

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2017

PRONOUNCED ON : 16.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**Crl.OP.No.14744 of 2014
and MP.No.1 of 2014**

1.M/s.Bidass Apparel Industries Tiruppur Pvt Ltd.,
Rep by its Managing Director
Shri Palamalai Kannan @ C.P.Kannan
51/1, Ayyan Nagar, II Street,
No.3, Sengunthapuram, Mangalam Road,
Tirupur – 641604.

2.C.Palamalai Kannan

3.C.P.K.Parvathy

... Petitioners

Vs.

1. The Inspector of Police,
CBI/SCB, Chennai.

2.M/s.Vijaya Bank
Represented by its Regional Manager,
Raja Towers, Avinashi Road,
Coimbatore.

3.C.Chidambaram

4.S.Jaishankar

5.V.Ramkumar

6.S.Kannan

7.B.K.Prakash

8.V.Madhavan

9.V.R.Chandramouli

... Respondents

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PRAYER : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records of the criminal proceedings in CC.No.3 of 2011 on the file of the Special Court of the II Additional District Judge (CBI) Cases, Coimbatore and quash the same in the light of the decisions of Hon'ble Supreme Court in Nikhil Merchant V. CBI and another reported in CDJ 2008 SC 1430 and affirmed in Gian Sing V. State of Punjab and another reported in CDJ 2012 SC 647.

For petitioners : Mr.K.M.Vijayan, SC
for Mr.R.Selvakumar.

For Respondents : Mr.K.Srinivasan,
Spl.Public Prosecutor, CBI Cases for R1.
Mr.P.Elayaraja Kumar
for Mr.Ramalingam Associates for R2.
Notice Served on R5, R7 and R9.

ORDER

This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to quash the criminal proceedings in CC.No.3 of 2011 pending on the file of the Special Court, II Additional District Judge (CBI) Cases, Coimbatore.

2. The brief facts of the case are as follows :-

During 2005, the 1st petitioner was enjoying credit limits aggregating to Rs.1.60lakh with Karur Vysya Bank, for the equitable mortgage create on (i)vacant land measuring 1.80acres owned by the Company Located at Velampalayam Village, Tirupur Taluk valued for

Rs.85lakhs (ii)vacant land worth about Rs.70lakhs and (iii)deposit of Rs.1.21crores. On 01.12.2005, the 2nd petitioner approached the 2nd respondent bank with the proposal to take over the above credit facilities from Karur Vysya Bank with the enhancement for Rs.3crores. After verifying the records, the enhancement was sanctioned and credit limit was also enhanced to Rs.4crores on 09.05.2007. Due to financial crisis, the loan amount was not repaid and the loan account was declared as NPA on 30.08.2008. In the meanwhile, the Bank has initiated recovery proceedings before the DRT, Coimbatore in OA.Nos.30 of 2009 and 61 of 2010. The bank has also filed a report stating that the borrowers prepared two different set of balance sheets for the year 2005-2006 and submitted one before the Registrar of Companies and another one to the Bank for availing the credit facilities. On the basis of fabricated balance sheet with the connivance of the then bank officials the petitioners made wrongful loss to the bank.

3. Based on the complaint given by the bank officials, FIR in RC.10(S)/2009/CBI/SCB/Chn was registered by the Superintendent of Police, CBI/SCB, Chennai on 24.11.2009 for the offences under Section 120(B) r/w.420 IPC and 13(2) r/w.13(1) (d) of Prevention of

Corruption Act, 1988. After completion of investigation charge sheet was filed on the file of the Special Court, II Additional District Judge, CBI Cases, Coimbatore and the same was taken cognizance and numbered as CC.No.3 of 2011.

4. Subsequently, the petitioners received summons dated 28.02.2014 from the Lok Adalat, Coimbatore with regard to OA.Nos.30 of 2009 and 61 of 2010. The petitioners and the Bank arrived into a settlement and the compromise decree was passed on 15.03.2014 incorporating the terms of the compromise entered into between the parties. Based on the compromise decree the petitioners have paid a sum of Rs.275lakhs towards full and final settlement and on such settlement the applicant bank had to take up the matter with the Reserve Bank of India and other agencies for deletion of the account of the petitioners from fraud list. Out of Rs.275 lakhs a sum of Rs.200lakhs along with accrued interest available in the fixed deposit with the bank in the name of the Registrar, DRT, Coimbatore, the appropriated amount was deposited by the petitioners. The balance of Rs.54lakhs was also paid by the petitioners and the same was admitted by the Bank in the counter statement filed by them in MA.No.563 of 2014.

5. In continuation to the compromise arrived at between the petitioners and the Bank, the petitioners have come forward with the present petition before this Court, to quash the proceedings pending in CC.No.3 of 2011 on the file of the Special Court, II Additional District Judge, CBI Cases, Coimbatore.

6. The learned Senior counsel appearing for the petitioners would submit that the above transaction is only a loan transaction and the case is purely civil in nature and the matter is also amicably settled between the petitioners and the defacto complainant/Bank. The petitioners have paid the entire loan amount as per the award passed by the Lok Adalat and no loss has been created to the Government of India and there is no necessity to give criminal colour once again to the settled issue before the Lok Adalat.

7. The learned senior counsel appearing for the petitioners in support of his contention relied on the following decisions :-

- 1. CDJ 2008 SC 1430 – Nikhil Merchand v. CBI and another.**
- 2. CDJ 2012 SC 647 – Gain Singh V. State of Punjab and another.**

3. 2017 (1) MLJ (CrI.) 724 – CBI v. Sadhu**Ram Singla and others.**

8. As per the directions laid down by the Hon'ble Supreme Court, even in the non-compoundable offences when the matter is settled between the parties, the High Court can quash the proceedings. In this case, the offence is non-compoundable one, it is settled matter and the petitioners have not created any loss to the Government or to the defacto complainant/Bank. The defacto complainant/Bank has also sent a letter to the authority/CBI that as per the order of the Lok Adalat dated 15.03.2014, the petitioners have complied with the terms of the compromise recorded and the Bank has also sent a letter dated 26.04.2016 to RBI Informing them about closure of account of the borrower company on 17.04.2014.

9. The learned Special Public Prosecutor would submit that mere settling the amount will not absolve the petitioners from the criminal offence. The evidence on record clearly establishes that the petitioners in connivance with the other accused persons had forged and fabricated certain purchase orders of overseas buyers which were used as genuine to avail packing credit loan on different occasions

from bank. On certain occasion, one purchase order of overseas buyer was repeatedly used to avail PCL and the purchase orders of overseas buyers which are dated after the date of shipment were also used as genuine for availing PCL with an intention to cheat the bank.

10. Further the learned Special Public Prosecutor has submitted that the offences are certainly more serious they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act, the accused has also been charged for commission of the substantive offence under Section 471 IPC. Though, the amounts due have been paid the same is under a private settlement between the parties unlike in **Nikhil Merchand** case (cited supra) where the compromise was 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 cases. In totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in paragraph 57 of **Gian Singh** case (Cited supra) applies to the present case and on that basis comes to the conclusion that the powers under Section 482 Cr.PC should not be exercised to quash the criminal case against the accused.

11. The learned Special Public Prosecutor for CBI cases has also placed his reliance on the following decisions :-

1. CBI v. B.Rajagopal – 2002 (9) SCC 533.

**2. Viswanth v. State of Jammu and Kashmir –
1983 SC (CrI) 173.**

12. Heard the rival submissions made on both sides and perused the records.

13. The case of the prosecution is that during 2005, the 1st petitioner was enjoying credit limits aggregating to Rs.1.60lakh with Karur Vysya Bank by creating equitable mortgage. On 01.12.2005, the 2nd petitioner approached the 2nd respondent bank with the proposal to take over the above credit facilities from Karur Vysya Bank with the enhancement for Rs.3crores. After verifying the records, the enhancement was sanctioned and credit limit was also enhanced to Rs.4crores on 09.05.2007. Due to financial crisis, the loan amount was not repaid and the loan account was declared as NPA on 30.08.2008. In the meanwhile, the Bank has initiated recovery proceedings before the DRT, Coimbatore in OA.Nos.30 of 2009 and 61 of 2010. On the basis of fabricated balance sheet with the connivance

of the then bank officials the petitioners made wrongful loss to the bank. Based on the complaint given by the bank officials, FIR in RC.10(S)/2009/CBI/SCB/Chn was registered by the Superintendent of Police, CBI/SCB, Chennai on 24.11.2009 for the offences under Section 120(B) r/w.420 IPC and 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. After completion of investigation charge sheet was filed on the file of the Special Court, II Additional District Judge, CBI Cases, Coimbatore and the same was also taken cognizance and numbered as CC.No.3 of 2011.

14. Subsequently, the petitioners and the Bank arrived into a settlement and the compromise decree was passed on 15.03.2014 incorporating the terms of the compromise. Based on the compromise decree, the petitioners have paid a sum of Rs.275lakhs towards full and final settlement and on such settlement the applicant bank had to take the matter with the Reserve Bank of India and other agencies for deletion of the account of the petitioners from fraud list. The amount compromised was duly paid by the petitioners and the same was admitted by the Bank in the counter statement filed by them in MA.No.563 of 2014.

15. The learned senior counsel appearing for the petitioner would submit that the matter is settled with the Bank and it is only a loan transaction and the same is settled between the parties amicably and the Lok Adalat has also passed an award recording the terms of compromise entered into between the parties. The defacto complainant/Bank has also sent a letter to the authorities concerned informing them about closure of account of the borrower company on 17.04.2014 and not to proceed further in this regard.

16. Now the question is as to whether the petitioners' case can be quashed on the ground that the matter is settled before the Lok Adalat and liability of the loan amount is repaid.

17. The learned Special Public Prosecutor for CBI cases seriously objected that mere settling the loan amount will not absolve the criminal liability and this is not the private settlement or Court settlement. The settlement is arrived at between the parties before the Lok Adalat, the award passed by the Lok Adalat shows the liability of the accused and the petitioner company to the Bank, the Civil liability has been settled and the Lok Adalat has only fixed the quantum of amount to be paid to the Bank. On perusal of the Lok

Adalat award, nothing has been stated about the criminal case and also for compounding the offences. However, it is settled proposition of law that the mere settlement will not absolve the entire criminal liability.

18. Further, reliance has been placed on the decision of the Hon'ble Apex Court cited by the learned senior counsel for the petitioners in the case of **Gain Singh V. State of Punjab and another** reported in **CDJ 2012 SC 647** wherein the Hon'ble Apex Court has clearly discussed the powers of High Court while exercising its inherent jurisdiction, which is extracted hereunder :-

"57. 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 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 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 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 dispute. 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.

19. Further the learned Senior Counsel appearing for the petitioners would place reliance on the judgment reported in **Nikhil Merchand V. Central Bureau of Investigation and another** reported in **CDJ 2008 SC 1430**, the relevant portions of the judgment is extracted hereunder:-

"22.Despite the ingredients and the factual content of the offence of cheating punishable under Section 420 IPC, the same has been made compoundable under Sub-section (2) of Section 320 Cr.PC. with the leave of the Court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S.Joshi's case (supra) becomes relevant.

23.In the instant case, the disputes between the company and the bank have been set at rest on the basis of the compromise arrived at by them

whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

24. On an overall view of the facts as indicated herein above and keeping in mind the decision of this Court in B.S.Joshi's case (supra) and the compromise arrived at between the company and bank as also clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our

view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.”

20. In the recent case relied on by the learned counsel for the petitioners in **CBI v. Sadhu Ram Singla and others** reported in **(2017) 1 MLJ (crl.) 724**, wherein it is held as follows :-

“Whether FIR and criminal proceedings alleging non-compoundable offences could be quashed by High Court in exercise of its jurisdiction under Section 482 of Cr.PC – Held, continuance of criminal proceedings, after compromise has been arrived at between complainant and accused, would amount to abuse of process of Court and exercise in futility – Trial would be prolonged and it may end in decision which may be of non consequence to any of parties – appeal dismissed.”

21. From the judicial pronouncement of the Hon'ble Apex Court in various decisions referred to by the learned senior counsel for the petitioners, once the matter is settled between the parties, the commission of non compoundable offences or for criminal conspiracy

to commit the offences under Sections 120(B) r/w.420, 467, 468 and 471 of IPC, the dispute between the parties are settled by repayment of loan amount should invariably be quashed. Thus, there is no ratio decidendi has been given by the Hon'ble Apex Court invariably in all the cases, if the matter is settled, the High Court has powers to quash the proceedings depends upon the circumstances of the case and also the offences involved in the case, more so ever, if it is private in nature, the case can be quashed. This Court has no quarrel with the references to the law laid down by the Hon'ble Apex Court. But at the same time, each case has its own merits and demerits and depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect and the gravity of the offences involved in it. The facts and circumstances of the cases above referred to are different from the present case on hand and therefore the same are not applicable to the present case.

22. The investigation reveals that A1 to A5 are private persons, inconnivance with A6, A7, A8 and A9 and A10, the Bank Officials (Public Servant) entered into a criminal conspiracy during 2006 to 2008 at Tiruppur and other places with an intention to cheat Vijaya

Bank and in pursuance thereof, fraudulently altered purchase orders of overseas buyers and the same were produced as genuine along with PCL applications and in furtherance thereof, A6 to A10 knowing fully well that the said purchase orders were forged, false and fabricated, sanctioned packing credit loans against the said forged purchase orders, thus causing wrongful loss to Vijaya Bank and corresponding wrongful gain to themselves. The acts of A1 to A10 disclose the commission of offences punishable under Sections 120B r/w.420, 468 and 471 IPC and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act and substantive offences.

23. On bare perusal of the documents produced by the prosecution along with the charge sheet, the allegations levelled against the accused persons and the petitioner company for the offences under Sections 120(B) r/w.420, 468 and 471 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act 1988 are found to be very serious in nature. The petitioners knowing full aware of the future consequences and in connivance with the public servant/Bank officials with an intention to cheat the Bank by producing false and fabricated balance sheet for the year 2005-2006 and availed credit facilities to a tune of Rs.300lakhs. Whereas the company had

submitted a different balance sheet to the Registrar of companies, it was also alleged that though the stock of the company was secured as primary security, the same was disposed of by the company without the knowledge of the Bank, causing wrongful loss of Rs.433.8lakhs to Vijaya Bank.

24. It is relevant to place reliance on the decision of the Hon'ble Supreme Court in the case of **Central Bureau of Investigation Vs. Maninder Singh** reported in **(2016) 1 SCC 389**, the relevant paragraphs are extracted hereunder :-

18. In the recent decision in Vikram Anantraï Doshi, this Court distinguished Nikhil Merchant case and Narendra Lal Jain case where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case laws under subject in Vikram Anantraï Doshi case, this Court observed that cheating bank expositis fiscal impurity and such financial fraud is an offence against the society at large, in para 26, this Court held as under: (Vikram Anantraï Doshi case).

"26. ...Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis 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 kind of benefits it cannot be regarded as a case having overwhelmingly and predominantinglly 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 1 Page 11 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 proceedings 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 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the

crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible".

25. The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the

ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the Code, even assuming, although not accepting that invoking the revisional power of the High Court is impermissible. Further, the inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned under Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provisions of the code.

26. In what cases power to quash the criminal proceeding or complaint or FIR 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, dacoity, etc cannot be

fittingly quashed even though the victim or victims 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.

27. Thus, for the discussions held above and considering the circumstances and serious nature of the offences involved in this case and also the allegations made against these petitioners, this Court is not inclined to invoke the provisions under Section 482 of the Code to quash the criminal proceedings in CC.No.3 of 2011 pending on the file of the Special Court, II Additional District Judge (CBI) Cases, Coimbatore.

28. In the result, the criminal original petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

16.08.2017.

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Index : Yes/No.

Internet : Yes/No.

P. VELMURUGAN, J.

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To

1. The Special Court, II Additional District Judge (CBI) Cases, Coimbatore
2. The Special Public Prosecutor, CBI Cases, High Court, Madras.
3. The The Inspector of Police, CBI/SCB, Chennai.



Pre - Delivery Order in

Crl.OP.No.14744 of 2014

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