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HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 259 OF 2015

Romesh Kumar Sinha S/o R.K. Sinha, aged about 35 years, R/o T.V. Tower Road, Chotte Attarmuda, Raigarh, P.S. - Chakradharnagar, Raigarh, Tahsil and District Raigarh (C.G.)

… Petitioner

Versus

State of Chhattisgarh, through District Magistrate, Raigarh (C.G.)

… Respondent

For Petitioner	:	Mr. Pramod Kumar Verma, Senior Advocate, along with Mr. Virendra Verma, Advocate.
For Respondent	:	Mr. O.P. Sahu, Government Advocate.
For Intervener	:	Mr. Raghvendra Pradhan, Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 30.08.2016
Delivered on : 02.09.2016

1. The present petition under Section 482 of CrPC has been filed assailing the order dated 16.2.2015 passed by the Second Additional Sessions Judge, Raigarh in Criminal Revision No. 165 of 2015 dismissing the revision petition preferred by the Petitioner against the order dated 8.9.2014 of the Chief Judicial Magistrate, Raigarh passed in Criminal Case No. 754 of 2014 whereby the charges of offence punishable under Sections 120-B, 420, 467, 468 and 471 of IPC were framed against the Petitioner.

2. Brief facts relevant for the adjudication of the present petition are that the Petitioner and the other accused persons is said to have established a company named as 'Neelam Traders' showing themselves to be traders of coal. They had allured the poor villagers for making investments in their company with an assurance that they will be given 5% dividend from the said company. Coming under the impression of the

Petitioner and the other accused persons the people started making investment by depositing money with the Petitioner and with the other accused persons individually. Initially, the Petitioners gave some dividends to the same persons so invested, but after some time the payment of the said dividend was closed. Now with an intention of further collecting more money from the public, the Petitioner conspired among themselves and is said to have issued a cheque of Rs.2.5 Crore in the name of a co-accused Chandrahas Dubey projecting him to be the beneficiary by virtue of his investment in the company. Thereafter further huge investments were also made by the general public taking into consideration the alleged money which the said Chandrahas Dubey had received. Subsequently, the Petitioner and the other accused persons closed their bank account and after closing it also they continued to issue cheques to the people from the accounts which were closed and which further prompted more people to invest with the Petitioner's company.

3. An FIR in this regard was lodged by one of the Complainants on 19.6.2014 upon which Crime No. 188 of 2014 was registered at Police Station Chakradharnagar, District Raigarh. In due course of time, after investigation the police authorities filed a charge-sheet before the Court below and the matter was put to trial in Criminal Case No. 754 of 2014 before the Chief Judicial Magistrate, Raigarh who proceeded with the trial and framed the charges against the Petitioner for the offence punishable under Section 120-B, 420, 467, 468 and 471 of IPC. Pending the trial before the Court below, an application under Section 320(1) and 320(2) of CrPC was filed seeking for permission to compound the offence stating that the Complainants are agreed to settle the dispute and they did not intend to prosecute the accused persons any further. On this application, learned Chief Judicial Magistrate vide its order dated 16.2.2015 has partly allowed the application to the extent of granting permission to the Complainants for compounding the offence under Section 420 of IPC with the accused persons. However, the said Court refused to grant permission for compounding the remaining offence i.e. under Section 120-B, 467, 468 and 471 of IPC.

4. It is relevant at this juncture to mention that the charges in the instant case were framed as early as on 8.9.2014 and the matter was already ordered to be put on trial and the present petition has been filed on 7.4.2015 i.e. almost after about 8 months from the date of framing of charges. The present petition has also been filed after the Court below refused to grant permission for compounding the offence under Sections 120-B, 467, 468 and 471 of IPC.

5. Learned Senior Counsel Shri Pramod Kumar Verma, appearing for the Petitioner, submitted that he intends to assail the framing of charge against the Petitioner for the offence under Sections 467 and 468 of IPC on the ground that a plain reading of the entire contents of the charge-sheet does not bring home the necessary ingredients that are required for making of offence under Sections 467 and 468 of IPC. According to him, the most important ingredients in the making of the offence under the two Sections are that of forging of a document and which is not there in the present facts of the case. Forging of a document also means making of a false document which has been defined under Section 464 of IPC. He further submits that if the contents of the entire charge-sheet are perused it would reveal that there has been no false document which has been created or prepared or used by the Petitioner for the commission of the alleged offence.

6. According to the learned Senior Counsel, in nutshell the offence alleged against the Petitioner is that for the purpose of impressing the general public at large, they had initially provided dividends to same of the depositors for a couple of months and thereafter they stopped. Subsequently, as part of a larger conspiracy one of the accused persons from his account issues a cheque in favour of the other accused persons that the present Petitioner issues a cheque in favour of the co-accused Chandrahas Dubey for an amount of Rs. 2.5 Crore projecting it to be the benefits which Chandrahas Dubey has received for the investment that he has made in the company. He further submits that the account of the cheque which has been issued was that of the Petitioner. Cheque book was that of the Petitioner and the cheque was issued in favour of one Chandrahas Dubey is also not in dispute. As such the said act on the part of the Petitioner by itself would clearly show that there was no creation of false documents for a false record so as to constitute offence under Sections 467 and 468 of IPC.

7. Learned Senior Counsel further refers to the three circumstances which would broadly constitute the offence under Section 464 of IPC and thereafter referring to these three circumstances compared the nature of allegations levelled against the Petitioner and tried to emphasis the fact that the case of the prosecution if it is accepted as it is without adding or subtracting anything from the charge-sheet, circumstances which are otherwise spelt out in the three categories under Section 464 is not reflected out and in the absence of any of these ingredients the offence under Sections 467 and 468 would not be made out. As per the learned Senior Counsel, the entire allegation as is levelled in the charge-sheet would only constitute of an offence of cheating and that there is no element of forgery in it whatsoever. Neither does the allegation spell out the ingredients of forgery. According to him, making of a false document is *sine qua non* for bringing home the offence under Section 464 without which the offence under Sections 467 and 468 would not be made out.

8. Counsel for Respondent-State after arguing for some time and referring to only the statements of Amit Mourya and Mintu Masih closed the arguments of the State and submitted that from the statements of these two the petition does not deserves to be allowed.

9. Having considered the rival contentions put forth on either side and on perusal of the records and also considering the submissions put forth by the learned Senior Counsel for the Petitioner, what culls out is that the only issue which this Court has to see at this juncture and which has also been the only ground raised by the Petitioner seeking for quashment of the charges which are levelled against him is whether any prima facie case is made out or not. For ready reference it would be relevant at this juncture to reproduce the provisions of Sections 464, 467, 468, 470 and 471 of IPC :

> **"464. Making a false document.–** [A person is said to make a false document or false electronic record–
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> *First* – Who dishonestly or fraudulently –
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> (a) makes, signs, seals or executes a document or part of a document;
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> (b) makes or transmits any electronic record or part of any electronic record;
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> (c) affixes any electronic signature on any electronic record;
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> (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,
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> with the intention of causing it to be believed that such document or part of a document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
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> *Secondly*- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

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467. Forgery of valuable security, will, etc.– Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquaintance or receipt acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.– Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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470. Forged document or electronic record.– A false document or electronic record made wholly or in part by forgery is designated "a forged document or electronic record".

471. Using as genuine a forged document or electronic record.– Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.**"**

10. Initially on 16.2.2015 the matter was taken up for compounding the offences but two Complainants, Amit Mourya and Mintu Masih, had not entered any compromise with the accused Petitioner and therefore the Court ordered for proceeding with the case so far as these two Complainants are concerned, as also for the remaining offences. Subsequently, it is learnt from the records that the said two Complainants also have on 13.4.2015 appeared before the Court below and have agreed for compounding of the offences and the Court below accepting the same had compounded the offence under Section 420 is concerned like as earlier and ordered for proceeding with the case for the remaining offences i.e., under Sections 120-B, 467, 468 and 471 of IPC.

11. Learned Senior Counsel for the Petitioner submits that taking into consideration the nature of the offence and transaction involved in the case and that allegations also being purely monetary transactions between the Petitioner with that of the investors it may not fall strictly within the ambit of a crime against the society neither does the said offences fall within the parameters provided by the Hon'ble Supreme Court in the case of **Narinder Singh** Vs. **State of Punjab [2014 (6) SCC 466]** wherein the Supreme Court in paragraph 29 has laid down certain guidelines which for ready reference are reproduced herein 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:
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> **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.
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> **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:
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> (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.
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> **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 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, 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 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 is 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 later 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 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.

12. In the matter of **Central Bureau of Investigation, ACB, Mumbai** Vs. **Narendralal Jain & Others [2014 (5) SCC 364]**, the Supreme Court again reiterating the propositions of law laid down in **Narinder Singh** (supra) has held that continuation of a criminal proceeding when the matter has already been resolved between the complainant and the offender would become oppressive :

> **"12.** It is further submitted by the learned counsel that the correctness of the view in B.S. Joshi (supra) and Nikhil Merchant (supra) were referred to the three Judges Bench in Gian Singh (supra). As already noted, the opinion expressed in Gian Singh (supra) is that the power of the High Court to quash a criminal proceeding under Section 482 CrPC is distinct and different from the power vested in a criminal court by Section 320 CrPC to compound an offence. The conclusion in Gian Singh (supra), therefore, was that the decisions rendered in B.S. Joshi (supra) and Nikhil Merchant (supra) are correct.
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> **13.** In the present case, as already seen, the offence with which the accused-respondents had been charged are under Section 120-B/420 of the Indian Penal Code. The civil liability of the respondents to pay the amount to the bank has already been settled amicably. The terms of such settlement have been extracted above. No subsisting grievance of the bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120-B is not. To the latter offence the ratio laid down in B.S. Joshi (supra) and Nikhil Merchant (supra) would apply if the facts of the given case would so justify. The observation in Gian Singh (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B IPC.
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> **14.** 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

> CrPC. 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...."

13. Again in the case of **Gold Quest International Pvt. Ltd.** Vs. **State of Tamil Nadu & Others [2014 (15) SCC 235]** referring to all the judgments passed in the recent past in this context, the Supreme Court has held as under :

> **"8.** In view of the principle laid down by this Court in the aforesaid cases, we are of the view in the disputes which are substantially matrimonial in nature, or the civil property disputes with criminal facets, if the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 CrPC read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity, cases under Prevention of Corruption Act, cases under Narcotic Drugs and Psychotropic Substances Act and other similar kind of offences in which punishment of life imprisonment or death can be awarded. After considering the facts and circumstances of the present case, we are of the view that learned Single Judge did not commit any error of law in quashing the FIR after not only the complainant and the appellant settled their money dispute but also the other alleged sufferers entered into an agreement with the appellant, and as such, they too settled their claims."

14. Keeping into consideration the ratio of the laws laid down by the Supreme Court in the judgments referred to in the preceding paragraphs if we compare the issue in the present case, it clearly reflects that the nature of dispute between the complainants and the accused persons has an overwhelming and predominant civil flavour as it is a case where it is alleged that the complainants have been defrauded by the accused Petitioner which now by virtue of a compromise entered between the parties stands resolved and the Petitioner's company has already repaid the entire amount and therefore the offence in the instant case would stand in a different footing for the purpose of quashing of criminal proceedings. In the instant case since the offences are more in the nature of commercial financial transaction, it would not fall within the category of a heinous crime or serious offence against the society. Rather, the present is a case where in fact the dispute is purely a private dispute between the investors and the offenders.

15. Hence, in view the law laid down by the Supreme Court in the judgments cited in the preceding paragraphs, which have been passed on the basis of the earlier judgments of the Supreme Court i.e., **B.S. Joshi** Vs. **State of Haryana [2003 (4) SCC 675]** as well as **Nikhil Merchant** Vs. **CBI [2008 (9) SCC 677]** and the judgments referred to in the preceding paragraphs, this Court is of the opinion that since the parties to the present dispute have entered into a settlement and compromised the matter, there is a minimal chance of the complainants coming forward in support of the prosecution case and the chances of conviction therefore appear to be very remote and bleak. It would be entirely a futile exercise and would also be a waste of time, energy and money of the court and also the abuse of judicial process and therefore it would not be justified to drag these proceedings unnecessarily knowing fully well the final outcome.

16. Accordingly, the petition is allowed. The impugned orders are set aside. Consequently, the entire criminal proceedings of Criminal Case No. 754 of 2014 pending before the Chief Judicial Magistrate, Raigarh so far as the Petitioner is concerned stand quashed and the Petitioner stands discharged from the offence punishable under Sections 120-B, 420, 467, 468 and 471 of IPC. No costs.

Sd/-
(P. Sam Koshy)
Judge

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