THE HONOURABLE SRI JUSTICE RAJA ELANGO
<u>CRIMINAL PETITION No.11049 OF 2015</u>

<u>ORDER</u>:

This petition is filed by the petitioners/A-1 and A-2 to quash the proceedings in C.C.No.57 of 2005 pending on the file of the Principal Special Judge for C.B.I. Cases, Hyderabad registered for the offences punishable under Sections 120-B, 420 and 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "the Act").

2. The respondent C.B.I filed charge sheet against five persons in connection with Cr.No.RC.-17(A)/2004, dated 14.5.2004, alleging that during the year 2000, the petitioners, while working as Senior Manager and Assistant Manager respectively in Punjab National Bank, Musheerabad Branch, entered into criminal conspiracy with A-3 and sanctioned a term loan of Rs.10 lakhs and cash credit of Rs.15 lakhs based on two forged collateral securities and allowed the latter to abuse diversion of funds and thereby, caused wrongful loss to the bank to an extent of Rs.33.61 lakhs. A-3 is the Proprietor of M/s.Ismit Poly Clinic and Lab Services situated at Padmaraonagar, Secunderabad. A-4 is the valuer who gave valuation certificate in resepect of the properties offered as collateral securities by A-3. A-5 is the Proprietor of M/s.Platinum Enterprises situated at Panjagutta, Hyderabad, who has issued invoice for Rs.13 lakhs.

3. Learned counsel for the petitioners mainly contended that already the *de facto* complainant initiated civil proceedings for recovery of the loan amount in O.A.No.249 of 2002 before the Debts Recovery Tribunal and the said O.A. was also decreed on 4.11.2004. During the pendency of the said proceedings, A-3 submitted an application for one time settlement and the same was accepted. After

payment of the amounts as per the terms and conditions of OTS, he filed Crl.P.No.1510 of 2009 before this Court to quash C.C.No.57 of 2005 and the same was allowed on 16.10.2012. A-4 who gave the valuation certificate is no more and hence, the case against A-4 was abated. A-5, who supplied the material to A-3, filed discharge petition before the C.B.I. Court and the same was dismissed on 11.3.2013. Challenging the same, A-5 filed Crl.R.C.No.805 of 2013 before this Court and the same was allowed on 29.9.2015. Against these two orders, no appeal was preferred by the C.B.I. before the Apex Court and hence, those orders have become final. Further, as the proceedings against A-3 were quashed and the disputes between A-3 and the bank have been set at rest on the basis of the compromise arrived at between them, continuation of proceedings against these petitioners would be futile exercise. Basing on the said compromise, the learned counsel for the petitioners seeks to quash the impugned proceedings against the petitioners relying on the decision of the Apex Court in **Nikhil Merchant v. Central Bureau of Investigation and another**[1] and also the other earlier decisions on the subject.

4. The contention of the learned counsel for the petitioners is disputed by the learned Special Public Prosecutor for C.B.I., contending that the present petition under Section 482 Cr.P.C. is not maintainable since charges are framed by the trial Court and the same is not challenged before this Court. Hence, the framing of charges became final. He further submitted that even after framing of charges, A-5 filed a revision for discharge and the same was allowed on 29.9.2015 quashing the proceedings against A-5. He further submitted that the averments of the petitioners that the loan amount was repaid by A-3 basing on the compromise arrived at in between him and the bank and as such, the proceedings against the petitioners are futile exercise are contrary to the facts of the case. The Hon’ble Principal Special Judge for C.B.I. Cases has, on earlier occasions, vide his

order, dated 17.10.2007, dismissed similar plea of the petitioners for their discharge and framed charges against the petitioners.

5. Considering the facts and circumstances of the case, this Court is of the view that nomenclature as to whether it is a revision or a petition under Section 482 Cr.P.C. may not make much difference and the relief sought for in the revision as well as in the present petition are one and the same.

6. Learned Special Public Prosecutor submitted that the petitioners are not the individual parties and they are the Senior Manager and Assistant Manager respectively of the Punjab National Bank and when the offence is punishable under Section 13(2) read with 13(1)(d) of the Act, the judgment of the Apex Court is not applicable to the present facts and circumstances of the case.

7. The decision relied on by the learned counsel for the petitioners along with other decisions i.e. **B.S.Joshi and others v. State of Haryana and another**[2] and **Manoj Sharma v. State and others**[3] were placed before the Larger Bench of the Supreme Court for its verdict in **Gian Singh v. State of Punjab & another**[4]. The Apex Court exhaustively dealt with its earlier decisions on the subject and answered the reference as follows:

> *"The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R. may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape,*

decoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences 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 disputes. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

Further, while answering the said reference, the Apex Court opined that the decision relied on by the learned counsel for the petitioner in **Nikhil Merchant** (1 supra) cannot be said to be not correctly decided.

8. In the context of the present law laid down by the Apex Court in **Gian Singh** (4 supra), this Court perused the decision rendered by the Apex Court in **Nikhil Merchant** (1 supra). The facts and circumstances in the case on hand are similar to that of **Nikhil Merchant** (1 supra). In the said case also, the offences are under Sections 120B, 420, 467, 468, 471 IPC read with Section 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the said case, since the *de facto* complainant and the borrower settled the issue, the Apex Court set aside the order of the High Court and

allowed the petition filed by the petitioner therein to quash the proceedings.

9. In view of the above, this Court is of the view that the decision of the Apex Court relied upon by the petitioner in **Nikhil Merchant** (1 supra) is squarely applicable to the facts and circumstances of the present case. In view of the settlement arrived at between the parties, the proceedings against A-3 were already quashed. So, the same benefit can be extended to these petitioners also. Accordingly, the impugned proceedings against the petitioners/A-1 and A-2 are liable to be quashed.

10. Accordingly, the Criminal Petition is allowed quashing the proceedings in C.C.No.57 of 2005 pending on the file of the Principal Special Judge for C.B.I. Cases, Hyderabad against the petitioners/A-1 and A-2.

11. Miscellaneous petitions, if any, filed in this petition shall stand closed.

JUSTICE RAJA ELANGO

16.3.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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AMD

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[1] (2008) 9 SCC 677

[2] (2003) 4 SCC 675

[3] 2008 (14) SCALE 44

[4] 2012(9) SCALE 257