IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

CORAM :

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

CRL.OP. No.28399 of 2009
and M.P.No.1 of 2009

A.Srihari ... Petitioner/accused No.3

Vs.

State Rep. By:
Additional Superintendent of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan,III Floor,
Haddows Road, Nungambakkam,
Chennai – 600 006.
R.C.No.2(A)/2006 ... Respondent

PRAYER:- Petition has been filed under Sections 482 of the Code of Criminal Procedure to call for the entire records pending in C.C.No.4 of 2008 on the file of the XI Additional Special Judge for CBI cases relating to Banks and financial Institutions, Chennai-600 001 and quash the same.

For Petitioners : Mr. K.Suresh Babu

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

O R D E R

This petition is filed to call for the entire records pending in C.C.No.4 of 2008 on the file of the XI Additional Special Judge for CBI cases relating to Banks and financial Institutions, Chennai-600 001 and quash the same.

2. The petitioner is arrayed as A3 in R.C.No.2(A) of 2006 which is now pending in C.C.No.4 of 2008 on the file of the XI Additional Special Judge for CBI Cases relating to Banks and Financial Institutions, Chennai.

3. The case of the petitioner is that the petitioner is one of the Directors of M/s.Suasa Project Infrastructure Development Company Pvt.Ltd., and the Company applied for Secured Over Draft to the tune of Rs.15 lakhs in the Sowcarpet Branch of Andhra bank, Chennai and it was sanctioned on the basis of 50% Books of Accounts and on the petitioner's guarantee as well as other Director viz., Hari Sesha Reddy. The petitioner has not offered forged documents to the Bank. Loan was repaid to the Bank fully and the account was closed on 20.11.2004 itself. The discharge petition in Crl.MP.No.44/2009 was dismissed by the XI Additional Special Judge for CBI cases relating to Banks and Financial Institutions, Chennai on 16.11.2009 under misconceived facts and law.

4. The learned counsel for the petitioner would submit that he availed the Bank loan much earlier on 09.01.2004. Subsequently because the surety were absconding, chargesheet was filed against this

petitioner and other accused.

5. The main contention raised by the learned counsel for the petitioner is that even prior to filing of the FIR, i.e, on 06.01.2016, he repaid entire loan amount and closed loan account on 29.12.2005 itself. Since even much prior to filing of FIR, the loan availed by the petitioners were repaid, as on the date of filing of FIR, no case is made out. Therefore, he has placed reliance on the judgment of ***Harmanpreet Singh Ahluwalia and others Vs.State of Punjab and others*** reported in ***(2009) 7 SCC 712.***

6. Learned Special Public Prosecutor would submit that the petitioner who is arrayed as A3 along with others stood charged for the offences punishable under Sections 120-B, 420, 419, 467, 468 and 471 IPC and Sections 13(2) r/w. 13(1) (d) of the Prevention of Corruption Act, 1988. The petitioner conspired with others cheated Andhra Bank, Sowcarpet Branch, Chennai and in pursuance of the same, opened the current account in the name of 11 companies and the same was floated by A3 to A16. But actually the said companies were not doing business as projected. These companies were floated only for the purpose of obtaining credit facilities from the bank. This petitioner along with others forged property documents in the bank and introduced A20 who does not have

landed property of her own. She was impersonated and signed the guarantee agreement and other bank documents for sanction of SOD limit of Rs.15 lakhs to the company.This petitioner/A3 had impersonated and cheated the bank and hence, subsequent re-payment of the loan will not take away the offence. He would submit that the Hon'ble Supreme Court has held in the case of ***Narinder Singh & Others Vs. State of Punjab & Another*** reported in ***CDJ 2014 SC 248*** wherein certain guidelines have been given which reads as follows:

> *31. 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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> *(I) 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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> *(II)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.

(III) Such a power is not 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.

(IV) 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.

(V) 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.

(VI) 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.

(VII) 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.

7. Learned Special Public Prosecutor appearing for the respondent would further submit that eventhough he has settled the loan amount

before filing of FIR and charge sheet, he falls under the clause (III) of the above guidelines given by the Hon'ble Supreme Court in ***Narinder Singh & Others (supra).*** Therefore, this Criminal Original Petition is not liable to be quashed. He would further submit that the very same petitioner has filed the discharge petition before the trial court invoking Section 239 of Cr.P.C., in Crl.MP.No.44 of 2009 and the same was dismissed by the trial court. However, invoking under Section 239 of Cr.P.C., will not take away the rights conferred under Section 482 of Cr.P.C., In this case, the main contention of the learned counsel for the petitioner is that he has settled the amount much earlier before lodging of the complaint itself. The trial court has not properly appreciated and accepted the decisions referred by him before the trial court in the case of ***Harmanpreet Singh Ahluwalia and others Vs.State of Punjab and others*** reported in ***(2009) 7 SCC 712. and SVL.Murthy Vs. State rep. By CBI Hyderabad*** reported in ***AIR 2009 SC 2717***. As per the latest decisions of the Hon'ble Supreme Court, mere repaying the amount/settling the amount will not take away the offence committed by the petitioner. Therefore, the contention raised by the petitioner is not sustainable. The reliance has been placed on the judgments in the case of ***Central Bureau of Investigation Vs. Maninder Singh*** reported in ***(2016) 1 SCC 389*** and ***State of Tamilnadu Rep. By Inspector of Police, Central Crime Branch Vs. R.Vasanthi Stanley and another*** reported in ***(2016) 1 SCC 376.*** He referred to para-18 of the judgment in ***Central Bureau of Investigation Vs. Maninder Singh*** which reads as follows:

> *18. In the recent decision in Vikram Anantrai 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 Anantrai Doshi case, this Court observed that cheating bank exposits fiscal impurity and such financial fraud is an offence against the society at large, in para 26, this Court held as under: (Vikram Anantrai Doshi case).*
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> *"26. …Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits 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 predominantingly 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".*

Further the reliance has been placed on the decision in the case of ***Gian Singh Vs. State of Punjab and Another*** reported in ***(2012) 10 SCC 303.*** The relevant portion of the judgment is extracted hereunder in para 61 of the judgment which reads as follows:

"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 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-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 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.*

8. On careful perusal of the entire records placed before this court and also considering the serious nature of the allegation and considering the submission made by both the learned counsel and also authorities submitted by both the learned counsel, it is clearly seen that the petitioner himself admitted that he availed the bank loan and subsequently, he re-paid the amount. The only contention raised by the petitioner is that even much prior to the filing of FIR, they repaid the entire loan amount and therefore, as per the Judgments of the Hon'ble Supreme Court. In this case, the charges against the petitioner in C.C.No.4 of 2008 on the file of

the XI Additional Special Judge for CBI cases relating to Banks and financial Institutions, Chennai has to be quashed.

9. On careful reading of the above referred decisions and perusal of the material records of the present case which involve heinous and serious offences under Sections 120 B, r/w. 420, 419, 467, 468 and 471 and Sections 13(2) r/w. 13 (1) (d) of P & C Act and substantive offence under Sections 420 & 468 r/w. 471 IPC. The allegation against the petitioner is 'forging'. He along with A9 produced forged property documents and introduced A21 Smt.Vijaya as R. Muniammal, owner of the property offered as security. He along with A21 executed demand promissory note and composite agreement on 09.01.2004 in their capacity as Directors of M/s.Suasa Infrastructure Development Co., Pvt Ltd., (A31). After framing such serious charges of forgery, the petitioner wants the proceedings to be quashed on account of settlement with the Bank. The inherent power of this court under Section 482 of Cr.P.C., should be sparingly used. In this case, the offence was committed with a deliberate design with an eye on personal profit regardless of consequence to the society at large. Under the above said circumstances, to quash the proceedings merely on the ground that the accused has settled the amount with the bank is not sustainable.

10.In this case, the charges against the petitioner along with other accused A3 to A13 are under Sections 120 B, r/w.420, 419, 467, 468 and 471 IPC and Sections 13(1) r/w. 13(1) (d) of Prevention of Corruption Act, 1988 and substantiate offence under Sections 420 and 468 r/w. 471 IPC.

11. In this case, the allegation against this petitioner/A3 is that he is the younger brother of A2/A.Subramaniam. He was the Director of M/s.Energomasch Power Engineering & Consulting Pvt. Ltd., till 18.01.2003. He along with the second petitioner/A9, R. Harisesha Reddy took M/s. Suasa Projek Infrastructure Development Co., Pvt. Ltd.,(A31) and applied for SOD of Rs.15 lakhs. He along with A9 produced forged property documents and introduced A21/Vijaya as "R. Muniyammal", owner of the property offered as security. He along with A21 executed demand promissory note and composite agreement on 09.01.2004 in their capacity as Directors of M/s.Suasa Infrastructure Development Co., Pvt. Ltd (A31).

12. After framing of such serious charges of forgery, the petitioner wants the proceedings to be quashed, on account of settlement with the Bank. The inherent power of this Court u/s.482 Cr.P.C., should be sparingly used. In this case, the offence was committed with a deliberate

design with an eye of personal profit regardless of consequences of the society at large. Under these circumstances, the petitioner prays to quash the proceedings merely on the ground that the accused have settled the amount is not sustainable. In the light of the above discussion, considering the facts and circumstances of the case and serious nature of the offence, this court is not inclined to quash the proceedings.

In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

02.08.2017

(1/3)

Index :Yes/No
Speaking / Non-speaking order
gv

To

1.The XI Additional Special Judge for CBI cases
relating to Banks and financial Institutions,
Chennai-600 001

2. Additional Superintendent of Police,
Special Police Establishment,
Central Bureau of Investigation,
Anti-Corruption Branch,
Shastri Bhavan,III Floor,
Haddows Road, Nungambakkam,
Chennai – 600 006.

3. The Public Prosecutor,
High Court, Madras,
Chennai.

P.VELMURUGAN.,J.
Gv

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and M.P.No.1 of 2009

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