

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

Date of Decision: September 04, 2015

+ CRL.M.C. 3400/2015

JOGINDER SINGH LOGANI

..... Petitioner

Through: Ms. Rebecca M. John. Senior
Advocate, with Mr. Vishal Gosain,
Mr. Harsh Bora & Ms. Nicy
Paulson, Advocates

versus

STATE (CBI)

..... Respondent

Through: Ms. Sonia Mathur, Standing
Counsel for CBI

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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Quashing of case RC No.1(E)/1997-SIU(X)/CBI/New Delhi, under Sections 420/467/468/471 of IPC r/w Section 120-B IPC and Section 13(2) r/w Section (1) (d) of *The Prevention of Corruption Act, 1988* is sought on the basis of '*No Objection Certificate*' of 27th September, 2007 (*Annexure-B*).

At the hearing, learned senior counsel for petitioner submitted that charge of cheating with the aid of Section 120-B of IPC has been framed against petitioner and allegation of forgery etc. are not attributable to petitioner and in view of '*No Objection Certificate*' of 27th September, 2007 (*Annexure-B*) given by the complainant-bank, FIR of this case

deserves to be quashed qua petitioner.

It was pointed out by learned senior counsel for petitioner that as per the charge-sheet, the outstanding amount was of Rupees One Crore Fifty Eight Lacs odd and the complainant-bank has been compensated to the tune of Rupees One Crore Seventy Four Lacs and in addition, interest component of Rupees Twenty Six Lacs and Twenty Nine Thousand odd has been already paid to the complainant-bank and so, the proceedings arising out of RC No.1(E)/1997-SIU(X)/CBI/New Delhi in question deserve to be quashed qua petitioner.

Reliance is placed upon decision of a Coordinate Bench of this Court in *Sanjay Bhandari & Anr. Vs. Central Bureau of Investigation* 2015 SCCOnline Del 10079 to submit that in a similar case, proceedings arising out of RC No./4A/94/SIU (X) for similar offences already stands quashed while relying upon decision of Apex Court in *CBI Vs. Narendra Lal Jain & ors.* (2014) 5 SCC 364. Reliance is also placed upon decision in *Nikhil Merchant Vs. Central Bureau of Investigation & anr.* (2008) 9 SCC 677 in support of petitioner's case.

This petition is opposed by Ms. Sonia Mathur, learned Standing Counsel for respondent-CBI, while relying upon Apex Court's decision in *Narinder Singh & ors. Vs. State of Punjab & anr.* (2014) 6 SCC 466; *State of Maharashtra through CBI Vs. Vikram Anantrai Doshi & ors.* 2014 (10) SCALE 690; *Gopakumar B. Nair Vs. CBI & anr.* 2014 (4) SCALE 659 and *State through Inspector of Police Vs. A. Arun Kumar & anr.* 2014 (4) SCALE 164. However, factum of 'No Objection Certificate' of 27th September, 2007 (*Annexure-B*) issued by the

complainant- bank is not disputed by learned Standing Counsel for CBI.

After having heard both the sides and perusal of charge-sheet of this case, the charge framed, '*No Objection Certificate*' of 27th September, 2007 (*Annexure-B*), material on record and the decisions cited, I find that Apex Court in *Vikram Anantrai Doshi (Supra)*, has cautioned the courts to resist from quashing of the FIR in case of fraudulent transactions, merely because '*No Objection Certificate*' has been obtained from the bank as gravity of such economic offences has an immense societal impact. It is true that in case of dishonest diversion of funds, criminal proceedings ought not be quashed while relying upon '*No Objection Certificate*'. However, in the instant case, I find that there is no dishonest diversion of funds by petitioner nor any other fraudulent act has been attributed to petitioner evidencing that a grave economic offence has been committed by petitioner.

A three Judge Bench of the Apex Court in '*Gian Singh Vs State of Punjab*' (2012) 10 SCC 303, has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

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

Where the High Court quashes a criminal proceeding

having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in *Narinder Singh v. State of Punjab* (2014) 6 SCC 466. The pertinent observations of the Apex Court in *Narinder Singh* (*supra*) are as under:-

29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have

settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. 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.

29.3. Such a power is not to 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 the 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. 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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the

criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to

whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

Apex Court in *Narendra Lal Jain (supra)*, has authoritatively ruled that in cases of cheating, if the dispute between the parties is settled, then criminal proceedings are to be invariably quashed. The ratio of decisions relied upon by respondent is not attracted to the facts of the instant case.

In the instant case, on a bare perusal of the charge-sheet filed and charge framed, it cannot be made out that on what basis it can be said that petitioner had conspired with his co-accused in defrauding the complainant-bank to the tune of Rupees One Crore Fifty Eight Lacs odd. In this background, ‘*No Objection Certificate*’ of 27th September, 2007 (*Annexure-B*), evidencing payment of Rupees One Crore Seventy Four Lacs odd with interest of Rupees Twenty Six Lacs Odd, persuades this Court to bring an end to the criminal proceedings qua petitioner. On a careful consideration of the facts of the instant case, it can be unhesitatingly concluded that substratum of the charges framed against petitioner are of simplicitor cheating with the aid of Section 120-B of

IPC, for which he can be prosecuted in the instant case. In the considered opinion of this Court, in view of '*No Objection Certificate*' of 27th September, 2007 (*Annexure-B*), continuance of proceedings arising out of RC No.1(E)/1997-SIU(X)/CBI/New Delhi qua petitioner is unwarranted.

Hence, this petition is allowed and RC No.1(E)/1997-SIU(X)/CBI/New Delhi, under Sections 420/467/468/471 of IPC r/w Section 120-B IPC and Section 13(2) r/w Section (1) (d) of *The Prevention of Corruption Act, 1988* and proceedings emanating therefrom are quashed.

This petition is accordingly disposed of.

(SUNIL GAUR)
JUDGE

September 04, 2015

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