

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

% *Judgment pronounced on: June 29, 2015*

+ **CRL.M.C. No.5798/2014 & CrI. M.A. No.19744/2014**

SANJAY BHANDARI & ANR Petitioners
Through Mr.K.T.S.Tulsi, Sr.Adv. with
Mr.Suman Kapoor, Mr.Raj Kamal
& Mr.K.Shrivastava, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through Mr.Narender Mann, Spl. PP, CBI
with Mr.Manoj Pant, Adv. for
respondent-CBI, along with
Inspector Mr.R.K.Sangwan, IO in
person.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioner have filed the present petition under Section 482 Cr.P.C for quashing of the proceedings pending against the petitioners, on the basis of settlement arrived at between the petitioners and the complainant bank arising out of R.C. No.4A/94/SIU(X) dated 23rd May, 1994, titled as 'CBI vs. N.Bhojraj Shetty & Ors.', being C.C. No.65/11, pending in the Court of Special Judge (CBI), Tis Hazari Courts, Delhi.

2. Brief facts of the case are that a case RC-4(A)/94/SIU(X) was registered on 23rd May, 1994 on the basis of a complaint dated 20th

May, 1994 of Shri H. Vasant Shetty, DGM, Vijaya Bank, Zonal Office, New Delhi on the allegation that Vijaya Bank, R.K Puram Branch, New Delhi was defrauded to the tune of about Rs.46.99 lac approximately during 1987 to 1990 by the Director of M/s RKB Herbals Pvt. Ltd. in connivance with officers of Vijaya Bank in the matter of obtaining credit facilities to the tune of Rs.1 crore.

PROSECUTION CASE

3. The prosecution's case is that in the revised application, the accused company (A-5) did not disclose that its other unit i.e. Homeopathy unit at New Delhi was availing credit facility with another bank, namely, Indian Overseas Bank, Daryaganj Branch, New Delhi. Both the complainant bank and its officers were fully aware of such credit facilities.

3.1 Prosecution also alleges that co-accused Sh. N. Bhojraj Shetty (A-1), Branch Manager of the complainant bank colluded with (A-5) and released the credit limits without due approvals of the higher authorities of the bank.

3.2 The original application dated 2nd February, 1987 of M/s. RKB Herbals Private Limited was not processed further because of Non Obtention of the opinion of the previous lender i.e. the Indian Overseas Bank and also the fact that its Executive Director Shri Deepak Bhandari was a defaulter in the personal loan taken by him from Vijaya Bank, though Accused No.1 in conspiracy with the petitioners had favourably recommended the loan proposal of M/s. RKB Herbals Private Limited. When the petitioners could not succeed

in getting the credit facilities, they in pursuance of the criminal conspiracy submitted another revised loan proposal dated 24th October, 1987 concealing the material fact of having obtained Working Capital facilities from Indian Overseas Bank. In furtherance of the criminal conspiracy, accused No.1 positively recommended the proposal of the petitioners and before the same was approved by the competent authority, he unauthorizedly and fraudulently released ad-hoc credit facilities to the tune of Rs.65 lakhs and thereby exposed the bank without securing its financial interest. In view of these facts, the contention of the petitioners cannot be accepted.

3.3 The petitioner No.1 in his capacity as proprietor of M/s Indian Herbs, 21, Okhla Industrial Area, Phase II, Scheme III, New Delhi-110020, opened a current account bearing No.338 in M/s UCO Bank, Delhi High Court Branch, New Delhi on 23rd March, 1989 and that the firm M/s Indian Herbs was fictitious and non-existent business concern, as the address shown in the said bank account application form was a shed of DSIDC, Okhla, Industrial Area, New Delhi, which was not owned / allotted to M/s Indian Herbs and as per the investigation, this shed was allotted to Sh. Deepak Bhandari (one of the Directors of accused company (A-5), and brother of petitioner No.1, for manufacturing of Homeopathic Medicines and ultimately this shed was then sold to one Sohan Lal Mittal on 6th July, 1989. In short, the prosecution's case in this respect is that no actual business was being run out of the said DSIDC shed during the year 1989 and the said account was opened for realizing payment from the complainant bank. It is further alleged that bogus invoices and hundis

of M/s Indian Herbs were signed by the petitioner No.2 (A-4) as "S. Mehta" and therefore, both the petitioners cheated the complainant bank.

3.4 The Branch Manager (A-1) also failed to adhere to certain written instructions from his supervisors to normalize the account of the accused company (A-5), he allegedly colluded with the accused company (A-5) and its directors for certain pecuniary advantages.

4. In the FIR, it was also alleged that the bank and Directors of the company committed certain forgeries for the purpose of cheating and used forged documents as genuine but after investigation, charge sheet dated 19th December, 1996 was filed by C.B.I, in the Court of Special Judge, Delhi, alleging therein that the bank has been cheated to the tune of Rs.86 Lac by the company due to non-repayment of its loan. On 4th December, 1996, the company and its directors on appearing before the Court denied the charges but without prejudice to the allegations of cheating etc. promised to repay the said loan amount i.e. the so-called cheated amount of Rs.86 Lac in installments and in fact paid/deposited its first installment of Rs.15 Lac with the complainant bank in Court on 20th January, 1997.

5. During the pendency of the aforesaid criminal case and before framing of charge on 12th February, 2004 a settlement/ compromise was arrived at between the bank and the company, whereby a remaining sum of Rs.1.30 crores was paid to the complainant bank in full and final settlement of their claims, which was over and above a sum of Rs.15 lac paid to the bank in the criminal court on 20th January, 1997.

6. Upon receipt of the said sum of Rs.1.30 crores, the bank issued a 'No-Due Certificate', upon which the said suit was disposed off as settled. The relevant portion of the said compromise application filed by the bank before the Debt Recovery Tribunal wherein it was recorded that all disputes, differences, claims, suits, complaints etc. of the applicant bank stand fully settled, adjusted/compounded and the bank is left with no claim, grievance or complaint of any nature whatsoever against either of the respondents.

7. On the basis of the aforesaid settlement/compromise arrived at between the bank and the borrower company, the High Court, by order dated 6th October, 2004 allowed the application of co-accused Shri N.Bhojraj Shetty, Ex-Branch Manager of the complainant bank in his writ petition and directed the bank to release his post-retirement benefits, which the bank had withheld due to the pendency of the departmental enquiry against him, relating to the transactions in question.

8. After the release of aforesaid post-retirement benefits, the bank also withdrew the disciplinary proceedings against the co-accused N. Bhojraj Shetty, leading to the final disposal of his writ petition, vide order dated 18th March, 2005.

9. The trial court, vide order dated 23rd November, 2006 refused to quash the present proceedings against the petitioners on the ground that the power to quash the proceedings on the ground of compromise between the parties are only with the High Court under Section 482 Cr.P.C. and ordered framing of charges against the petitioners.

10. After completion of investigation, the charge sheet was filed on 19th December, 1996 in the court of Special Judge, Delhi against the accused Shri N. Bhojraja Shetty (A-1), Shri Sanjay Bhandari (A-2), Shri Rajinder Kumar Bhandari (A-3), Smt. Sonia Bhandari (A-4) and M/s RKB Herbals Pvt. Ltd. (A-5) for offence punishable under Section 120-B IPC read with 420 IPC and 5(2) read with 5(l)(d) of Prevention of Corruption Act, 1957 ('PC Act') and corresponding Section of 13(2) read with 13(l)(d) of PC Act 1988.

11. The case is pending for trial in the Court of Special Judge, Tis Hazari Court and the charges against the accused persons, viz. Shri N. Bhojraj Shetty, Shri Sanjay Bhandari, petitioner No.1 and Smt. Sonia Bhandari, petitioner No.2 were framed on 2^{3rd} November, 2006.

12. The order on charge dated 23rd November, 2006 of the trial court was challenged by the petitioner No.1 and 2 before this Court by way of Crl. Rev. Nos.856-57/2006. While filing the Revision Petition before this Court, in one of the grounds, it was contended that they had repaid all the outstanding dues of the bank therefore, the proceedings before the trial court be quashed on this ground also.

13. This Court did not find any merit in the said submission and Criminal Revision of the petitioners was dismissed by order dated 6th August, 2007 which was filed mainly against the framing of charge. The said order was challenged by the petitioner before the Supreme Court by filing a Special Leave Petition. However, after hearing the said SLP, the Supreme Court affirmed the order dated 6th August,

2007 of this Court and was pleased to dismiss the petition by order dated 28th September, 2007 the same being devoid of any merit.

14. The trial in the case is in progress before the trial court. IO in the matter is yet to be examined. In the meanwhile present petition was filed which was first time listed before another Bench of this Court who pleased to issue notice on 19th December, 2014 and passed the following orders:-

“This is a petition filed under Section 482 of Code of Criminal Procedure, 1973 seeking quashing of proceedings arising out of RC No.4A/94/SIU(X) dated 23.05.1994 in CC No.65/11 titled as ‘CBI vs. N. Bhojraj Shetty and Ors.’ pending before learned Special Judge (CBI), Tis Hazari Courts, Delhi.

Learned Senior counsel for the petitioners submits that the petitioners have settled the matter with Vijaya Bank and paid the entire amount in terms of settlement. He also submits that a ‘No Dues certificate’ has been issued by the Bank. Relying upon judgment in CBI vs. Narender Lal Jain, Crl. Appeal No.517/2014 arising out of SLP (Crl.) No.6138/2006 decided on 28.02.2014, learned senior counsel for the petitioners contends that the proceedings are liable to be quashed.

Notice.

Mr.Narender Mann, Special PP accepts notice on behalf of CBI and seeks time to file reply. Let the same be filed before the next date of hearing.
Renotify on 18.02.2015 before the Roster Bench.

Till the next date of hearing, the trial court will adjourn the matter to any convenient date after 18.02.2015.”

15. It is contended by the petitioners that the disputes were mainly of civil nature, in which settlement has been arrived between the parties and a consent decree to that effect has been passed under the Civil Procedure Code by the Debt Recovery Tribunal, Delhi, whereunder the complainant bank had exonerated the petitioners herein of any claims of any nature whatsoever. Further the said settlement was made under Reserve Bank of India's OTS Scheme, which Scheme excludes cases of willful default, fraud and corruption.

16. The present petition has also been filed on fresh grounds. The contention of Mr.K.T.S. Tulsi, learned Senior counsel appearing on behalf of the petitioners is that as per recent law laid down by the Supreme Court in the case of **CBI vs. Narender Lal Jain** (2014) 5 SCC 364 and **Nikhil Merchant vs. Central Bureau of Investigation & Anr.**, (2008) 9 SCC 677 and **Gian Singh vs. State of Punjab and Ors.**, 2012 (10) SCC 303. The principle and finding arrived in these cases are fully applicable to the present case. Thus, the present petition on the fresh grounds is maintainable as there is no bar to file the petition due to change of law.

17. Mr.Tulsi submits that in the case of **N.L. Jain** (supra), offences under Sections 120-B/420 IPC and Sections 5(2) read with Section 5(l)(d) of the Prevention of Corruption Act, 1947 corresponding to Sections 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988 were alleged against the accused persons. Despite of the same, Supreme Court quashed the proceedings.

18. Mr.Tulsi further submits in the case of **Nikhil Merchant** (supra), accused persons were charged under Section 120-B IPC read with

Sections 420, 467, 468, 471 IPC read with Sections 5(2), 5(1)(d) of PC Act, 1947 and Sections 13 (2) read with 13 (1) (d) of the PC Act, 1988. Charges are similar to the present case as the substratum of charges against the private individuals in all the three aforementioned Apex Court judgments appear to be of criminal conspiracy to cheat the complainant bank. Charges of forgery are also made out to achieve the said purpose. Substantive offences under PC Act are principally made out against the public servants, who were necessarily bank employees of public sector banks in all the three said cases.

Same is in the case of the present petition where substantive charges are of criminal conspiracy, cheating and forgery. Therefore it is stated that the ratio of the said judgments (quashing the proceedings of criminal conspiracy, cheating and forgery) are accorded their necessary weightage on the ground that the facts and circumstances of the present petition also warrant so.

19. It is submitted by Mr.Tulsi that as the settlement between parties was not a private settlement, and a consent decree was passed as duly satisfied, therefore the reservation of the Supreme Court in the case of **Gopakumar B. Nair v. CBI & Anr.**, (2014) 5 SCC 800 is not attracted in the present case. Per contra, **Gopakumar's** judgment reaffirms the legal position laid down in **Nikhil Merchant** (supra) and **N L Jain** (supra) that the passage of a consent decree in disputes of such nature makes a fit rationale for quashing of proceedings under Section 482 Cr.P.C., as the continuance of such proceedings serve no useful purpose.

20. The prayer is opposed by Mr.Narender Mann, learned counsel for the respondent who states that firstly the petition is not maintainable under Section 482 Cr.P.C. as the allegations made in the charge sheet prima facie discloses the commission of cognizable offences by the petitioners /accused, under Section 120-B IPC read with Section 420, 467, 468, 471 IPC, read with Section 5(1) (d) and Section 5(2) of the P.C. Act, 1947 and Section 13(2) read with 13(l)(d)(ii) of PC Act, 1988 and substantive offences thereof.

21. Secondly, he says that there is no fresh ground available to the petitioner to approach this Court as the similar plea of the petitioner was rejected by this Court. As one of the ground taken by the petitioner before the High Court was that a compromise was arrived at between the Bank and the Company before the DRT wherein the Company paid a sum of Rs.1.30 crores as full and final settlement. The Bank issued "No Dues Certificate". Mere repayment to the bank could not exonerate the petitioners from the criminal proceedings as the offences under the Prevention of Corruption Act and Section 120-B read with Sections 468, 467 and 471 IPC are not compoundable.

22. Thirdly he says that the facts of the instant case do not fulfil the guidelines/parameters defined in Section 482 Cr.PC. as the facts of the present case are similar to the facts in the case of ***State of Maharashtra through CBI v. Vikram Anantrai Doshi and others*** (Criminal Appeal No.2048 of 2014) decided by the Supreme Court of India on 19th September, 2014, wherein all the judgements are discussed and ultimately set aside the order of High Court who

quashed the proceedings on the basis of settlement. He referred the requisite para of the said decision which reads as under:

"It is not such a case where one can pay the amount and obtain a No Dues Certificate and enjoy the benefit of the quashing of the criminal proceedings hypostasis that nothing remains to be done. The collective interest of which the Court is guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or u/s 482 of the Code and quash the proceedings. It is not legally permissible".

23. It is argued that in view of the latest decision of the Supreme Court as mentioned above, the contention of the petitioners does not have any substance.

24. Mr.Mann submits that in the decree passed by the Debt Recovery Tribunal in OA No.200/95 on 12th February, 2004 and "No Dues Certificate" issued by Vijaya Bank on 6th February, 2004, there is no acknowledgement of exoneration of criminal liability of the petitioners. Unlike in **Nikhil Merchant Case** (supra), no conclusion can be reached that the substratum of the charges against the petitioners in the present case is one of cheating nor are the facts similar to those in **Narendra Lal Jain Case** (supra) where the accused was charged under Section 120-B read with Section 420 IPC only. The offences in the present case are serious and they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act. They have also been charged for commission of the substantive offences under Section 467, 468

and 471 IPC. As such the ratio of the cases viz. **Narender Lal Jain** and **Nikhil Merchant** (supra) do not apply to the instant case. The facts of the instant case are more closure to the facts of **Gopakumar B. Nair** case (supra) decided by the Supreme Court on 19th September, 2014.

25. Let me now consider the submissions of rival parties. It is admitted position that the three-Judge Bench of the Supreme Court in the case of **Gian Singh** (supra) who dealt with the issue of quashing of a criminal proceeding on the ground of settlement between an offender and the victim and in this context, it ruled thus as under:-

“**61.** 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 the 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, 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 a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 predominatingly civil flavour stand on

a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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.”

26. In the case of **Narinder Singh & Ors.vs. State of Punjab & Anr.**, (2014) 6 SCC 466 a two-Judge Bench placed reliance on **Gian Singh’s** case (supra) and **Dimpey Gujral v. Union Territory through Administrator** AIR 2013 SC 518 and distinguished the decision in **State of Rajasthan v. Sambhu Kevat**, (2014) 4 SCC 149 and came to hold that in the facts of the said case the proceedings under Section 307 IPC deserved to be quashed. The two-Judge Bench laid down certain guidelines by which the High Courts would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Cr.P.C. while accepting the settlement and quashing the proceedings or refusing to accept the settlement. Some of the guidelines which are relevant for the present purpose are reproduced herein below :-

“(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 dispute 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.”

27. Three Judge Bench in ***Narendra Lal Jain & Ors.***, (supra) it was held that during the investigation pertaining to the culpability of the accused in the crime, the concerned bank had instituted suits for

recovery of the amount claimed to be due from the respondents and the said suits were disposed of in terms of the consent decrees. On the basis of the said consent decrees an application for discharge was filed which was rejected by the trial court but eventually was allowed by the High Court. The charges in the matter were framed under Section 120-B/420 IPC by the learned trial Judge against the private parties. As far as bank officials are concerned, charges were framed under different provisions of the Prevention of Corruption of Act, 1988. Being dissatisfied with the said order, the CBI had preferred an appeal by obtaining special leave and in that context the court observed that the accused respondent had been charged under Section 120-B/420 IPC and the civil liability of the respondent to pay the amount had already been settled and further there was no grievance on the part of the bank. Taking note of the fact that offence under Section 420 of IPC is compoundable and Section 120-B is not compoundable, the Court eventually opined thus:-

“11. In the present case, having regard to the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court had thought it fit to invoke its power under Section 482 Cr.P.C. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 CR.P.C.

it must be remembered that continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C.”

28. In the case of **Vikram Anantrai Doshi** (supra), the Supreme Court distinguished the decision in **Narendra Lal Jain** (supra) by observing that the accused persons were facing charges under Section 120-B read with Section 13(2) read with 13 (1) (d) of the PC Act 1988 and Section 420/471 of IPC and the facts were not similar to the facts in **Narendra Lal Jain** (supra) wherein the accused was charged under Section 120-B read with Section 420 IPC. The Supreme Court observed as follows:-

“...Though the amount due have been paid the same is under a private settlement between the parties unlike in **Nikhil Merchant** (supra) and **Narendra Lal Jain** (supra) where the compromise was a part of the decree of the Court. There is no acknowledgement on the part of the bank of the exoneration of the criminal liability of the accused-appellant unlike the terms of compromise decree in the aforesaid two cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in **Gian Singh** (supra) (para61) applies to the present case and on that basis had come to the conclusion that the power under Section 482 CrPC should not be exercised to quash the criminal case against the accused, we cannot find any justification to interfere with the said decision.”

29. By following the earlier judgment of Supreme Court in the case of **CBI vs. Jagjit Singh**, reported as (2013) 10 SCC 686 it was held in the case of **Vikram Anantrai Doshi** (supra) that availing of money

from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposit fiscal impurity and, in a way, financial fraud. The *modus operandi* as narrated in the charge-sheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kinds of benefits it cannot be regarded as a case having overwhelmingly and predominanting of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a “no due certificate” and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution or under Section 482 Cr.P.C. and quash the proceeding. It is not legally permissible.

30. I am clear in my mind that if the facts and circumstances in the present case are similar to the case of **Vikram Anantrai Doshi** (supra) then the proceedings are not liable to be quashed. But if the same are similar to the cases of **Narender Lal Jain** (supra) and **Nikhil Merchant** (supra) and the circumstances are distinct, the Court may exercise its discretion.

31. The facts in the case of **Vikram Anantrai Doshi** (supra) are that amount of loan sought was sanctioned on 24th January, 2003 by one Mr.K.K.Aggarwal, General Manager and communicated to the branch. As per the terms and conditions of the said Term Loan, the primary security for the same was the first charge to be created on the fixed assets of the company ranking *pari passu* with the existing Term Lending Institutions. The primary charge for the cash credit and working capital demand loan was the hypothecation of current assets such as stocks, stocks in trade, raw materials and book debts, and, that apart, one of the important terms and conditions was that the CC, WCDL and Term Loan amounts were to be directly paid to the company's account with the UTI Bank and Federal Bank so as to take over the liabilities as well as the securities mortgaged with the two banks. Despite the said situation, the Bank on 29th January, 2003 intimated the sanction to ATCOM, the company in question. It is further demonstrable from the charge-sheet that A-1 and A-2, with the intention to escape personal liabilities, made A-3 and one Mr.Chirag Gandhi directors in ATCOM and got all the loan documents including the Demand Promissory Note (DPN) signed by the said persons.

The following charge-sheet was filed in the said matter before the trial court:

“That, in two of these fictitious companies, viz., M/s Anew Electronics & M/s Covet Securities, Sh. Vikram Doshi (A-1) and Sh. Vineet Joshi, (A-2) were Directors for some period of time. These two companies were maintaining their accounts at United Western Bank. Sh. Vikram Doshi (A-1) was also having his personal account in the same bank. From these two Accounts Sh. Vikram Doshi had received a sum of Rs.1,48,50,000/-. This amount was utilized by him towards purchase of residential flat. Thus it is clear that the accused persons under the garb of business requirements had obtained credit facilities from the bank but had utilized the funds for acquiring immovable property for personal use. In order to clear the liability generated because of such illegal acts, they had induced the Bank of Baroda to sanction the credit facilities, which facility was dishonestly used by them. The entire amount sanctioned and released by the Bank of Baroda is outstanding and nothing has been repaid. Because of the acts of the accused, the facilities sanctioned by the Bank of Baroda are rendered without any securities and the bank has thus suffered wrongful loss.”

It was observed by the Court that from the charge-sheet that though the accused A-1 and A-3 knew that the said Working Capital was sanctioned only for the purpose of taking over the liabilities of UTI Bank and Federal Bank yet they dishonestly diverted the funds to SBI and Dena Bank. The sanctioned money, as alleged, was not used for the purpose it was availed of and the sanction terms and conditions were violated as a consequence of which the Bank could not get the charge in *pari passu* with the other consortium Banks. The

said diversion of funds by A-1 and A-3 deprived the Bank of its security and the entire loan became unsecured.

32. The petitioners alleged that the real facts are that Late Dr. Rajinder Kumar Bhandari (A-3) was a highly renowned doctor of homeopathy in the city of Delhi. In pursuance to A-3's name and recognition of being the leading practitioner of homeopathy, and to meet the growing demand of homeopathic medicines, sometime during the late 1970s he started a business concern by the name R.K. Bhandari (Homeopath) Pvt. Ltd. to manufacture and sell homeopathic medicines. The said homeopathy unit was located at E-47/II, Okhla Industrial Area, Phase II, New Delhi. Later i.e. in the year 1985 the said company added an herbal unit to its business by setting up a manufacturing unit in Parwanoo (Himachal Pradesh). Later on, the same company came to be known as RKB Herbals Pvt. Ltd.(A-5), with two business units, namely, the Homeopath Unit located in Okhla Industrial Area, Delhi and Herbal Unit located in Parwanoo, Himachal Pradesh.

33. The relationship of the accused company with the complainant bank dated back to year 1982 with the opening of current account. In the year 1987, the accused company (A-5) made a loan application of about Rs.2 Crores for its homeopathy as well as Herbal Unit. The bank for three different reasons deferred this application, notably that there was a credit squeeze in the bank at that time. About 10 months later, the accused company (A-5) revised the loan application to Rs.1 crore, only for its herbal unit. The bank upon fulfilment of certain conditions on part of the directors of the accused company (A-5)

(such as, canvassing a deposit of Rs.2 Crores), first released an ad-hoc limit of Rs.65 Lacs, and later-on released the balance limit of Rs.35 Lakhs. The complainant bank, thereafter, enhance the limit of A-5 from time to time and the last limit was enhanced to more than Rs.2 crores and thereafter the proposal to enhanced the limit of A-5 was referred to the Board of Directors of the bank for their approval.

34. It is the case of the petitioners that sometime during the subsistence of the credit facilities, the Herbal Unit of the accused company suffered some losses due to operational difficulties namely, the technical failure of the spray system, due to which some of the Unit's produces were rejected by its buyers. This technical fault had a cascading effect on the overall Unit. As per the admitted documents of the complainant bank, the Unit mainly suffered because of the overambitious approach of the promoters, cost-overrun, inadequate investment, and diversion of funds for product promotions, advertisements etc. These problems eventually led the Herbal Unit to be shut down, and the accused company (A-5) became sick.

35. The petitioners have placed on record the following relevant dates and events for the convenience of this Court. The same are given as under :

- i) 13.03.1982 Current account No.622 was opened by accused company with the complainant Bank, wherein, it was clearly mentioned that the company, which at that time had only Homeopathic Division at Okhla Industrial Area at New Delhi was already enjoying credit facilities from M/s Indian Overseas Bank.
- ii) 1985 Accused Company expanded its business by establishing a herbal unit for manufacturing of herbal medicines at Parwanoo (Himachal Pradesh)

and later-on changed its name to M/s R.K.B. Herbals Pvt. Ltd.

- iii) 30.01.1987 The accused company, vide its first loan application dated 30.01.1987 applied loan from the complainant bank to the tune of Rs.204 Lacs for both its unites i.e. Homeopathic Division at New Delhi and Herbal unit at Parwanoo and disclosed the fact of its already availing credit limit from I.O. Bank for its Homeopathic Division.
- iv) 26.02.1987 First Loan proposal was deferred by the complainant bank, primarily on the ground that at that time there was credit squeeze in the bank.
- v) 24.10.1987 Second loan application dated 24.10.1987 was submitted to the complainant bank, wherein, the loan requirement for the herbal unit was reduced to less then half i.e. only Rs.100 Lacs (one crore) and in this loan application, the loan was applied only for Herbal unit at Parwanoo, which was not availing credit limit from any bank. However, this fact that the Homeopathic Division at New Delhi was already enjoying credit facility from I.O. Bank was known to senior officer of the bank, as the same was very much within the knowledge of the bank and was disclosed to them earlier on many occasions. Since in this second loan application, the request for loan was only for Herbal Unit, therefore, the fact that the company was enjoying credit facility for its homeopathic Division was not specifically mentioned. This according to the C.B.I, is concealment of material fact, constituting an offence of cheating against the accused company.
- vi) 26.10.1987 A note dated 26.10.1987 was prepared and signed by the Branch Manager, Divisional Manager and Asstt. General Manager and was put up before the Executive Director of the bank for his approval of the said loan to the company.
- vii) 27.10.1987 and November, 1987 The executive director approved the grant of ad-hoc limit of 65 lacs to be released to the company, subject to its bringing 2 crore as deposit for the Bank. Admittedly, by November, 1987, the directors

of the company were able to arrange this deposit of Rs.2 cores for the complainant bank.

- viii) 24.11.1987 After the directors of accused company were able to arrange Rs.2 crores as deposit for the bank, the ad-hoc credit limit of Rs.65 lacs was released.
- ix) 24.05.1988 The credit facility to the company was enhanced from Rs.65 Lacs to One Crore.
- x) 01.03.1989 The said enhanced credit limit of Rs.1 Crore was further enhanced to Rs.1.45 Crores.
- xi) 20.10.1989 Divisional manager of the bank put up a note dated 20.10.1989 before the chairman and managing director of the bank, in which it is mentioned that the credit limit of the company was enhanced from Rs.1.45 crores to 1.93 crores, and thereafter, it was further enhanced to more than 2 crores and therefore, the proposal to enhance the credit limit was referred to the Board of Directors of the bank for their approval. In this note dated 20.10.1989, the Div. Manager has clearly stated that the project has failed, mainly on account of cost overrun, lack of experience on part of promoters, over ambitious approach inadequate investment and diversion of finance for product promotion expenses etc. and recommended further funding of Rs.110 Lacs, reinstatement of OLCC limit of Rs.70 Lacs, reinstatement of the DBD limit of Rs.25 Lacs and temporary loan of Rs.30 Lacs and referred the proposal for approval of the board.
- xii) 17.03.1990 Memorandum for board of directors of the bank was prepared in which it is clearly mentioned that (i) the bills which were discounted were returned unpaid due to defect in the medicine/product, (ii) irregularities in the accounts arose due to non-salability of goods / return of goods sold and diversion of funds (for payment of outside creditors, advertisement and publicity charges etc.) (iii) market survey indicated that the existing as well as the proposed products of the unit are acceptable and (iv) concerned branch of the bank was permitted to

rebook the consignments covered under the unpaid DBP's so as to enable the party to reprocess sale of the same and approved the enhancement of credit limit to over 2 crores, vide its proposed resolution dated 06.04.1990. for fourteen months, the proposal for revival of the unit was kept pending with the bank and thereafter, suddenly, bank refused to participate in rehabilitation of the unit and for this reason, the company became sick and could not repay its loan in time, leading the bank to file suit for recovery of loan against the company in June, 1993 and then after about a year of filing of the suit, the present criminal case being R.C. no.4A/194 was registered in May, 1994.

- xiii) 30.06.1993 Recovery suit was filed by the bank against the company and its directors for recovery of loan amount with interest. No allegations of cheating, forgery or criminal misconduct etc. were made either against the branch manager or against the accused company and its directors.
- xiv) 08.07.1993 Order of ex-part injunction was passed by the High Court in the said suit, restraining the company and its directors from selling, alienating, transferring and parting with possession of their immovable properties i.e. factory premises at Parwanoo (H.P.) and their residential house situated at B-217, Greater Kailash-I, New Delhi.
- xv) 22.04.1994 An order of attachment and sale of hypothecated stocks of the company was also passed by the High Court in the aforesaid suit and the bank was allowed to dispose off the hypothecated and pledged stocks. Even directions were given to the bank officials to retrieve the defective goods from the distributors from all over the country for rectification and further sale.
- xvi) 03.05.1995 When complainant bank failed to fully recover the loan amount from the accused company, even after the order of attachment of assets of the company, the bank lodged the present R.C. No.4A/1994 on 03.05.1994 i.e. after about a year of the filing of the recovery suit and after about 7 years of the grant of

loan, alleging therein that the company and its directors have cheated the bank by not repaying its loan, thereby caused wrongful loss to the bank to the tune of Rs.86 Lacs. In the FIR it was also alleged that the bank and its directors committed certain forgeries for the purpose of cheating and used forged documents as genuine but after investigation, CBI in para 25 of its charge sheet found that the said charge of forgery of the purpose of cheating and use of forged documents etc. was not substantiated. The said para 25 of the charge sheet is reproduced here below:-

"25. The allegation regarding forgery for the purpose of cheating and use of forged documents as genuine as contained in the FIR could not be substantiated on account of the non-availability of the documents pertaining to the transportation of goods (Lorry Receipts)"

In the entire FIR there is absolutely no mention of floating of any company by the name of M/s Indian Herbs by Shri Sanjay Bhandari and his wife Smt. Sonia Bhandari. It is not the case of the bank in its FIR that Shri Sanjay Bhandari and his wife Smt. Sonia Bhandari started a fictitious business concern styled of M/s Indian Herbs for realizing payments from Vijaya Bank against bogus hundies (drawee bills) drawn on M/s R.K.B Herbals Pvt. Ltd. In spite of the fact that the FIR is completely silent about Smt. Sonia Bhandari and M/s Indian Herbs, yet Smt. Sonia Bhandari was charge sheeted as one of the accused.

36. Let me now examine the case in hand as per the facts and circumstances available on record. The petitioners and complainant bank reached the aforesaid settlement in accordance with the guidelines of the Reserve Bank of India (RBI) under the One Time Settlement Scheme (OTS Scheme), as stated in paragraph 2 of the Joint Application for settlement filed before the DRT. The RBI, in

consultation with the Government of India, notified the said OTS Scheme (DBOD.BP.BC.65/ 21.04.117/2002-2003) on 29th January, 2003 with the view to give opportunity to the borrowers of all public sector banks to come forward for settlement of their outstanding dues.

The OTS Scheme makes it necessary upon the public sector bank to specifically exclude cases of wilful default, fraud and malfeasance. Para 3 of the said OTS Scheme is reproduced herein below for emphasis;

"The guidelines will not, however, cover cases of wilful default, fraud and malfeasance. The banks should identify cases of willful default, fraud and malfeasance and initiate prompt action against them."

The same provision is repeated in others parts of the OTS Scheme in different words. Suffice to say that the letter and spirit of the OTS Scheme and the intention of Government of India (as the owner share holder) of the complainant bank, in respect of the OTS Scheme is clear; that those accounts that are fraught with complexities of willful default, fraud and corruption (a common parlance nomenclature of the term malfeasance) cannot be brought to avail the OTS Scheme. The borrower company under OTS Scheme is certainly free to make an application for settlement thereunder, but the acceptance of such application would depend only upon the relevant public sector bank, which would be guided strictly by the norms set out therein.

37. After the accused company (A-5) became sick, the complainant bank first filed a suit for recovery against the accused company (A-5) and its directors in May, 1993 as the complainant bank failed to fully recover the suit amount, the bank, as arm twist to recover the suit amount lodged a complaint with the CBI on 23rd May, 1994 i.e. after about eleven months of filing of the aforesaid recovery suit and on the basis of the said complaint, case R.C. No.4A/1994/SIU (X) was registered and after investigation, charge sheet was filed in Court on 19th December, 1996.

38. In the present case, on the application of parties dated 11th February, 2004 under Order 23 Rules 1, 3 and 3A read with Section 151 CPC, the judicial forum has already passed a decree of settlement between the parties, no dispute between the parties shall remain; in three documents, namely; a) the aforementioned joint application for settlement filed with the DRT; b) the No-Due Certificate dated 6th February, 2004 issued by the complainant bank, and filed with the DRT; and c) the decree of the DRT dated 12th February, 2004.

39. The settlement arrived at between the parties was a part of the decree of the Civil Court (it being the Debt Recovery Tribunal) who is the Forum empowered to adjudicate matters involving debt owed to financial institutions. The consent decree was passed as duly satisfied as recorded.

40. In the case decided by the Supreme Court in **CBI vs. Duncuns Agro** reported in 1996 (5) SCC 591 it was held that once a compromise has been made, and the complainant bank received its

outstanding sums in full and final settlement, no purpose would be served by the prosecution, and the continuing of the prosecution will be an abuse of the process of law and hence powers under Section 482 Cr.P.C. will have to be exercised and, the accused ought to be discharged.

41. In his individual capacity, petitioner No.1 herein, namely Shri Sanjay Bhandari has been charged under Sections 420 and 471 IPC. In her individual capacity, petitioner No.2, namely Smt. Sonia Bhandari has been charged under Sections 420, 467, 468 and 471 IPC. The accused bank employee (public servant) being accused No.1 in the trial, together with the petitioners who are accused No. 2 and 4, have been together charged under Sections 120-B IPC, read with Section 420, 467, 468, 471 IPC read with Section 5 (1) (d) punishable under Section 5 (2) of Prevention of Corruption Act, 1947 and Section 13 (1) (d) (ii) punishable under Section 13 (2) of Prevention of Corruption Act, 1988.

42. The question that comes to require consideration is, whether the complainant bank acknowledged the exoneration of the criminal liability of the accused company? The answer appears to be clearly yes. This is evidenced both in letter and conduct of the complainant bank. Reliance is placed on the No-Objection Letter, and also the Joint Application before the DRT more fully enunciated in Para 4 (d) above. Further reliance is placed on the OTS Scheme under which the settlement was drawn up, which by its very nature excluded any accounts relating to wilful defaults, fraud and corruption. From the year 1994, when the complainant bank filed the criminal complaint

with the CBI, till the time of driven settlement with the accused company in 2004, a significant time of almost a decade had past. It is during this period during which both by the letter and conduct of the complainant bank, it has exonerated and released the accused company of all liabilities and claims.

43. It is stated in the settlement application before the DRT that the said settlement was made within the scheme of the OTS. By executing the settlement application within the OTS Scheme, the complainant bank has not only intended to compound the alleged offences, but also given up its criminal complaint, which was initiated by the CBI on the behest of the complainant bank. The observation in **Gopakumar Nair's** case, such compounding and giving up on criminal complaint on part of the complainant is relevant when examining an application under Section 482 Cr.P.C. to quash proceedings. The relevant observation of the Supreme Court in **Gopakumar Nair** (supra) is reproduced herein below for emphasis:

"Though the amounts due have been paid the same is under a private settlement between the parties unlike in Nikhil Merchant and Narendra Lai Jain where the compromise was a part of the decree of the Court. There is no acknowledgement on part of the bank of the exoneration of the criminal liability of the accused - appellant unlike the terms of compromise decree in the aforesaid two cases."

44. Para. 6 of the Joint Application is reproduced below:

"6. That with the said payment, all disputes, differences, claims, suits, complaints etc. of the applicant bank stands fully settled, adjusted/compounded and the applicant bank

is left with no claim grievance or complaint of any nature whatsoever against either of the respondents."

The relevant portion of the 'No Due Certificate' is as under:

"We hereby state that we have no claims of any kinds whatsoever against M/s RKB Herbals Private Limited and its directors namely Mr.Sanjay Bhandari, Mr.Deepak Bhandari & Mrs.Nirmala Bhandari."

The relevant extract from the consent decree of the DRT is as under:

"Accordingly, in view of the aforesaid the instant OA stands disposed off as having been duly satisfied in terms of the compromise and the aforesaid IA shall remain part of these proceedings."[Emphasis Supplied)

45. It is submitted by Mr.Tulsi that as per complainant only A-1 has been made accused in the said criminal complaint, even though trial evidence would show that the said accused 1 was not the eventual approval authority and instructions for the approval, continuance and further increase in the said credit facilities were coming from the Zonal Manager, Executive Director up to the Chairman of the complainant bank. The Executive Director of the complainant bank made the first approval of the said credit facilities, after the approval from Divisional Manager and Asstt. General Manager. However, none of the said approving higher officers of the bank have been charged.

46. In this respect, the observation of the Supreme Court in ***Duncans Agro*** (supra) becomes pertinent to reproduce :

"In the facts of the case, it appears to us that long after the completion of civil suits, the further investigation in connection with the complaints may not be expedient. It may be noted that the opinion given by the Senior Manager (Legal) that the credit facility given to DAIL for its tobacco division should be transferred to the newly formed Company, namely, New Tobacco Company Limited, it cannot be held to be per se mala fide or illegal in view of the provisions of Section 394 of the Companies Act, 1956. The apart, the legal opinion of the said Senior Manager (Legal) was placed for consideration by the highest administrative body of the Bank, i.e. the Board of Directors and the decision was taken by the Board that the credit liability which stood in favour of DAIL should be transferred in favour of New Tobacco Company Limited. In the aforesaid circumstances, it appears to us that even if Senior Manager (Legal) or any other officer of the Bank had not acted properly, in view of the fact that the ultimate decision as taken by the Board of Directors, it cannot be reasonably held that some of the officers of the bank connived and misled the Board. It may be noted that no allegation has been made against the members of the Board."

[Emphasis Supplied]

47. Mr. Tulsi submitted on behalf of the petitioners that in the examination-in-chief stage itself, the stand of the petitioners was vindicated as the prosecution was unable to find, and lead any evidence in respect of payment of illegal gratification, whether directly or indirectly, that was offered by the petitioners to A-I and the prosecution is unable to lead any evidence to indicate that the employee of the complainant bank obtained any valuable thing or pecuniary advantage by illegal or corrupt means or by abusing his position as a public servant. The prosecution has failed to have the

case pass the most basic condition for charge under Section 13 (1) (d) of PC Act to sustain. There is no credible evidence to prove such pecuniary advantage.

48. The petitioners state that they are private persons, and not public servants. The petitioners are seeking to quash the FIR in respect of them. The reliance has been placed by Mr.Tulsi upon the judgment of this Court in the case of **K. Chandra v. State**, reported in 1993 Crl. L.J. 1237 the offences punishable under Sections 11 to 13 of the PC Act, 1988 with which the petitioner is charged related to the criminal misconduct by public servant.

"(11) The reading of these provisions quoted above would show that these apply only to a public servant and not to a private person. Hence no case on the face of the allegations can be registered against the petitioner under Sections 11,12,13 of the P.C. Act."

49. It is stated that uncontroverted evidence has come to light from the trial stage that these uncharged senior bank employees not only approved and continued the credit facilities themselves, but also on many occasions gave oral instructions to the said A-1 to continue and enhance the said credit facilities in favour of the accused applicants. During cross-examination, prosecution and its witnesses were not able to support as to why the other four layers of sanctioning authority were left out from being named as accused in the matter.

50. It is the admitted position that after the parties entered into the aforesaid settlement, leading to the passing of consent decree, even the departmental enquiry against A-1 Mr.N. Bhojraj Shetty, Branch Manager of the complainant bank in respect of the transaction and

debt in question were withdrawn and his retirement benefits were also ordered to be released in his favour on the order passed by this Court. Though not a direct subject matter of this petition, such release of retirement benefits by this Court indicates the complainant bank's exoneration of the accused Branch Manager (A-1).

51. CBI in para 25 of the charge sheet found that the said charge of forgery of the purpose of cheating and use of forged documents etc. was not substantiated. The said para 25 of the charge sheet is reproduced here below:-

"25. The allegation regarding forgery for the purpose of cheating and use of forged documents as genuine as contained in the FIR could not be substantiated on account of the non-availability of the documents pertaining to the transportation of goods (Lorry Receipts)."

52. It was not mentioned in the FIR about the floating of any company by the name of M/s Indian Herbs by the petitioner. It was not the case of the bank in its FIR that the petitioner started a fictitious business concern styled of M/s Indian Herbs for realising payments from Vijaya Bank against bogus hundies (drawee bills) drawn on M/s R.K.B Herbals Pvt. Ltd. In spite of the fact that the FIR is completely silent yet Smt. Sonia Bhandari was charge sheeted as one of the accused.

53. With regard to submission of learned counsel for the respondent that the present petition is not maintainable being non-compoundable offence, the same has no force as the inherent power falls within the parameters of Section 482 Cr.P.C., it shall have an overriding effect over any of the provisions of the Code. In exercise

of its inherent powers under Section 482 Cr.P.C., the High Court may permit compounding of a non-compoundable offence provided that in doing so it satisfies the conditions mentioned therein. This principle of law has been discussed in many cases decided by the Supreme Court including in the recent case of **Gian Singh** (supra). Therefore as per the mandate of Supreme Court, the non-compoundable offence can be compounded by the High Court while exercising its discretion under Section 482 Cr. P.C.

54. The other submission of the respondent is that the petition is not maintainable as the petitioners earlier sought the same prayer which was rejected. No doubt the said revision application was filed in this Court to challenge the order on charge of the trial court and it was under the provisions of Section 397/401 Cr.P.C. In their original petition, the petitioners had disclosed in Para 20 of the said petition, the fact that they had filed a revision application in this Court, and appealed in the Supreme Court, both of which had been unsuccessful.

55. It is immaterial whether if one of the pleas taken by the petitioners in revision application is similar to the plea taken in the present petition for quashing. Even if the eventual prayer of both the petitions are same or similar, each are to be determined on the grounds individual to them within the framework of law under which it is being presented to this Court. The question of "fresh grounds" is to be assessed in juxtaposition of both facts and law, and not facts alone.

56. The petitioners are evoking the principles of law in respect of quashing under Section 482 Cr.P.C. as pronounced by the Supreme Court of India in the three-judge decision of **Narendra Lal Jain & Ors** (supra) and the two-judge decision in case of **Nikhil Merchant** (supra) (as subsequently confirmed by a three-judge bench in the case of **Gian Singh** (Supra). These decisions of the Supreme Court have been pronounced after the Revision Petition of the petitioners were decided, and therefore the principle of law, as laid down by the Supreme Court (binding on all courts in India, under the provisions of Article 141 of the Constitution of India) were available after passing the **N. L. Jain** judgment (in April 2014) read together with **Gian Singh** (in reference to **Nikhil Merchant**).

57. Even during the cross examination stage of the trial, which commenced after the decision on the Revision Petition, it came to the knowledge of the petitioners that the prosecution has ignored to charge the senior members of the bank and the complainant-bank is protecting its senior employees, to the level of executive director and managing director, made its junior most employee the scape goat to affix the blame of a commercial loan that had become non-performing. Therefore the petitioners' case is that such a lame prosecution warrants this Court's interference to rescind such abuse.

58. Pending a departmental enquiry against bank employee, the complainant bank had withheld the said A-1's retirement benefits. The same was challenged by the said AI in this Court by way of a civil Writ Petition bearing WP (C) No.1235/2003. Adjudicating upon the

application, this Court in its judgment dated 6th October, 2004, opined:

"The main plank of the petitioner's submission is that the bank had reached a settlement with the Party and a no-due certificate has been annexed as Annexure A-1 and the amount of settlement has been duly paid by the said party.

In view of the forgoing discussion, I am of the view that prima facie no case is made out in favor of the respondents which would enable them at this stage to withhold the retiral benefits namely contribution to provident fund and gratuity. The enquiry itself based on the charge sheet has been stayed by this Court which is another factor showing that prima facie, the petitioner has made out a good case for interference.

In view of the forgoing discussion, the application is allowed and the retiral benefits of the petitioners be released by the respondents.

The application stands disposed of accordingly."
[Emphasis Supplied]

The complainant bank did not challenge the said order of this High Court.

59. DRT Consent Decree (arising out of the settlement between the parties) was passed in February, 2004 and relying upon which, this Court released the retirement benefits of the said A1 in October 2004. In compliance of the said order of this Court, the complainant bank, not only released the entire retirement benefits, by way of its letter dated 15th February, 2005, but went many steps further and

withdrew the entire charge sheet that had initiated the departmental proceedings against the said A1.

60. By releasing the retirement benefits, read together with the complainant's bank abandonment of departmental proceedings against the said A1, is to be further read in juxtaposition with the judgment of the Supreme Court in the case of ***P S Raja vs. State of Bihar*** reported in (1997) Supreme Court Cr.R. 137:-

"The standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the present case, the charge in the departmental proceeding and in the criminal proceeding is one and the same. There is no dispute as to the findings rendered in the departmental proceedings and the ultimate result of it. On those premises, there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in departmental proceedings and in view of admitted discrepancies in the reports submitted by the valuer, one wonders what is there further to proceed against the appellant in criminal proceedings. On the peculiar facts of this case, the criminal proceedings against the appellant cannot be pursued." [Emphasis Supplied]

61. It is settled law that a charge of criminal conspiracy under 120-B IPC can only sustain if there is a meeting of minds between the co-accused in order to commit an illegal act. When a charge of 'misconduct' against the main accused A1 could not proceed, where is the question that he could be liable of 'criminal misconduct'. Even assuming if the complainant bank were a private bank, of who the State was not the principle shareholder, then such a commercial

dispute would squarely fall within the realms of Debt Recovery Tribunal, and would have been dealt with under the provisions of SARFESI Act.

62. In the present case both parties voluntarily subjected themselves to a written agreement to regulate their conduct. Bank also secured itself by way of charge against the business as well as the private assets of the petitioners. However, the petitioners came to be unable to repay the loan due to the genuine failure of their project due to commercial reasons (such as lack of demand, technical problems in plant etc.), and not because of the offences that the respondent alleges. These two critical aspects are both the admitted position of the complainant bank and the documents to that effect are on record. The dispute between the parties was predominantly civil - commercial in nature. In light of which, the Petitioners are invoking the principles of law laid down in ***Gian Singh*** (supra) judgment whereby it is clarified that in such cases, where the dispute is predominantly of civil nature, with some criminal facets, the High Court would well be within its powers to quash the proceeding on the basis of a settlement/ compromise between parties.

63. The claim of the respondent that the settlement arrived at between the complainant bank is merely a private settlement under these circumstances has no force as decree was passed by the Debt Recovery Tribunal, with the suit disposed off as duly satisfied. The said DRT's consent decree together with the joint compromise application, are on records.

64. **Gian Singh** (supra) case came to a larger bench (comprising of three judges) by way of a reference made to it by a two-judge bench. The three-judge bench to answer that reference was asked not only to opine on the **Gian Singh** (supra) case itself but also determine the correctness of that court's decision in **B S Joshi vs. State of Haryana** (2003) SCC 675. In **Nikhil Merchant vs. CBI** (supra) the three-judge bench of Supreme Court, after long deliberations on the subject of quashing and compounding of non-compoundable offences, concluded :-

"62. In view of the above, it cannot be said that B S Joshi, Nikhil Merchant and Manoj Sharma were not correctly decided. We answer the reference accordingly. "

65. The appeal to the Supreme Court in the cases of **Nikhil Merchant** and **N.L. Jain** both arise from a common order and judgment of the Bombay High Court dated 28th October, 2005. While the High Court quashed the proceedings in **N.L. Jain's** case, it refused to do so in the case of **Nikhil Merchant**. The distinguishing aspects between the two cases, which weighed upon the High Court, was that Nikhil Merchant was charged with substantive offences that were not limited to Section 420 and 120-B IPC, but was also charged under Section 467, 468 and 471 IPC and therefore the Bombay High Court did not find it fit to evoke its extraordinary powers to quash a proceeding. In appeal to the Supreme Court, it quashed the FIR against Nikhil Merchant, even though the alleged offences were more than that of N.L. Jain, and provisions of PC Act were also attracted. It is restated that the **N.L. Jain** judgment, which was pronounced by a

three-judge bench dismissed CBI's appeal and confirmed the order and judgment of Bombay High Court to quash the FIR in case of **N.L. Jain**.

66. In the case of **Narinder Singh**, the compromise entered into between the complainant and the accused, the Supreme Court quashed the FIR. In the said case, the charges against the accused were extremely grave, and included the charge of 307 IPC - attempt to commit murder. However, with the intervention of the panchayat, the matter came to be settled and peace was restored between the parties. The Supreme Court accepted such a compromise and quashed the proceedings pending against the accused - petitioners.

67. The petitioners have referred judgments which are by a bench of three-judges. They are namely, **N.L. Jain** and **Nikhil Merchant** (originally of a two-judge bench, but confirmed by the three-judges bench in **Gian Singh**) and **Gopakumar B. Nair vs. CBI & Anr.**

The ratio of pronouncements in the case of **Nikhil Merchant** (as confirmed by the **Gian Singh**), **N.L. Jain** and **Gopakumar Nair** are the authoritative law in respect of the questions that arise in the present petition, and that ratio is that in cases where the compromise has been arrived at between the parties, even if the substantive charges against the private persons are more grave than offence under Section 420 and S 120-B IPC, and include substantive offences under Sections 467, 468, 471 read with offences under PC Act, yet the High Court is fully empowered to quash the said proceedings depending upon the facts of the case.

68. The Supreme Court, answering the reference of **Nikhil Merchant**, in **Gian Singh** was mindful of the factum of offences that were alleged in the case of **Nikhil Merchant**. Substantive offences were alleged under Section 420, 467, 468 and 471 of IPC, and offences were alleged under 120-B IPC read with PC Act, 1988. In this respect, Para 1 of the **Nikhil Merchant** judgment is relevant to be reproduced below:

"The Central Bureau of Investigation (hereinafter referred to as "CBI") filed a charge sheet against five accused persons under Section 120-B read with Sections 420, 467, 468, 471 of the Penal Code, 1860 read with Sections 5(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988. In the said charge sheet, the appellant herein was made Accused 3 and the company, in respect of which he was the former Managing Director, M/s Neemuch Emballage Ltd., Mumbai, was made Accused 4. The other three accused are official of Andhra Bank."

While confirming the judgment of **Nikhil Merchant**, the Hon'ble Bench in **Gian Singh** (supra) sounded a word of caution:

"61. ... Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. "

69. Relying upon the judgment of the Supreme Court in the case of **Gopakumar B. Nair** (supra) wherein the Supreme Court refused to quash the proceedings for the reason that the compromise entered into between the complainant and the accused was not a part of a

court decree. In the present case, as in the case of **N.L. Jain** and **Nikhil Merchant**, the compromise entered into between the complainant bank and the petitioners was a subject of court proceedings and consent terms were duly entered into under the provisions of Civil Procedure Code. In such circumstances, the distinguishing aspects of the judgment only confirms the legal relevance of a compromise that is entered as consent terms in a court-driven process between the complainant and the accused. The facts in the present case are more similar with the judgments in the case of **Nikhil Merchant** and **N.L. Jain** is also a three-judge bench judgment as the petitioners and the complainant have compromised and compounded the alleged offences, and that the complainant bank has exonerated the petitioners from all claims, grievance or complaint of any nature whatsoever. By consent the parties have settled all disputes in the recovery suit, the consent decree of DRT stood to be disposed off as duly satisfied. There is hence no force in the submission of respondents that the complainant bank has not exonerated the petitioners, first being the Civil Procedure Code, and the second being the OTS Scheme of the Reserve Bank of India, which the petitioners have extensively referred to in the original petition. The provisions of OTS Scheme prevent the complainant bank from entering into any compromise or settlement under the said OTS Scheme in the cases of willful default, fraud and malfeasance. The complainant bank in choosing to enter into such consent terms under the provisions of OTS Scheme has not only exonerated the petitioners, but for all intents and purposes given up the perusal of

the complaint and having no grievance against them in any other proceeding whether civil or criminal on the same set of issues.

70. There is no doubt that the trial has been proceeding for offences for the last about 20 years ago. The dispute between the petitioner and complainant Bank 33 years old. A long time has in fact been elapsed since the alleged commission of offences. Still the trial continues. The present petition is maintainable as the same has been filed also on additional grounds and circumstances. No useful purpose would be served if such oppressive trial may continue for many more years. Thus, ends of justice are served by quashing such a proceeding, as the parties cannot be allowed to go through the rigmarole of criminal prosecution for long numbers of years in a matter, it is doubtful in the mind of the Court in whose favour it would be decided.

71. In view of abovementioned reasons, this Court is inclined to quash the proceedings pending against the petitioners, arising out of R.C. No.4A/94/SIU(X) dated 23rd May, 1994, titled 'CBI vs. N.Bhojraj Shetty & Ors.', being C.C. No.65/11, pending in the Court of Spl. Judge (CBI), Tis Hazari Courts, Delhi.

72. As the State Machinery has been used where the matter is kept pending for the last more than two decades coupled with the fact that the conduct of the petitioners for obtaining the credit facilities were not at par, thus the petitioners are burdened with cost of Rs.5 lac which shall be deposited with Prime Minister's National Relief Fund within twelve weeks from today. The receipt shall be

filed by them with the Registry within four weeks thereafter with an advance copy to the IO.

73. The present petition is disposed of accordingly. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JUNE 29, 2015