

**REPORTED**

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

% DATE OF RESERVE: March 23, 2009

DATE OF DECISION: April 09, 2009

**+ CRL.M.C. 3759/2008 and Crl. M.A. 14053/2008**

PAWAN JAGGI ..... Petitioner

Through: Mr. Sudhanshu Batra, Advocate

versus

CBI & ORS. .... Respondents

Through: Mr. Harish Gulati, Advocate for CBI.

**CORAM:**

**HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

**: REVA KHETRAPAL, J.**

1. By way of this petition under Section 482 Cr.P.C., the petitioner seeks quashing of criminal proceedings bearing No.RC S15 2001 S0007 dated 12.11.2001 entitled State Vs. Pawan Jaggi & Others pending in the court of Shri A.S. Aggarwal, Metropolitan Magistrate, Karkardooma Court, New Delhi.
2. The relevant facts leading to the filing of the present petition are as under:-
3. The petitioner herein is the Chairman-cum-Director of M/s. Seasons

Creation (Pvt.) Ltd., a garment exporting company. The respondent No.2 (the Allahabad Bank) is the complainant in the aforesaid FIR, the respondent No.3 is a former Director of M/s. Seasons Creation (Pvt.) Ltd. and the respondent No.4 was its accountant at the relevant time. M/s. Seasons Creation Pvt. Ltd. had availed of certain credit facilities from the respondent No.2-Bank from time to time and in order to secure the outstanding due to the respondent No.2, M/s. Seasons Creation Pvt. Ltd. had hypothecated its machineries, stocks etc. to the said respondent. Between 15.11.1998 to 1.5.1999 when the petitioner was away to London in connection with his business, the respondent No.3 fraudulently misappropriated and cheated M/s. Seasons Creation Pvt. Ltd. and the petitioner to the tune of more than Rs.2 crores by illegally disposing of the machineries and stocks hypothecated by M/s. Seasons Creations (Pvt.) Ltd. in favour of the respondent No.2-Bank. It is submitted by the petitioner that on coming to know about the fraud the petitioner immediately lodged a complaint with Police Station Tiruppur (Tamil Nadu) and an FIR No.25/99 under Sections 406 and 420 IPC dated 26.07.1999 pursuant to the same was registered against the respondent No.3. On investigation the police of Police Station Tiruppur altered the charges against the respondent No.3 and sought his prosecution under Section 120-B, 454,457,380,408 & 420 IPC.

4. As a result of the fraud committed by the respondent No.3, the

respondent No.2-Bank on 9.4.2001 lodged a complaint against the petitioner, the respondent No.3 and others, inter alia, alleging that M/s. Seasons Creation (Pvt.) Ltd. and its Directors had committed fraud upon the bank, as a consequence of which the CBI, Economic Offences Wing, New Delhi on 12.11.2001 registered an FIR No.RC S15 2001 S0007. On 1.12.1999, the respondent No.2 also instituted recovery proceedings against M/s. Seasons Creation (Pvt.) Ltd. and its Directors etc. before the Debt Recovery Tribunal vide Original Application No.523/1999 seeking recovery of a sum of Rs.99,76,452.89 (Rupees Ninety Lacs Seventy Six Thousand Four Hundred Fifty Two and Paise Eighty Nine only). Subsequently, however, the petitioner and M/s. Seasons Creation filed a joint application being I.A.No.353/2002 in O.A.No.523/1999 that they have entered into a compromise as per which the bank had agreed to receive as full and final, one-time settlement an amount of Rs.72,00,000/- (Rupees Seventy Two Lacs only). On 23.07.2002 in terms of the said settlement, the respondent No.2-Bank confirmed and acknowledged that the Bank had no claim whatsoever against the defendants therein and all the allegations made by the Bank against them before the Tribunal or any Court or Authority shall be deemed to be withdrawn.

5. The Debt Recovery Tribunal on 23<sup>rd</sup> July, 2002 disposed of the Original Application filed by the respondent No.2/complainant in terms of the

compromise arrived at between the parties recording as follows:

*“.....Out of this total compromise amount of Rs.72 lakhs, the applicant bank is stated to has already received an amount of Rs.67,80,772/- from the defendants 1 to 4 and vide order dated 21.2.2002 the said amount was ordered to be kept in an FDR till the disposal of the joint application for recording of compromise filed by the parties. The defendants 1 to 4 have handed over a cheque bearing No.079911 dated 23.7.2002 for balance compromise amount of Rs.2,17,501/- (balance compromise amount arrived at after giving credit of the interest at 7% accrued on Rs.67,80,772/- in terms of order dated 21.2.2002) to the applicant's counsel and with the said payment the claim of applicant bank against all the defendants is stated to has been fully satisfied and now the applicant bank has not to recover anything from any of the defendants.....”*

6. After the disposal of the aforesaid Original Application by the Debt Recovery Tribunal, the petitioner filed a petition bearing Crl.M.C.No.589/2005 titled Pawan Jaggi and Anr. Vs. State and Others before this Court (Hon'ble Mr.Justice Pradeep Nandrajog) seeking quashing of the criminal proceedings bearing RC-S15-2001-S0007, which was dismissed by this Court vide order dated 17.09.2007 on the ground that merely because the company and its Directors on the basis of one-time settlement had paid dues to the bank and the bank had consented for compounding of the offences, the same would not entitle the petitioner to pray for the exercise of powers of this Court under Section 482 Cr.P.C. The complainant-Allahabad Bank was a Public Sector bank and the custodian of the public funds and mere settlement between the parties was not a ground for quashing of criminal prosecution against the

petitioner.

7. The present petition was thereafter filed in this Court on November 24, 2008 on the ground that the Hon'ble Supreme Court of India in a similar case entitled ***Nikhil Merchant Vs. Central Bureau of Investigation & Anr.*** **2008(9) SCC 677** in SLP No.3655/2005, which related to a compromise arrived at between the Andhra Bank and the accused therein and in which there were allegations of forgery, besides allegations under Prevention of Corruption Act, had held that pendency of criminal proceedings would serve no useful purpose and continuance of the same would be nothing but an abuse of the process of law and a cause of harassment to the petitioner. The relevant portion of the said judgment reads as follows:-

*“22. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.P.C. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S.Joshi's case (supra) becomes relevant.*

*23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled.*

*The dispute involved herein has overtones of a civil*

*dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?*

24. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in *B.S.Joshi's case* (supra) and the compromise arrived at between the Company and the Bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

25. We, therefore, set aside the order passed by the High Court dismissing the petitioner's revision application No.49 of 2003 in Special Case No.80 of 1998 and quash the proceedings against the appellant. The appeal is accordingly allowed.”

8. Mr.Sudhanshu Batra, the learned counsel for the petitioner submits that in view of the judgment in the ***Nikhil Merchant's case*** (supra), the petitioner prays for quashing of the criminal proceedings in the instant case, as the aforesaid decision rendered by the Supreme Court squarely applies to the present case. Mr.Harish Gulati, the learned counsel for the respondent/CBI , on the other hand, though opposed the prayer for quashing was not able to point out any difference to this Court between the case of ***Nikhil Merchant*** and the case of the petitioner herein.

9. Mr.Batra, learned counsel for the petitioner heavily relied upon a copy of the letter dated 14.01.2003 from the respondent No.2-Bank acknowledging

receipt of the compromised amount in full which is also placed on the record by the petitioner along with a copy of the Original Application No.523/1999 filed before the Debt Recovery Tribunal, wherein the terms of settlement have been set out. In sub-para (f) of para 3, it is specifically stated that the Bank confirms and acknowledges that it will have no claim whatsoever against the defendants after the passing of the compromise decree by the Hon'ble Tribunal, which decree as stated above, was passed on 23.07.2002. recording therein that the Bank now has not to recover anything from any of the defendants.

10. Keeping in mind the terms of compromise arrived at between the petitioner and the Bank and the fact that the subject matter of the dispute has since been settled with the bank, in my opinion, it does not stand to reason to continue with the criminal proceedings against the petitioner, which had commenced on the complaint filed on behalf of the bank, which bank now has no claim or grievance left against the petitioner.

11. Accordingly, I am of the view that this is a fit case for quashing the criminal proceedings against the petitioner as the dispute involved herein has the colours of a civil dispute with criminal facets and though some of the offences are non-compoundable in nature, relying upon the judgment of the Hon'ble Supreme Court in ***Nikhil Merchant's case*** (supra) and in the case of ***B.S.Joshi Vs. State of Haryana and Anr. 2003 (4) SCC 675***, criminal

proceedings bearing No.RC-7(S)/2001 titled State Vs. Pawan Jaggi and Others (pending in the Court of Shri A.S.Aggarwal, learned Metropolitan Magistrate, Karkardooma Courts, Delhi arising out of FIR No.RC S15 2001 S0007 dated 12.11.2001 registered by Delhi Special Police Establishment CBI SIC II, New Delhi) and all proceedings emanating therefrom are hereby quashed.

CRL.M.C. 3759/2007 and Crl. M.A. 14053/2008 stand disposed of accordingly.

**REVA KHETRAPAL, J.**

**APRIL 09, 2009**  
**dc**