. Before proceeding further, it is necessary to refer to the various decisions relied upon by the learned counsel for the petitioners on the relevant aspect.

(i) **Mrs. SHAKUNTALA SAWHNEY V. MRS. KAUSHALYA SAWHNEY AND OTHERS**[1]. The facts of the cited case are as follows: - ‘Two sisters, apparently of the affluent bracket, with a common father but different mothers, became estranged. Appellant claimed a half share in the estate of the father *inter alia* claiming that after the death of the father before 1956, the respondent’s mother inherited her husband’s estate but died after 1956, possessed of her husband’s assets & her own and that the intestate succession to her opened and therefore she is entitled to claim a half share therein as per the provision of Section 15(1)(a) of the Hindu Succession Act.’ The High Court negatived the right to a share as a heir. Having regard to the complex facts and the legal position, both the parties filed a compromise. The Supreme Court while dealing with the said compromise, observed as follows: ‘We command this example to the judiciary and to the Bar and reinforce it with what Gandhiji has recorded in his autobiography: ‘I have learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. I realised that the true function of a lawyer was to unite parties driven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing, thereby-not even money, certainly not my soul.’ This decision is

[1] (1980) 1 SCC 63

relied upon in support of the contention that when the parties compromise the matter, it is reasonable, just and fair to consider the request for quashing the proceedings. The dispute in the cited case is purely a civil property dispute. In the considered view of this Court, the ratio is obviously not applicable to the case on hand in view of the distinguishable facts.

(ii) **KULWINDER SINGH AND OTHERS V. STATE OF PUNJAB AND ANOTHER**[2]. In this case, the Supreme Court considered the following two questions – (i) Whether the High Court has the power under Section 482 of the Cr.P.C to quash the criminal proceedings or allow the compounding of the offences in the event of the parties entering into a compromise in the cases which have been specified as non-compoundable offences and in particular, in view of the provisions of Section 320 of the Cr.P.C? (ii) Whether the aforesaid power could be restricted to matrimonial cases only? While answering the said questions, the Supreme Court eventually held as follows: -

> '40. The only inevitable conclusion from the above discussion is that there is no statutory bar under the Cr.P.C. which can affect the inherent power of High Court under Section 482. Further, the same cannot be limited to matrimonial cases alone and the Court has the wide power to quash the proceedings even in non-compoundable offences notwithstanding the bar under Section 320 of the Cr.P.C., in order to prevent the abuse of law and to secure the ends of justice.
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> 41. The power under Section 482 of the Cr.P.C. is to be exercised Ex-debito Justitiae to prevent an abuse of process of Court. There can neither be an exhaustive list nor the defined para-meters to enable a High Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The power under Section 482 of the Cr.P.C. has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality

[2] 2007 (4) CTC 769

in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

(Emphasis is supplied by this Court)

(iii). **MANOJ SHARMA V. STATE AND OTHERS[3].** It is a case where the accused and the complainant have compromised and settled the matter between them. Therefore, the question arose as to whether a First Information Report under Sections 420, 468, 471, 34, 120-B IPC can be quashed either under Section 482 of the Code or under Article 226 of the Constitution of India. The Supreme Court noted that in the case of B.S. Joshi v. State of Haryana [2003 (4) SCC 675] a question arose as to whether criminal proceedings or a First Information Report or complaint filed under Section 498-A and 406 of IPC by the wife could be quashed under Section 482 of the Code on account of the fact that the offences complained were not compoundable under Section 320 of the Cr.P.C. The Supreme Court having regard to the facts and as continuing with the criminal proceedings would be an exercise in futility quashed the criminal proceedings which are pending before the trial Court.

(iv). **GIAN SINGH V. STATE OF PUNJAB AND ANOTHER[4].** In this decided case, the Supreme Court considered the import of Sections 320 and 482 of the Code and summarised the position.

(v). **NARINDER SINGH V. STATE OF PUNJAB**[5]. In this decision, the Supreme Court gave the guiding principles for the High Court while giving adequate treatment to the settlement between the parties and exercising its powers under Section 482 CrPC while accepting the settlement and quashing

[3] 2008(2) ALD (Crl)923
[4] (2012) 10 SCC 303
[5] (2014) 6 SCC 466

the proceeding or refusing to accept the settlement with direction to continue with criminal proceedings. The said guidelines are as follows:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II)When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

(vi). **CBI V. SADHU RAM SINGLA AND OTHERS**[6]. The facts of the cited case are as follows: - 'The 3rd respondent company dealing with State Bank of Patiala, Bhatinda (City) Branch, since 1976 availed credit limits from a consortium of banks with the said Bank as leader and enjoyed certain funds based on credit limits from the banking system to an extent of Rs.31,500.00 Lakhs in March, 1996. However, due to destruction of stocks, it claimed to have suffered heavy loss to the extent of Rs.38.08 Crores. However, the plea could not be corroborated by any evidence. Credit facilities were granted against hypothecation of stocks which included stocks lying at the port. On verification, it was found that the respondent company fraudulently obtained higher credit loans on the basis of stock statements which appeared forged and false. Criminal law was set into motion and a crime was registered against the Board of Directors including the respondents 1 & 2 therein and a charge sheet

[6] AIR 2017 SC 1312

was filed before the Special Judicial Magistrate, CBI, Patiala, Punjab, against the respondents for the offences punishable under Section 420/471 read with Section 120(B) IPC for having entered into with criminal conspiracy and causing loss to State Bank of Patiala to the extent of Rs.28.49 Crores through false stock statements, forged bank guarantee and dishonest misuse of funds generated. During the pendency of the proceedings before the trial Court, compromise was arrived at between the Bank and the respondent company under OTS of the bank through which sums of Rs.6 Crores and Rs.1.25 Crores were deposited by the respondents and acknowledged by the Bank and thereafter Bank released the securities and guarantees of the respondents, withdrew the recovery proceeding pending in the DRT and stated that nothing was due from the respondents to the Bank. An application filed by the 1st respondent for compounding the offences under Section 320(2) of Cr.PC was dismissed by the trial Court on the ground that the offences alleged to have been committed are not compoundable. Thereafter, the respondents approached the High Court. Invoking its power under Section 482 CrPC the High Court quashed the criminal proceedings against the respondents.' The Supreme Court noted that the High Court while quashing the FIR and consequent proceedings has relied upon the Full Bench judgment of the High Court in Kulwinder Singh & others v. State of Punjab wherein reliance was placed on the decision of the Supreme Court in Mrs.Shakuntala Sawhney v. Mrs.Kaushalya Sawhney. The Supreme Court also referred to the case in Manoj Sharma and State of Tamil Nadu v. R. Vasanthi Stanley [(2016) 1 SCC 376], CBI v. A. Ravishankar Prasad [(2009) 6 SCC 351], CBI v. Maninder Singh [(2016) 1 SCC 389] and Gian Singh v. State of Punjab. The Supreme Court also referred to Kulwinder Singh's case. Having referred to the decisions, the Supreme Court held as follows: - 'Since the present case pertains to the crucial doctrine of judicial restraint, we are of the considered opinion that encroaching into the right of the other organ of the government would tantamount clear violation of the rule of law which is one of the basic structure of the Constitution of India.' Then the Supreme Court referred to the following ratio in Manoj Sharma's case by supplying emphasis.

> **'21. Ordinarily, we would have agreed with Mr. B.B. Singh. The doctrine of judicial restraint which has been emphasises repeatedly by this Court e.g in Aravali Golf Club v. Chander Hass (2008) 1 SCC 683 and Govt. of A.P. v. P. Laxmi Devi (2008) 4 SCC 720, restricts the power of the Court and does not permit the Court to ordinarily encroach into the legislative or executive domain. As observed by this Court in the above decisions, there is a broad separation of powers in the Constitution and it would not be proper for one organ of the state to encroach into the domain of another organ.'**

Eventually, the Supreme Court, having considered the singular facts of that case and also the law relating to continuance of criminal cases where the complainant and the accused has settled their differences and arrived at an amicable arrangement finally, held as follows:

> "we see no reason to differ with the view taken in Manoj Sharma's case (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties.
>
> In view of the discussion we made in the preceding paragraphs, in our opinion, it would be proper to keep the said point of law open. However, in the given facts, we dismiss this appeal."

Therefore, the Supreme Court having kept the point of law open dismissed the appeal of the CBI, considering the facts of the case.

9.1 The following decisions are relied upon by the learned Special Public Prosecutor.

(i). **RUMI DHAR V. STATE OF WEST BENGAL AND ANOTHER**[7]. The facts of the cited case disclose that the appellant and her husband-A4 along with various other persons including the officers of Oriental Bank of Commerce, were prosecuted for the alleged commission of offences under Sections 120-B/420/467/468 and 471 of IPC; the officers of the Bank were also prosecuted under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988; a charge sheet was filed against the appellant and seven others; she was *inter alia* charged for taking the benefit of overdrafts without furnishing any security; for the purpose of realisation of the amounts due, the bank filed an application before the DRT; the appellant and the bank entered into a settlement pursuant whereto and in furtherance whereof a sum of Rs.25.51 lakhs was paid; for that purpose, CBI returned the title deed in respect of the property, which was kept as security for obtaining the loan from the bank; the appellant filed an application for her discharge raising various grounds and also the ground that a settlement was arrived at between her and the bank and that no case for proceeding against her has been made out and that she has already paid Rs.25.51 Lakhs and hence the criminal proceedings should be dropped relying on or on the basis of the said settlement. Learned Judge of the Special Court dismissed the application noting that mere repayment could not exonerate the accused from the *prima facie* charge in a criminal case. The High Court concluded that the trial Court was justified in rejecting the petition filed under Section 239 of the Cr.PC by the appellant. In the said factual background, the Supreme Court held as follows:

> 15. When a settlement is arrived at by and between the creditor and the debtor, the offence committed as such does not come to an end. The judgment of a tribunal in a civil proceeding and that too when it is rendered on the basis of settlement entered into by and between the parties, would not be of much relevance in a criminal proceeding having regard to the provisions contained in Section 43 of

[7] (2009) 6 SCC 364

the Indian Evidence Act. The judgment in the civil proceedings will be admissibile in evidence only for a limited purpose.

16. It is not a case where the parties have entered into a compromise in relation to the criminal charges. In fact, the offence alleged against the accused being an offence against the society and the allegations contained in the first information report having been investigated by the Central Bureau of Investigation, the bank could not have entered into any settlement at all. CBI has not filed any application for withdrawal of the case. Not only a charge sheet has been filed, charges have also been framed.

Having so noted, the Supreme Court referred to the decisions in Nikhil Merchant v. CBI [(2008) 9 SCC 677]; B.S. Joshi v. State of Haryana [(2003) 4 SCC 675]; CBI v. Duncans Agro Industries [(1996) 5 SCC 591]; Janata Dal v. H.S. Chowdhary [(1992)4 SCC 305]; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]; and State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222] and finally held as follows: - ' The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a *prima facie* case has been made out against the appellant herein for framing the charge.'

(ii). **SUSHIL SURI V. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER**[8]. The facts of the cited case are as follows: -'A source information was received by the CBI that in the year 1999 two chartered accountants, had dishonestly and fraudulently opened or caused to be opened several fictitious accounts in some banks in the names of certain concerns with an intention to facilitate the diversion of bank finance availed by various public limited companies for the purpose other than what had been stated in the loan application. On the basis of the said information, a crime was registered against the company involved in the matter and its Directors. The investigation

8 (2011) 5 SCC 708

disclosed that the machinery for which the loan was raised from Punjab & Sind Bank (PSB) was never purchased by the company and in-fact to defraud PSB, photographs of the existing/some other machinery were taken by affixing labels of PSB and the same were filed with PSB as conformation for having purchased the machinery for which the loan was raised under the hire purchase limit. Furthermore, the value of the machinery, purportedly purchased with these funds, was reflected in the balance sheet of the Company and even depreciation on the said machinery amounting to Rs.52,33,066/- was also claimed in the income tax/minimum alternate tax (MAT) return for Assessment year 1998-1999 without any such machinery having been actually acquired. It further transpired that the loan proposals were supported by forged proforma invoices, purportedly issued by some suppliers in whose name fictitious bank accounts were opened to encash the demand drafts/pay orders issued by PSB in favour of these firms and that the appellant and others committed the offences for which they are charged. Accordingly, a charge sheet was filed by the CBI in the Court of the Chief Metropolitan Magistrate, Delhi, and the said Magistrate took cognizance. On receiving summons, the appellant filed a petition under Section 482 of the Code praying to quash the charge sheet on the ground that once the company has repaid the loan amount along with interest to the PSB, no loss was caused to the PSB and, therefore, they had not committed any offence for which the charge sheet has been filed. On behalf of the CBI it was pleaded that the appellant and others by forging documents/vouchers to show purchase of machinery, a pre condition for release of instalments of loan, had not only duped PSB but also defrauded the Revenue by claiming depreciation on non-existent machinery and in the process cheated the public exchequer of crores of rupees. The High Court held that merely because the Company and its Directors repaid the loan to PSB they could not be exonerated of the offences committed by forging/fabricating the documents with the intention of defrauding the Bank as well as the exchequer.' The Supreme Court while considering the question – whether the High Court was correct in declining to exercise its jurisdiction under the said section?, dismissed the appeal confirming the view of the High Court and directed the trial Court to proceed with the case expeditiously.

(iii). **GOPAKUMAR B. NAIR V. CBI AND ANOTHER**[9]. The facts of the case are as follows: 'The appellant, who is the 2nd accused, along with A1, who is the Branch Manager of a Bank and another entered into a criminal conspiracy to obtain undue pecuniary advantage and in furtherance of the conspiracy he dishonestly applied for a car loan of Rs.5 lakhs and opened a bank account without proper introduction. Thereafter, he furnished a forged agreement for purchase of second hand Lancer car showing the value thereof as Rs.6.65 lakhs though he had purchased the said vehicle for Rs.5.15 lakhs. Further, A1 by abusing his official position as Branch Manager dishonestly sanctioned the loan of Rs.5.00 lakhs towards the car loan without pre-requisite sanction inspection. Further, he did not have the authority to do so. Though he did not have the authority to do so, he sanctioned education loan of Rs.4.00 lakhs under a scheme to the said appellant-accused for undergoing course on Digital Film Making at SAE Technology College, Thiruvananthapuram. The appellant-accused submitted two forged receipts of the aforesaid college showing payment of Rs.1,60,000/- as fees and the said amount was duly released in his favour though he actually paid Rs.47,500/- to the college and had attended the course only for three days. Further, A1, without being authorised to do so, sanctioned cash credit facility of Rs.17.00 Lakhs to Ms/s.Focus Infotainments of which the appellant is the proprietor and obtained inflated value of the collateral security offered by the appellant from the deceased accused. After sanction of the loan, A1 wiped out the overdraft facility of Rs.13,94,000/- given to the appellant without any authority by transferring the said amount from the cash credit account, which was against the bank procedure but had

[9] (2014) 5 SCC 800

also caused undue pecuniary advantage to the appellant-accused to the extent of Rs.23,57,887/-. Insofar as the appellant, he was alleged to have committed the offences punishable under Sections 420/471 IPC. All the amount due to the bank from the appellant-accused has been tendered in full, in an out of Court settlement between the parties and that the bank has issued an acknowledgement wherein it is stated that the bank has no further claims and charges against the appellant-accused in view of the compromise reached. In view of the said settlement, the appellant requested the High Court to exercise its power under Section 482 CrPC to quash the criminal proceedings against him. The High Court refused to quash the proceedings against the appellant-accused.' The Supreme Court referred to the decisions in CBI v. Narendra Lal Jain [(2014) 5 SCC 364]; Gopakumar B. Nair v. CBI [Crl.MC.No.2480 of 2013 decided on 25.06.2013 (Ker)]; Gian Singh v. State of Punjab; Manoj Sharma v. State; and Nikil Merchant v. CBI. Further, the Supreme Court took note of the facts of the case and the charges against the appellant-accused and noted that the offences alleged against the appellant are certainly very serious and they are not private in nature and that there is also a charge of conspiracy to commit offences under the provisions of the Prevention of Corruption Act and also the substantive offence under Section 471 IPC. Though the amounts due have been paid, the Supreme Court noted that the said payment was under a private settlement between the parties. Hence, in the totality of the facts, the Supreme Court dismissed the appeal filed by the appellant-accused as there is no justification to interfere with the decision of the High Court.

(iv). **CBI V. MANINDER SINGH**[10]. The facts of the case are as follows: - 'The respondent and one Suresh Kumar Puri introduced themselves as proprietors of M/s.Ronney Exports and M/s.Fashion India and opened two current accounts with New Bank of India (PNB) and by means of forged documents they have availed various facilities like (i) anticipated case

[10] AIR 2015 SC 3657

incentive advance of Rs.50,000/- to each of the firms; (ii) F.B.P against order documents (the bills of ladings now turned out to be forged) of Rs.3,05,000/- each; (iii) F.B.P against order documents (the bills of ladings now turned out to be forged) additional funds released Rs.22,000/- each; (iv) P.C.L against orders (Packing Credit Loans) Rs.1,50,000/- each and interest Rs.4,000/- to each of the firms. The investigation revealed that the respondent and the other accused entered into the criminal conspiracy during the period 'November-December, 1986', with an intention to cheat New Bank of India (PNB) to a tune of Rs.10.62 lakhs and that the bill of lading presented by the proprietors of the above said two firms were found to be forged and that the manager of the Bank helped the respondent-accused to avail advance upto Rs.10.62 lakhs by opening two different accounts just to ensure that the pecuniary limits allowed may fall under his power. However, according to the prosecution, nature of transactions revealed that parties were one and the same. Therefore, the allegations against the respondent are forgery for the purpose of cheating and use of forged documents as genuine in order to embezzle public money. Having settled the account with the Bank, the respondent wanted the proceedings against him to be quashed on account of the settlement with the Bank. In this background the Supreme Court held as follows: -

> The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

The Supreme Court then referred to the decision in Vikram Anantrai Doshi [2014 AIR SCW 5567] wherein the Supreme Court distinguished the decision in Nikhil Merchant's case and Narendra Lal Jain's case and finally held as follows:

> In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi's case, the order of the High Court cannot be sustained.

Accordingly, the Supreme Court allowed the appeal and set aside the order of the High Court and directed the trial Court to proceed in the matter expeditiously in accordance with law.

(v). **STATE OF TAMIL NADU V. R. VASANTHI STANLEY AND ANOTHER**[11]. The facts of the case are as follows: - 'The 1st respondent, who is A2, along with her husband, submitted an application for home loan to Centurion Bank of Punjab (HDFC) for a sum of Rs.6 lakhs by depositing a sale deed. The bank found that the documents were forged and accordingly filed a complaint with the Commissioner of Police, Chennai. A crime was registered. Another report was lodged by the Bank of India, Cathedral Branch, from which the couple had availed loan of Rs.25 lakhs for a company development on the grounds that the documents were forged. Further, Vijaya Bank, G.N. Chetty Branch, filed a complaint that the husband of the accused had applied for a mortgage loan by depositing title deed and the wife stood as surety. Considering the complaints lodged by the aforesaid banks investigation was taken up. While so, Syndicate Bank, Mylapore Branch, also filed a complaint with the Commissioner of Police, Chennai, to the effect that the husband of the 1st respondent submitted an application for grant of home improvement loan for Rs.12 lakhs with forged

[11] (2016) 1 SCC 376

documents and his wife was the guarantor and that on the basis of said complaint another FIR was registered and investigation took place. The 1st respondent was a co-applicant in respect of the loans availed from HDFC bank and Bank of India and was a guarantor in respect of the loans availed from Vijaya Bank and Syndicate Bank. After due investigation, charge sheets were filed before the Court concerned and four calendar cases were taken on file. After charge sheets are filed, the accused moved the High Court in all Criminal OPs for quashing of the criminal proceedings. During the pendency of the said criminal petitions, the husband of the 1st accused breathed his last. The wife contended that she was not aware of any transactions done by her husband as she was working as a public servant and that apart she was not aware of the business activities carried on by her husband and that she signed the documents as instructed by her husband without any intention or knowledge to cheat and that after she had come to know about the cases pending against her due to the alleged involvement of her husband, immediately she had taken necessary steps to settle the entire dues of the Bank and, therefore, there was no justification for continuance of the criminal proceedings. The quashment of the criminal proceedings was resisted by the respondent bank stating *inter alia* that certain loan availed by her husband had remained unpaid and OTS was arrived at without prejudice to the rights regarding pending cases against her before the XI Metropolitan magistrate, Saidapet, Chennai. The High Court came to hold that as 'no due certificate' had been issued by the respective banking institutions in view of the settlement arrived at under the scheme, continuance of the prosecution would be an exercise in futility and therefore quashed the criminal proceedings. The Supreme Court having referred to the decisions in CBI v. Muninder Singh and a catena of other decisions held as follows:

> Recently, in CBI v. Maninder Singh, the allegation against the accused was that bill of lading presented by the proprietors of the accused firms were found forged and

cases were registered Under Section 120B Indian Penal Code read with Section 420 Indian Penal Code and Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947 and further substantive offences Under Sections 420, 467, 468 and 471 Indian Penal Code. The accused person arrived at a settlement with the Bank and thereafter moved the High Court Under Section 482 Code of Criminal Procedure for quashing of the FIR. The High Court placed reliance on the decision in Nikhil Merchant (supra) and allowed the petition and directed for quashing of the criminal proceedings. This Court placed reliance on Vikram Anantrai Doshi and Ors. (supra) and came to hold as follows:

"16.The allegation against the Respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the Respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

17. The inherent power of the High Court Under Section 482 Code of Criminal Procedure should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy."

The Supreme Court finally held as follows:

> "Testing the present controversy on the anvil of the aforesaid principles, we are disposed to think that the High Court has been erroneously guided by the ambit and sweep of power Under Section 482 Code of Criminal Procedure for quashing the proceedings. It has absolutely fallaciously opined that the continuance of the proceeding will be abuse of the process of the Court. It has been categorically held in Janta Dal v. H.S. Chowdhary [(1992) 4 SCC 305], that the inherent power Under Section 482 CrPC though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In Inder Mohan Goswami [(2007) 12 SCC 1], it has been emphasised that inherent powers have to be exercised sparingly, carefully and with great caution."

10. I have carefully gone through all the decisions. Having gone through all the decisions, this Court is of the considered view that the Supreme Court in the decision in **CBI v. Sadhu Ram Singla (supra)** having referred to the decision in **State of Tamil Nadu v. R. Vasanthi Stanley** decided the case having regard to the given facts of the case. In Vasanthi Stanley's case, the Supreme Court referred to the entire legal position including the decision in CBI v. Muninder Singh wherein the decision in Vikram Anantrai Doshi is also referred to. In Gian Singh's case rendered by a Bench of three Hon'ble Judges of the Supreme Court, it was held at paragraph no.57 as follows:

> 57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. <u>In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and</u>

<u>circumstances of each case and no category can be prescribed.</u> However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

[emphasis is of this Court]

From the ratio in the decision, it appears that though quashing a non compoundable offence under Section 482 would not amount to circumvent the provisions of Section 320 CrPC the exercise of such power will always depend upon the facts of each case. It is necessary to reiterate that in the case of

Maninder Singh, the Supreme Court while sounding a word of caution held as follows:

> The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

In the subsequent decision in Vasanthi Stanley, the Supreme Court noted the observations in Maninder Singh's case and tested the controversy in that case on the anvil of the aforesaid principles laid down in Maninder Singh's case. On the above analysis of the case laws, it is to be now examined as to whether in the given facts of the instant case, the request of the petitioners-accused to quash the proceedings against them can be considered.

11. Reverting to the facts of the instant case this Court finds that the offences in the present case are certainly serious. The charge of conspiracy is to commit offences under the Prevention of Corruption Act and IPC. The present accused 1 to 4 have been charged for the commission of substantive offence under Section 471 of IPC also. Though certain amount was said to have been paid under OTS, the same was paid and received under a private settlement between the parties. The compromise/settlement was later reported to the DRT and it was not a part of the decree of any Court. The bank did not acknowledge for exoneration of the criminal liability in terms of a compromise decree. The CBI has not filed any application for withdrawal and there is no withdrawal from prosecution. No compromise was recorded and no

compromise decree or award was passed in the proceedings before the DRT or a Civil Court. The OA was merely withdrawn after out of court settlement (viz., OTS). Therefore, this case falls under the exclusion spelt out in Gian Singh's case. The acts constituting the charges also indicate that out of several documents deposited with the banks in connection with the financial transactions, 11 documents were fake and forged and that by use of forged and fake documents as genuine, public money was embezzled. When the petitioners-accused were charged with serious offences, they came before this Court for quashment of the proceedings pleading that the matter was settled with the Bank by means of one time settlement with the bank. However, the entire debt/loan amount due to the Bank was not paid and only a part of it was paid having opted for and got approval for one time settlement. The acts alleged to have been committed are public wrongs and crimes committed against the Society. The alleged acts constituting the offences alleged against the accused herein, if proved, would actually be public wrongs or grave crimes committed against the society. The prosecution case is that the alleged acts are committed with intention, knowledge and design for personal profit regardless of the consequences and public & societal interests. In cases where the acts constituting the alleged offences are alleged to have been committed by ingenious and devious means and when the alleged transactions involved huge public money and the offences are serious, prosecuting the accused herein will not be an abuse of the process of the Court. Therefore, when the issue is examined in the light of the interests of the society at large, quashing the proceedings merely on the ground that the case was settled with the bank under OTS would be a travesty of justice. If the prosecution against the present accused offenders is not allowed to continue the entire community would be aggrieved. Merely on private settlement between the bank and the accused it cannot be said that no evidence will come on record and there will be a remote chance of conviction and that the prosecution of the accused would amount to abuse of process of Court. However, it is needless to state that this Court did not express any opinion on the merits of the matter and it is always open to the accused herein to raise before the Special Court all the defences, which the facts and law permit.

12. On the above analysis, this Court finds that in the given facts the petitioners-accused could not make out a case for quashing the criminal proceedings against them.

13. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

01.09.2017
Vjl