

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

+ **Crl.M.C. 3842/2008**

% Date of reserve: 12.05.2009
Date of decision: 21.05.2009

MR. SUSHIL SURI ...PETITIONER
*Through: Mr. Vijay Aggarwal, Mr. Vishal
Garg, advs.*

Versus

C.B.I. AND ANR. ...RESPONDENTS
*Through: Mr. Harish Gulati, Mr. Anindya
Malhotra, advs.*

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG, J.

1. This order shall dispose of a petition filed by the petitioner under Section 482 Cr.P.C. seeking quashing of an FIR bearing no. R.C.5(E) 2002/SIU/VIII, P.S./CBI/SPE/SIU-VIII registered by Central Bureau of Investigation (CBI) and the proceedings arising therefrom against the petitioner on 23.07.2002 under Sections 120B/420/409/468/471 IPC. It is the case of the petitioner that the present dispute is between the petitioner and the second respondent regarding paying the dues of the second respondent which has been settled in full and final and now

there is no dispute left between them. It is submitted that in these circumstances no useful purpose shall be served in continuing with the proceedings/investigations in the aforesaid FIR registered by the CBI as aforesaid.

2. Briefly stating, the facts of the present case are that M/s. Morpen Laboratories Ltd. is a public limited company engaged in manufacture of pharmaceutical products having manufacturing units in District Solan of Himachal Pradesh. To run the affairs of the company various types of advances were taken by the company from different banks/ financial institutions and the money was also raised from the open market from time to time in the form of shares, etc.

3. In the year 1998, accused petitioner and other Directors of the company applied for "Hire Purchase" advance of Rs. 2 crores from Punjab and Sind Bank (hereinafter referred to as 'PSB'), Hire Purchase Branch, Connaught Circus, New Delhi. The purpose mentioned in the loan application was purchase of various machinery items proposed to be installed at the manufacturing units. To avail the advance many forged and fabricated performa invoices of non-existing suppliers were submitted. On this basis, PSB sanctioned the funds to the company of which the petitioner is a Director. The said company neither purchased any plant or machinery and the advance were used for other purposes.

4. On a source information received by the CBI the FIR subject matter of this petition was registered and investigated. During the course of investigation it was revealed that the machinery for which the loan was obtained was not purchased by the petitioners and in fact

to defraud the bank with ulterior motives the photograph of already existing/ some other machinery (false security) was taken by affixing label of PSB and the same was provided by the borrower to the PSB, New Delhi fraudulently in confirmation of having purchased the machinery in question. It was further revealed that hire purchase advance taken by the borrower has been repaid to the PSB, New Delhi but the petitioner accused had not purchased any machinery from the fund obtained from the PSB. The purchase of machinery by utilizing the funds obtained from PSB was reflected by the petitioner in the balance sheet. They also claimed depreciation in the income tax/ minimum alternate tax (MAT) amounting to Rs. 52,33,066/- in the year 1998-99 without the existence of any such machinery.

5. Further in the year 1999 also accused petitioner and other Directors of the company again applied for "Hire Purchase" advance of Rs. 3 crores in PSB, in the same branch and the purpose shown was that they wanted advance to install various machineries at manufacturing unit of the company.

6. Similarly, in the balance sheet for the year 1999-2000 they also claimed wrongful benefit of depreciation in the income tax/ minimum alternate tax which amounts to Rs. 1,44,88,605/-. Investigation has revealed that accused K.B. Suri (since expired), Sushil Suri (petitioner) Smt. Kanta Suri, Mahesh Jain, Nityanand Singh, Sanjay Malik, Bipin Chandra Paul Kakkar, Ravinder Malik, Gaurav Malhotra and Sanjay Gupta have committed the offences under Section 120-B read with Section 420/467/468/471 of IPC. Accordingly, the charge-sheet was filed on 13.10.2004 by the CBI in the Court of learned CMM, Delhi.

7. According to the petitioner, once the company has made the payment of loan taken from the PSB along with interest, the FIR is liable to be quashed. At the outset, it may be observed that the PSB has not joined the petitioner as a party for quashing of the FIR. The said Bank arrayed as respondent No.2 despite service of summons has neither opposed nor supported the petitioner.

8. The petitioner to support his case has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of Nikhil Merchant Vs. CBI and Anr. (2008) 9 SCC 677.

9. The petitioners also relied upon the following judgments:

- i. Seema Grover & Anr. Vs. State & Ors. CrI.M.C. 3627/2006
- ii. Ajay Kumar & Ors. Vs. State & Anr. 131 (2006) DLT 130
- iii. B.K. Sondhi Vs. State (NCT of Delhi) & Anr. 2001 (1) JCC Delhi 73
- iv. Chain Sukh & Ors. Vs. State & Ors. 1999 (1) JCC Delhi 142
- v. Yog Raj Arora Vs. State & Ors. 2002 (2) JCC 1103
- vi. Govind And Other Vs. the State (Govt. of NCT of Delhi) 2003 II AD (Cr) DHC 537
- vii. Mohd. Tahir Vs. State of U.P. 2004 (2) CRJ 422
- viii. B.S. Joshi & Ors. Vs. State of Haryana & Anr. 2003 (1) JCC 541
- ix. D.C. Singham Vs. State & Anr. 133 (2006) DLT 372
- x. G. Udayan Dravid & Anr. Vs. State & Anr. CRL.M.C. No. 227/2005
- xi. Mideast India Ltd. & Ors. Vs. State CRL.M.C. No. 8661-64/2006
- xii. Daulat Zia Vs. Govt. of NCT of Delhi 74 (1998) DLT 259 (DB)
- xiii. Rachna Gera & Ors. Vs. State & Ors. 122 (2005) DLT 412
- xiv. Anil Kumar Vs. State CRL.M.C. 6558-60/2006
- xv. Mrs. Priya Gupta @ Kochar & Ors Vs. (Delhi) 2007 (3) JCC 1940
- xvi. Neelu Gupta & Ors. Vs. State 2007 (3) JCC 1938
- xvii. Acharya Arun Dev Vs. State 2007 (4) JCC 2662
- xviii. Naresh Gupta & Anr. Vs. State 2007 (4) JCC 2661
- xix. M/s Ansal Build Well Ltd and Ors. Vs. The State CRL.M.C. 3517/2007 (Rekha Sharma, Order date 21/2008)
- xx. Mr. Anil Bhasn Vs. State & Anr. CrI.M.C. 2193/2007
- xxi. M/s Ansal Build Well Ltd Vs. State CrI.M.C. 3515/2007, 21.1.2008 (Rekha Sharma)
- xxii. Mr. Harmeet Singh & Ors Vs. state of Delhi & Anr. CrI.M.C. 212/2008, 14.2.2008, Rekha Sharma
- xxiii. Smt. Jaspreet Kaur & Ors. Vs. State of Delhi & Anr. CrI.M.C. 211/2008, 14/2/200
- xxiv. Madan Mohan Abbot Vs. State of Punjab SLP (CrI.) APP.555/2008 (26.3.2008)
- xxv. Rajiv Talwar Vs. State. CrI.M.C. 2933/2004, order dated 12.03.2008
- xxvi. Religare Securities Ltd. & Ors. Vs. State 2008(2) JCC 824
- xxvii. Manoj Vs. NCT of Delhi and Anr. W.P.(CrI) 97/2008, 30.04.2008
- xxviii. H.B. Chaturvedi Vs. State & Anr. 125(2005) DLT 109
- xxix. Nikhil Merchant Vs. CBI & Anr. JT 2008(9) SC 192
- xxx. Jagdish Chanana & Ors Vs. State of Haryana & Anr. 2008(2)LRC 137(SC)
- xxxi. Ramesh Vs. State & Anr (Rajasthan High Court) 1(2007) CCR 116 (304A)

- xxxii. CBI Spe. SIU (X), New Delhi Vs. Duncans Agro Industries Ltd. Calcutta 1996 SCC (CRL) 1045
- xxxiii. Manoj Sharma Vs. State & Ors. Crl.M.A. 1619/2008 @ SLP (Crl.) 5265/2007 order dated 16.10.2008.
- xxxiv. Mohit Jain Vs. Jain 2008(3) JCC 2112
- xxxv. Madan Mohan Abbot Vs. State of Punjab 2008(4) SCC 582
- xxxvi. Maninder Singh Vs. CBI Crl.M.C. 2083/2006, 10.02.2009
- xxxvii. Smt. Rumi Dhar Vs. State of West Bengal and Anr. JT 2009(5) SC 321

10. They also relied upon the following judgments about the binding nature of the precedents:

- i. Vijay Laxmi Sadho Vs. Jagdish 2001 AIR (SC) 600
- ii. Legal Maxims The Mode of Administerin G. Justice.P.No. 81-83
- iii. Central Board of Dawood Bohara Community and Anr. Vs. State of Maharashtra and Anr. 2005(2) SCC 673
- iv. Indian Council of Agricultural Research & Anr. 144 (2007) DLT 81 (DB)
- v. Amulya Kumar Dutta Vs. Union of India 1993(1) CHN) 159
- vi. Shri Utpal Mishra, AIR Customs Officer, I.G.I. Airport, New Delhi Vs. Mr. Nicelai Christen 1997 ILR (1) DEL 650
- vii. Srinivasan Vs. Sri Madhyarjuneswaraswami 1998 (1) CTC 630
- viii. Jabalpur Bus Operators. Associatin Vs. State of M.P. 2003 (1) M.P.L.J. 513
- ix. Keva Mukherjee Vs. Magma Leasing Ltd. and Anr. 2008(8) SCC 447
- x. Dr. Pannkkal Mohamed Basheer Vs. Union of India and Ors. 1993 ILR (2) DEL 488
- xi. Union of India and Anr. Vs. Raghubir Singh (Dead) by LRS. ETC 1989 SCC (2) 754

11. However, respondent/CBI strongly opposed the request made by the petitioner for quashing of the FIR. It is their case that the FIR was registered on the basis of source information which revealed that the petitioner got the loans on the basis of Hire Purchase Agreement of certain machinery twice, but he never purchased such machinery and in fact, showed fabricated documents regarding the purchase for showing compliance of the conditions of the grant of loan. It is also their case that the petitioner and other Directors of the company also defrauded public authorities in claiming depreciation on non-existent machinery and in this manner has cheated the public exchequer to the tune of crores of rupees. In this manner, the petitioner along with others have committed various offences under Section 120-B read with 420/467/468/471 of IPC and, thus, it is not a case where the

proceeding can be quashed only on the basis of repayment of loan obtained from the bank along with interest as is claimed by the petitioner.

12. It is also contended by the CBI that the judgments cited on behalf of the petitioner, are of no help to the petitioner in the facts of this case. On their part, they have relied upon the following judgments:

- i. State of M.P. Vs. Rameshwar & Ors. JT 2009 (5) SC 171
- ii. Rumi Dhar Vs. State of West Bengal Crl.App.No. 661/2009 decided on 08.04.2009.
- iii. Devender Singh & Ors. Vs. State & Anr. and J.K.Singh & Ors. Vs. CBI & Anr. (Crl.M.C.1304/2004 & Crl.M.C.No.6389/2006), both cases decided on 23.05.2008.

13. The questions which arise for consideration in this case is as follows:

- i) Merely because the company of which the petitioner is a Director has repaid the loan amount to the PSB from where they took a loan for the purpose of purchasing machinery but did not purchase the machinery and claimed depreciation in their income tax returns on the basis of fabricated documents of purchase are entitled to get the proceedings quashed even though FIR has been registered by the CBI and not at the instance of PSB and involves cheating of public authorities and in addition to the offence under Section 420 IPC also makes out case against the petitioner under Section 467, 468, 471 read with Section 120 B of the IPC on account of fabrication of documents and using forged documents as genuine.

- ii) Whether the judgment given in Nikhil Merchant's case (supra) is applicable to the peculiar facts of this case, which judgment has been delivered by taking into consideration Clause 11 of the consent terms which was entered into between the appellant in that case with the Andhra Bank as well as in the light of subsequent judgment delivered by the Apex Court and this Court in the case of Rumi Dhar and Devender Singh & J.K.Singh (Supra) respectively.

14. The judgment delivered in the Nikhil Merchant's case (supra) proceeds on the basis of an agreement which was entered into between the financial institution and the appellant in that case of which Clause 11 of the consent terms reads as under:

Clause 11. Agreed that save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter allegations made against each other.

15. The relevant observations made in the aforesaid case are reproduced hereunder:

30. 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?

31. 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.

16. A bare perusal of the aforesaid judgment goes to show that the criminal proceedings have been quashed as parties settled the dispute in the light of Clause 11 of the consent terms as aforesaid.

17. However, the facts in the present case are entirely different inasmuch as:

- i) In the present case the Bank has not joined the petitioner.
- ii) It is not a case where the question of only repayment of loan was the subject matter of the FIR registered against the petitioner but the FIR proceeds on the basis of
 - a) fabrication of documents by the petitioner to show that they purchased the machinery without purchasing the machinery for which loan was obtained from the Bank in this case.
 - b) Showing the machinery in existence in their balance sheet and thereby claiming depreciation of non-existent machinery.
 - c) Claiming rebate in the tax payable to the income-tax authorities on the basis of depreciation claimed by way of MAT to the tune of crores of rupees by fraudulent acts and deeds.
 - d) CBI is opposing the petition tooth and nail on the aforesaid grounds.

18. It would also be relevant to take note of the judgment delivered by a Learned Single Judge of this Court in Devender Singh's case (supra). In the said case facts were as under:

2.1. The facts relevant for this petition are that an FIR No. 376 of 2000 was registered at Police Station Azad Nagar pursuant to a complaint dated 29th May, 2000 by one Mr. K.D. Tandon who was running the business in the name and style of Krishna Motors at Sanjay Gandhi Transport Nagar, Delhi. Mr. Tandon stated that he got

introduced to the Petitioner Mr. Devender Singh @ Babboo during his visit to the Azadpur Mandi for work. The petitioner assured Mr. Tandon that if moneys were invested with him, the petitioner would pay interest well above the normal rate. He also assured Mr. Tandon of the safety of the money by representing that his father and he himself were in the business of financing transporters had their own trucks and enjoying a good reputation. Mr. Tandon was shown post dated cheques issued by certain transport companies as well as invoices and transport documents. On the basis of this assurance, Mr. Tandon and his relatives invested a large sum with the petitioner for which they were issued receipts by the petitioner.

2.2 After Rs. 16 lakhs invested by Mr. Tandon and his relatives was unable to be realized, they realized that they had been cheated. When Mr. Tandon went to the address given in the receipt purportedly issued by one of the transport companies, he found that no such company was in existence. It also transpired that the cheques issued in favor of the complainant by the transport companies were fake since no such companies were in existence. The petitioner had opened accounts in his own name, in the name of his friends, and in the names of the fictitious companies and deposited the moneys collected from the complainants and others. During the course of investigation, an FSL report was obtained which confirmed that the receipts and cheques issued were forged by the petitioner. A large number of investors were thus cheated and accordingly a charge sheet was filed.

2.3 During the pendency of the proceedings, the petitioner settled the disputes with each of the complainants and paid them the amounts pursuant thereto. Enclosed with the petition are the affidavits of each investor or complainant acknowledging receipt of the amount and stating that the complainant is not interested in pursuing the criminal proceedings. A copy of a letter dated 9th September, 2000 written by Mr. Tandon to the police seeking the dropping of the criminal proceedings in FIR No. 376 of 2000 against the petitioner has been produced. The petitioner has also filed an additional affidavit dated 9th October, 2006 giving the details of the settlements between him and the complainants.

19. In the aforesaid case the learned Single Judge opined as under:

18. The question really is where does one draw the line when it comes to quashing cases involving non-compoundable offences. Despite the unanimity in the decisions that a case involving the offence of rape ought not to be quashed under Section 482 CrPC, this Court is very often approached by accused with petitions under Section 482 for quashing of cases involving such offence on the ground that the victim and the accused are happily married. In fact the victim joins the accused as a co-petitioner in such cases. Can it be said that for peace and harmony in society such cases must be quashed? Is that then the 'common sense' approach? These are

uncomfortable but relevant questions. How far can the court go along with the 'common sense' plea which if taken to its logical end might well include all kinds of offences. One of the purposes for prescribing punishments for crimes is that it serves to deter specifically the accused involved and generally other potential accused from committing similar crimes. By quashing cases like the present, this purpose may be defeated. Also, by widening the scope in this manner, much will depend on the individual outlook of judges as to when to exercise the power to quash. That in turn makes such decisions vulnerable to challenge on the ground of arbitrariness. This Court while exercising its powers under Section 482 is also required to account for the public policy compulsions involved in continuing to treat the offences under Sections 468 and 471 IPC as non-compoundable. In the mass of judicial orders where the power under Section 482 CrPC has been exercised to quash proceedings involving non-compoundable offences, the principle on which to base such decision remains elusive.

20. The ultimate question in each of these cases is whether in the facts and circumstances, the proceedings should be quashed or not. To recapitulate, one of the cases involves creating false receipts in the names of fictitious transport companies and getting cheques issued by such fictitious entities, the second involves tampering with the date of the cheque and the third involves forging receipts and invoices by using white fluid. These are cases involving cognizable offences. The dispute may be characterised as a 'private' one but it cannot be said that the offence is one that does not concern the society. One of the cases involves a 'public financial institution.' In each there is an FSL report being relied upon by the prosecution in support of its plea that the offences can be proved irrespective of the evidence of the complainant who may no longer support the prosecution. In one of the cases, the accused has 'settled' the dispute with several persons apart from the complainant. Quashing such a case will defeat the purpose of the probable conviction and punishment acting as a deterrent either specifically or generally. Finally, this Court is unable to overlook the fact that the categorization of certain kinds of offences relating to "Documents and Property Marks" separately in Chapter xviii and their classification as cognizable and non-compoundable is informed by public policy as acknowledged by the legislature.

21. It was submitted by counsel for the petitioners that the evidence that emerges during the trial may well falsify the FSL report; or it may show that the accused was in any event not the person who committed the forgery. That may well be, but equally, it may not. It is not possible to anticipate at this stage which way the trial will go. The question at this stage is whether it can be said that going to trial in these cases is a waste of time and an exercise in futility. In the considered view of this Court it is not possible to come to such a conclusion at this stage in any of the three cases.

22. This Court is therefore unable to accept the plea in each of these cases for quashing of the proceedings

on the basis of the settlement arrived at between the accused and the complainant. It is clarified that any observation made hereinabove touching upon the merits of the cases is not intended to influence the decision to be arrived at by any other court at any stage of the proceedings hereafter.

20. The aforesaid judgment was challenged by the petitioners and came up for consideration before the Hon'ble Supreme Court on 03.12.2008. The SLP filed against the said judgment was dismissed on the same day.

21. The judgment delivered in the cases of Devender Singh and J.K. Singh (supra) has dealt with the specific situation which came up before the Court in that case and the Court was not inclined to quash the proceedings, which approach has not been found wrong by the Apex Court. It is true that the judgment of the Apex Court in this case is a dismissal in limini but the reasoning given by the learned Single Judge applies with full force to the facts of this case.

22. It may also be observed that the judgment delivered by the Apex Court in Nikhil Merchant's case (supra) came up for consideration and discussion before the Apex Court in the case of Smt. Rumi Dhar (Supra). In the peculiar facts of that case, it was observed:

17. Appellant is said to have taken part in conspiracy in defrauding the bank. Serious charges of falsification of accounts and forgery of records have also been alleged. Although no charge against the appellant under the Prevention of Corruption Act has been framed, indisputably, the officers of the bank are facing the said charges.

18. It is now a well settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan, criminal offences have been committed by the persons accused thereof including the officers of the bank, criminal proceedings would also indisputably be maintainable. 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 the Indian Evidence Act.

19. The judgment in the civil proceedings will be admissible in evidence only for a limited purpose. 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. The CBI has not filed any application for withdrawal of the case. Not only a charge sheet has been filed, charges have also been framed. At the stage of framing charge, the appellant filed an application for discharge. One of the main accused is the husband of the appellant. The complicity of the accused persons was, thus, required to be taken into consideration for the purpose of determining the application for discharge upon taking a realistic view of the matter. While considering an application for discharge filed in terms of Section [239](#) of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.

23. In the aforesaid judgment, Nikhil Merchant's case (supra) has also been specifically discussed and distinguished. The relevant paragraphs from the said judgment are reproduced hereunder:

22. It has not been argued before us that the learned Judge, in arriving at the said opinion, committed any error of law or the same otherwise suffers from any illegality so as to enable the High Court to interfere with the same matter. A prima facie case has been found out against the appellant. There is no error apparent on the face of the record warranting interference therewith.

Strong reliance has been placed by Mr. Rai on a decision of this Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta [1996 SCC \(cri\) 1045](#), wherein this Court held:

26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of Bhajan Lal (supra), P.P. Sharma (supra) and Janta Dal (supra), since relied on by Mr. Tulsi, the guiding principles in

quashing a criminal case have been indicated.

It was furthermore observed:

27. In the instant case, a serious dispute has been raised by the learned Counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section [405](#) I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section [405](#) I.P.C. is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section [405](#) I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the Respondents moved the High Court only in 1991 although the first FIR was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the purpose of framing the charge.

This is also not a case where unlike Duncans Agro Industries, no case of criminal breach of trust had been made out.

Our attention has also been drawn to a recent decision of this Court in Nikhil Merchant v. Central Bureau of Investigation and Anr. [2008 \(9\) SCC 677](#), wherein this Court refused to refer the matter to a larger Bench, stating:

30. 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?

31. 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.

23. The jurisdiction of the Court under Article [142](#) of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstance of each case. 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 charge.

24. Counsel for the petitioner has contended that the judgments relied upon by the respondents are subsequent to the judgment delivered in the case of Nikhil Merchant's case (supra) and thus, cannot be looked into as these judgments have been given by Coordinate Bench and in view of the judgment delivered by the Constitutional Bench of Hon'ble Supreme Court in the case of Central Board of Dawoodi Bohra Community and Anr. Vs. State of Maharashtra and Anr. (2005) 2 SCC 673 the previous judgment would hold the field.

25. In this regard, it can simply be observed that this argument has no legs to stand in the present case for the following four reasons:

- I. Because in the case of Nikhil Merchant (Supra) the Court proceeded on the basis of a specific Clause in the agreement granting finance by the lender Bank to the appellant/ accused in that case which provided for an amicable settlement which was entered into between the parties in that case and was the basis of quashing of the proceedings.
- II. The Bank was the complainant.
- III. In the present case the complainant is not the Bank but it is CBI, who are opposing the petition.
- IV. The subsequent judgment delivered in the case of Rumi Dhar (supra) has also discussed/ distinguished the judgment delivered in the case of Nikhil Merchant (supra) in the peculiar facts of that case and, therefore, merely because the petitioner has repaid the loan amount along with interest he is not protected by the law laid down in Nikhil Merchant's case in view of the facts of the present case before us.

26. At this juncture, it may be observed that there are judgments delivered even prior to Nikhil Merchant's case which have taken a similar view as has been taken later on in Rumi Dhar's case (supra).

For the sake of reference, the relevant observations made in these judgments are as under:

- i. Vishwa Nath Vs. State of J&K 1983 SCC (Crl) 173
- ii. Inspector of Police, CBI Vs. B. Rajagopal & Ors. 2002 (9) SCC 533
- iii. Jugal Kishore Sharma Vs. State & Ors. 1(2008) DLT (Crl.) 900
- iv. Rashmi Aggarwal Vs. CBI 2005 (83) DRJ 153

i. Vishwa Nath v. State of J & K, (1983) 1 SCC 215,

6. We do not consider it necessary to refer to any decision. The facts and circumstances of this case clearly establish that there was embezzlement of the government money by the accused, inasmuch as the accused had put to personal use the government money entrusted to him, instead of depositing the same in the proper place. The fact that the accused refunded the amount when the act of his defalcation came to be discovered, does not absolve him of the offence committed by him. The accused happened to be a public servant of the Police Department and was posted as Naib-Courty. He was entrusted with the amount seized in two cases FIR Nos. 16 and 17. In complete violation of the directions of law he had failed to send the amount to Sadar Courty, Udhampur and with criminal intention he had not made any entry of the money in Rahdari Register, while he made its entry in the Malkhana Register No. 1, so that his misappropriation of the amount might not be detected by anybody. He committed criminal breach of trust with respect to this money over which he had complete dominion by putting the same to his use between February 7, 1972 to August 8, 1972. The refund of the amount after detection does not absolve him of the offence.

7. The appeal fails and is hereby dismissed.

ii. Inspector of Police, CBI v. B. Raja Gopal, (2002) 9 SCC 533,

2. When a trial was in progress and reached almost the penultimate stage the High Court stepped in and quashed the criminal proceedings. The aggrieved State has come up with this appeal. The case involved offences under Sections 420, 468 and 471 IPC etc., on the allegation that Canara Bank was defrauded. One of the premises adopted by the High Court was that there was a compromise between the bank officials and the accused and the disputed amount found due from the accused had been paid later. Even assuming that the said stand of the accused is correct, that was not enough for quashing the criminal proceedings. Perhaps that would have been a ground for pleading mitigation at the final stage.

3. Mr Natarajan, learned Senior Counsel contends that even apart from the payment made the accused is able to establish that there was neither any intention to cheat nor was there any act of forgery. These are matters for the trial court to reach when the final conclusion is made. We do not express any opinion on these aspects on merits.

4. Nonetheless, we are of the view that the premature quashment made by the High Court is not in accordance with law. We, therefore, allow this appeal and set aside the impugned judgment.

5. We direct the trial court to proceed with the trial, and complete the examination of the remaining witnesses. The case shall be disposed of as expeditiously as possible.

iii In *Rashmi Agarwal And Ors. Vs. The Central Bureau Of Investigation* reported in 2005 VII AD (DELHI) 119

8.It is further to be noticed that although the bank has received its dues from M/s.Vikram Enterprises or from the guarantor, Mr.Neeraj Jain, there is no compromise between the parties in respect of the criminal case. The bank is the trustee of the public money and it cannot be heard to make a request for excusing conspirators in the offence against it. The case of B.S.Joshi and Others Vs. State of Haryana & Anr. reported as (2003) 4 SCC 675, which is cited by the petitioners cannot come to their rescue in any way. *(the judgment in the case of B.S. Joshi referred herein above was followed in Nikhil Merchant's case)*

iv. In *Jugal Kishore Sharma Vs. State and Ors. Crl. M.C no. 5480/2005 decided on 15.01.2008 by this court wherein it was held:*

16.This court cannot be unmindful of the fact that in criminal cases there are only two parties, viz., the accused and the State. When one of the parties i.e. State is not agreeable to the quashing of the proceedings, and the evidence that has been gathered supports the continuation of the trial for the offences of forgery and use of forged documents under Sections [468](#) and [471](#) IPC respectively, it would not be appropriate for this Court to exercise its jurisdiction under Section [482](#) CrPC to quash the criminal proceedings only on the ground that the accused and the complainant have settled their disputes. While each case has been to be examined for its peculiar facts, the larger interests of justice and the rule of law will also have to be borne in mind. The offence of forgery is not merely against the party who is misled as a result of the use of such forged document but against the State as such.

17. For the aforementioned reasons, this Court finds merit in the objection raised by learned APP for the State to the quashing of the criminal proceedings in this case. Accordingly, the petition stands dismissed and the pending application stands disposed of.

27. In view of the aforesaid, there is no need to discuss other

judgments cited by the petitioner. It will, however, be appropriate to take note of a recent judgment delivered by the Apex Court in the case of **CBI Vs. A. Ravi Shankar Prasad & Ors. in Crl.App. 1080-85/2009 decided on 15.05.2009**, wherein the judgments delivered in the case of Nikhil Merchant and Rumi Dhar (supra) have been discussed relying upon the judgment delivered in the case of Rumi Dhar (supra), it is held:

43. In our considered view it was extremely unfortunate that the High Court in the impugned judgment has erroneously invoked inherent power of the Court under Section 482 of the Code of Criminal Procedure. The High Court ought to have considered the entire material available to establish a case against the respondents under Section 120-B read with Section 420 IPC. It is significant that the respondents and the other bank officials share the charges under Section 120-B read with Section 420 IPC. Quashing the charges against the respondents would also have very serious repercussions on the pending cases against the other bank officials.

46. Before parting with the case we would like to observe that mere re-payment of loan under a settlement cannot exempt the accused from the criminal proceeding in the facts of this case.

28. In view of the aforesaid, both the issues explained by me in para 13 of the aforesaid judgment are decided against the petitioner and it is held that:

- i) In the peculiar facts, the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Section 482 Cr.P.C.
- ii) The judgment delivered in Nikhil Merchant's case (Supra) is not applicable to the facts of this case in view of the subsequent judgment delivered by the Apex Court in Rumi Dhar's Case (Supra) where in the judgment delivered in the Nikhil Merchant's case has been specifically distinguished

in view of clause 11 of the Consent Agreement between the borrower and the Bank.

29. Consequently, the petition filed by the petitioner seeking quashing of the proceedings in this case is DISMISSED with costs of Rs.25,000/-. Parties to appear before the trial court on 26.05.2009.

Crl.M.A.14287/2008 (Stay)

In view of the orders passed above, this application also stands dismissed.

MOOL CHAND GARG, J.

MAY 21, 2009
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