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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 801 OF 2016

Suryakant Lakhman Mandal & Ors. ... Applicants
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Sushrut Jadhwar, for the Applicants.

Mr. Bhavesh M. Thakar, for the Respondent No. 2.

CORAM : V. M. KANADE, &
Ms. NUTAN D. SARDESSAI, JJ.

DATE : NOVEMBER 15, 2016

PC.

1. Leave to amend is granted. Re-verification is dispensed with.

2. Heard the learned counsel appearing on behalf of the Applicants and the learned counsel appearing on behalf of Respondent No. 2. The Applicants have filed this application under Section 482 Cr. P. C. for quashing of the criminal complaint, filed by Respondent No. 2, which is registered vide C. R. No. 65 of 2016 with the Govandi

Police Station, Mumbai for the offences punishable under Section 406, 420 read with 34 of the I. P. Code.

3. The parties have now settled the dispute amicably. Respondent No. 2 has filed an affidavit dated 24th June, 2016. In the said affidavit, he has stated that he has received amount Rs. 6 lakhs towards full and final settlement of all the dues. He has no objection if the complaint is quashed, since the parties have amicably settled the dispute. Respondent No. 2 is present in the Court. Upon enquiry being made by the Court asking whether the complaint filed by him should be quashed, he has answered in the affirmative.

4. It is now well settled that when the dispute between the parties is private in nature, then this Court while exercising its inherent jurisdiction under Section 482 Cr. P. C. can quash the proceedings if it is satisfied that the dispute between the parties is a personal one. The Apex Court in the case of - ***Gian Singh, Appellant Vs. State of Punjab & Anr., Respondents [(2012) 10 Supreme Court Cases 303]*** had an occasion to consider the nature and scope of power, which has to be exercised by the High Court under Section 482 Cr. P. C. and the scope and power which to be exercised by the Magistrate under

Section 320 Cr. P. C. The Apex Court after considering catena of judgments of the Apex Court and other High Courts, finally has observed in paragraph 60 as under:

“60. We find no incongruity in the above principle of law and the decisions of this Court in *Simrikhia Vs. Dolley Mukherjee* [(1990) 2 SCC 437], *Dharampal Vs. Ramshri* [(1993) 1 SCC 435], *Arun Shankar Shukla Vs. State of U. P.* [(1999) 6 SCC 146], *Ishwar Singh* (2008) 15 SCC 667, *Rumi Dhar (Smt.). Vs. State of W. B.* [(2009) 6 SCC 364] and *Ashok Sadarangani Vs. Union of India* [(2012) 11 SCC 321]. The principle propounded in *Simrikhia* (1990) 2 SCC 437 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In *Dharampal* (1993) 1 435, the Court observed the same thing that the inherent powers Under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in *Arun Shankar Shukla* (1999) 6 SCC 146. In *Ishwar Singh* (2008) 15 SCC 667, the accused was alleged to have committed an offence punishable Under Section 307, Indian Penal Code and with reference to Section 320 of the Code, it was held that the offence punishable Under Section 307 Indian Penal Code was not

compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Rumi Dhar (Smt.)* although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences Under Section 120-B, 420, 467, 468, 471 of the Indian Penal Code along with the bank officers who were being prosecuted Under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. *Ashok Sadarangani* was again a case where the accused persons were charged of having committed offences Under Sections 120-B, 465, 467, 468 and 471, Indian Penal Code and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-

credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in *B. S. Joshi* (2003) 4 SCC 675, *Nikhil Merchant* : (2008) 9 SCC 677 and *Manoj Sharma* (2008) 16 SCC 1 and it was held that *B. S. Joshi* (2003) 4 SCC 675, and *Nikhil Merchant* (2008) 9 SCC 677 dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in *Ashok Sadarangani* was more on the criminal intent than on a civil aspect. The decision in *Ashok Sadarangani* supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.”

5. The Apex Court thereafter has observed that the High Court before exercising its power to quash the criminal proceeding must give due regard to the nature and gravity of the crime. It is further observed that in cases having overwhelmingly and predominatingly civil flavour stand on a different footing, the High Court will be well within its jurisdiction to quash the criminal complaint. In this context, the Supreme Court has observed in paragraph 61 as under:

“61. The position that emerges from the above discussion can be summarised thus: the power of the High

Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section [320](#) of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R 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 serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal

proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour 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, High Court may quash 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 criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above

question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

6. In the present case ratio of the observations made by the Apex Court in paragraph 61 of the judgment will squarely apply to the facts of the present case. The dispute between the parties is a personal one and there is predominately civil flavour to the dispute, and as such we have no hesitation in exercising our inherent jurisdiction under Section 482 Cr. P.C. for the purpose of quashing the said complaint. Criminal application is, therefore, allowed in terms of prayer clause (b).

Sd/-

[Ms. NUTAN D. SARDESSAI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath