HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.805 of 2013

ORDER:-

The revision case is filed against the orders of the learned Special Principal Special Judge for CBI Cases, Hyderabad, in Crl.M.P.No.1321 of 2007 in C.C.No.57 of 2005, dated 11-03-2013, by and under which, the learned Judge has dismissed the petition filed by the petitioner/A.5 for discharging him of the offences punishable under Sections 120-B, 419, 420, 467 and 471 of I.P.C., and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

2. The facts are as under:-

The respondent/complainant filed the charge-sheet against the petitioner showing him as A.5. The non-petitioners/A.1 to A.4 in the charge-sheet are the then Senior Manager and Assistant Manager of Punjab National Bank (A.1 and A.2), one Cherukuri Sridhar said to be the proprietor of M/s.Ismit Poly Clinic and Lab Services (A.3) and one Jagannadha Rao (A.4).

Briefly stated, the allegations are that the non-petitioners/A.1 and A.2 conspired with the non-petitioner/A.3 in the sanction of a permanent loan of Rs.10 lacs and cash credit of Rs.15 lacs based on two forged collateral securities and allowed the non-petitioner/A.3 to divert the funds and thereby caused loss of about 33.61 lacs to the bank. The non-petitioner/A.3 has furnished forged sale deeds as security. A.1 to A.3 conspired with A.4 and obtained a false valuation certificate from the bank's approved valuer/A.4. Insofar as A.5 is concerned, he is alleged to have issued an invoice for Rs.13 lacs towards sale of medical equipment. The bankers have issued the Pay Order and handed it over to the non-petitioner/A.3 which was deposited in a newly opened bank account of petitioner/A.5. It is also alleged that the non-petitioners/A.1 and A.2 have allowed A.3 to utilize the cash credit.

3. During the pendency of the investigation and the charge-sheet, the admitted fact is that the bankers have filed O.A.No.249 of 2002 before the Debts Recovery Tribunal and the said O.A. was also decreed on 04-11-2004. During the pendency of the said proceedings, A.3 submitted an application for one time settlement. Further, he paid a sum of Rs.10 lacs on 25-09-2005 in addition to Rs.2,05,500/- to the bank against the outstanding loan amount. On 16-01-2007, the Zonal Office of the complainant-bank accepted the offer of the petitioner for one time settlement of Rs.35 lacs. The said amount was paid by A.3 and the complainant-bank has also received the same and addressed a letter dated 14-05-2007 to the Superintendent of Police, Central Bureau of Investigation, Hyderabad, informing that the credit facility availed by A.3 has been closed in their book through the compromise and no dues are pending.

4. In view of the above development, the non-petitioner/A.3 filed Criminal Petition No.1510 of 2009 and by order dated 16-10-2012, this Court has quashed all further proceedings against the non-petitioner/A.3. The relevant portion of the order of this Court reads as under:-

> "The decision relied on by the learned Counsel for the petitioner along with other decisions i.e., **B.S.Joshi and others V. State of Haryana and another (2003) 4 SCC 675)** and **Manoj Sharma v. State and others (2008 (14) SCALE 44)** were placed before the Larger Bench of the Supreme Court for its verdict in **Gian Singh v. State of Punjab and another (2012(9) SCALE 257)**. The Apex Court exhaustively dealt with its earlier decisions on the subject and answered the reference as follows:-
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> > "The position that emerges from the above discussion can be summarized 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. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. 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, decoity 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 overwhelming 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 basically private or personal in nature and the parties have resolved their entire disputes. 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 tentamount 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 the jurisdiction to quash the criminal proceeding."

Further while answering the said reference, the Apex Court opined that the decision relied on by the learned Counsel for the petitioner in **Nikhil Merchant (2008) 9 SCC 677)** cannot be said to be not correctly decided.

In the context of the present law laid down by the Apex Court in **Gian Singh's case,** this Court perused the decision rendered by the Apex Court in **Nikhil Merchant's case.** The facts and circumstances in the case on hand are similar to that of **Nikhil Merchant's case.** In the said case also, the offences are under Sections 120B, 420, 467, 468, 471 IPC., read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the said case, since the *de facto* complainant and the borrower settled the issue, the Apex Court set aside the order of the High Court and allowed the petition filed by the petitioner there to quash the proceedings.

In view of the above, this Court is of the view that the decision of the Apex Court relied on by the petitioner in **Nikhil Merchant's case** squarely applicable to the facts and circumstances of the present case. In view of the settlement arrived at between the parties, the impugned proceedings against the petitioner are liable to be quashed and the same are accordingly quashed."

5. In view of the specific findings of this Court, insofar as the main person viz., A.3 is concerned, virtually nothing remains insofar as the petitioner/A.5 is concerned. Be that as it may, even a perusal of the charge-sheet shows the involvement of the petitioner/A.5 to be far less culpable than the principal borrower/non-petitioner/A.3. Even according to the charge-sheet, all the substantive allegations are made against A.1 to A.3. The non-petitioner/A.4 is alleged to have only given an approval and insofar as the petitioner/A.5 is concerned, he has issued an invoice towards sale of medical equipment said to be worth about Rs.13 lacs and on the basis of the said invoice, the bank has released Rs.13 lacs and handed over the Pay Order to the non-petitioner/A.3. The said amount was deposited in the account of A.5 and subsequently diverted. In view of the above, since all further

proceedings against the principal borrower/non-petitioner/A.3 have been quashed, who, in fact, is alleged to have submitted fake and forged title deeds and the invoice said to have been given by A.5, it will be travesty of justice if further proceedings are allowed to continue against the petitioner/A.5. This Court, in the case referred to above, has relied upon the decision of the Supreme Court and held that in view of the compromise and one time settlement in between the bank and the non-petitioner/A.3, further proceedings against A.3 are liable to be quashed. In that view of the matter, all further proceedings insofar as A.5 is concerned are liable to be quashed.

6. In the result, the Criminal Revision Case is allowed setting aside the order of the learned Special Principal Special Judge for CBI Cases, Hyderabad, in Crl.M.P.No.1321 of 2007 in C.C.No.57 of 2005, dated 11-03-2013 and all further proceedings against the petitioner/A.5 – Lingam Laxmoji Rao are hereby quashed.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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