SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.1405 of 2011

ORDER:

The petitioners figure as accused in Cr.No.57 of 2011 on the file of the Police Station, Panjagutta, Hyderabad. The offences alleged against the petitioners are under Sections 120-B, 406, 420 read with Section 34 of the Indian Penal Code, 1860 and 156(3) of the Criminal Procedure Code. The petitioners have filed this petition seeking for quash of the proceedings against them, in the above crime.

2. Heard the counsel for the petitioners, the counsel for the second respondent and the learned Public Prosecutor appearing on behalf of the first respondent.

3. The revocation of bank guarantee, which was taken with the first petitioner bank herein, is the basis of this complaint. From the averments in the complaint, it can be understood, that the complainant is a company incorporated under the Companies Act, 1956. During the course of its business, the complainant entered into a contract with M/s. Orissa Computer Associates (OCA), for construction and implementation of e-books and as per the terms of the contract, the said OCA gave a bank guarantee for Rs.2.2 crores, through the first petitioner and the bank guarantee was executed by the first petitioner and its Manager and Vice President, D. Bhattacharaya. The OCA provided copy of the said bank guarantee to the complainant company, which is known to the first petitioner, which was formally known as UTI Bank Limited. The tenure of the said bank guarantee is one year from the date of its execution. One of the

conditions in the bank guarantee is that the first petitioner shall not revoke the bank guarantee without prior written unconditional approval/permission from the beneficiary, before expiry of the claim period of the said bank guarantee. Based on and acting upon letter dated 15.10.2003 given by the first petitioner, the complainant company proceeded and opened a letter of credit for US $ 2,00,000 through Barclays Bank dated 18.11.2003 through Habib Bank Ag Zurich. The first petitioner did not send the original copy of the bank guarantee, in spite of the demand by the complainant company, though the same has to be made available to the complainant.

4. The complainant company has been expecting the same to be delivered to it by the bank, but to its surprise, received a communication from the first petitioner, dated 10.10.2003, stating that the bank guarantee has been cancelled at the request of the applicant for the same i.e. OCA and that the original has been submitted to it by OCA. This act of cancellation of the bank guarantee by the bank without written confirmation from the beneficiary is contrary to well established business norms and is a clear violation of the trust reposed by the complainant company. It is clear that A1 and A2 colluded with OCA and acted in concert and made the complainant company to believe that there is existence of valid and subsisting bank guarantee and acting upon the said belief, the company opened valuable letters of credit. The Ombudsman, Reserve Bank of India, Bhuvaneshwar, after scrutinizing all the documents and transactions, found something fishy and suspicious in the matter and passed an order awarding damages of Rs.5.75 crores from Axis Bank

Limited and also advised them to file both criminal complaint and civil suits against the Axis Bank. Now the said amount has bulged into Rs.10.76 crores with interest. A1 is the company incorporated under the Companies Act while A3 to A18 are the Chairman cum Managing Director, Directors and Company Secretary respectively.

5. Aggrieved by the said complaint, which is filed in the year 2010, that is almost after seven years of taking the bank guarantee, the petitioners come before this Court by way of this quash petition, on the following grounds.

The petitioners have nothing to do with the alleged offences. The transaction, even if it is assumed to be true, is purely civil in nature and hence, the registration of crime is unsustainable. The petitioners issued bank guarantee at the request of its constituent and customer OCA, in favour of the complainant and it appears that there was a dispute between the customer of the petitioner and the complainant and subsequently, OCA returned the original bank guarantee to the first respondent for cancellation and since the original bank guarantee is returned, as per the banking procedure, the same was cancelled and the same was duly intimated to the complainant on 31.12.2003. OCA has procured the bank guarantee and as such, it ought to have made A1 and the correct officials representing it, as accused and the alleged business transaction of the complainant is with OCA and not with the petitioner bank. When the guarantee issued by the petitioner bank has not reached the hands of the complainant, the contract of guarantee cannot be expected to be commenced. In fact, till the bank guarantee reached the complainant, no contractual relationship of guarantor bank and complainant/beneficiary is established. Moreover, nobody acted under the bank guarantee, since the same is cancelled by surrendering the original bank guarantee to the petitioner bank. Therefore, malafides or the ground that the complainant opened letter of credit cannot be pleaded as a ground for the complaint. When the complainant has not insisted on the original bank guarantee, even after coming to know that OCA has agreed to issue such a bank guarantee to them, clearly shows that no such contract has come into existence. As per the Contract Law, the original bank guarantee has to be obtained by the beneficiary and only after tendering the same to the bank, it can be invoked. When the complainant itself has no right, it cannot claim or prosecute the petitioners for the alleged offences. The complaint alleged by the complainant before the banking ombudsman is rejected by order dated 30.04.2005. The averments in the complaint that damages were awarded by the Ombudsman is not correct. No such award was passed by the Ombudsman. Even assuming that the Ombudsman advised the complainant to file criminal case, lodging a complaint at very belated stage is a clear, deliberate and intentional act on the part of the complainant. There are no allegations in the complaint that there was any fraudulent intention at the time of execution. The bank guarantee was cancelled in December 2003 and at that time, the Executives/Directors of petitioner bank, who were arrayed as A3, A4, A7 to A16, were not in the petitioner bank as Executives/Directors and all of them joined the petitioner bank at a later period and hence, they cannot be made liable.

6. From the arguments extended on either side, the points that come up for consideration are:

1. Whether the allegations in the complaint would constitute the alleged offences, *prima facie*
2. Whether the delay in the complaint would vitiate it.
3. Whether the allegations in the complaint would make all the petitioners liable for the alleged offences.
4. To what result.

<u>POINT No.1</u>:

7. The offences for which the complaint was filed are section 420 and 406 IPC. The counsel for the petitioners contends that there is no breach of trust that is committed by the petitioners, as, for a breach of trust to be committed, there should be entrustment of property, as required under Section 405 IPC, which defines criminal breach of trust. The same is extracted hereunder for quick reference and understanding:

> 405. Criminal Breach of Trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

8. The Supreme Court in its decision in M/s. THERMAX LTD. v. K.M. JOHNY[1] observed as under:

---

[1] (2011) 13 SCC 412

> "Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence..."

It also observed that in few cases the question arose whether criminal prosecution can be permitted when the dispute between the parties is predominantly of civil nature and the proper remedy would be a civil suit.

In INDIAN OIL CORPN. v. NEPC INDIA LTD.[2] the Supreme Court extracted the observations made by it in an earlier case, which are as under:

> "23. In *Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin* [AIR 1953 SC 478], this Court held:
>
> > "To constitute an offence of criminal breach of trust, it is essential that the prosecution must prove, first of all, that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.
> >
> > It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person, other than the accused and the latter must hold it on account of some person or in some way for his benefit."

9. Whether the interest that the complainant had in the bank guarantee can be termed as property and whether the revocation of

---

[2] (2006) 6 SCC 736

the bank guarantee without informing it, in violation of the specific condition to that effect in the bank guarantee, would amount to breach of trust is the aspect, which needs examination in this case. The agreement between the complainant and OCA was entered on 29.09.2003. Clause (4) in the said agreement would touch upon the bank guarantee. The clause reads as under:

> "4. This EMD may be deposited in the form of a BG/Inland LC in the name of Atlantic Trade Info PVT Ltd., payable at India. In case, if the service provider submits a BG, then the format shall be as approved by the purchaser, such that the same shall be encasheable on establishment of the relevant LC EMD may be paid partly in one mode and partly in another mode."

10. From a reading of the above clause, the understanding that comes is, taking of the bank guarantee by OCA was not a pre-condition and it was not mandatory. The wording of the said clause would show that it was an option given to OCA with regard to the EMD. The wording "*In case, if the service provider submits a BG, then the format shall be as approved by the purchaser* ..." would mean that at the option of OCA, which is referred as service provider, only, the bank guarantee shall be taken. The clause wherein it is stated that EMD may be paid partly in one mode and partly in another mode would also support the said understanding. But, however, if a bank guarantee is taken by exercising the option given under the said agreement and when there is a clause in the bank guarantee to the specific effect that the bank guarantee shall not be revoked without prior written unconditional approval/permission from the beneficiary, it would amount to breach of trust. Whether it would attract and satisfy

the legality underlying the said phrase and whether it would satisfy the requirement of Section 405 IPC has to be seen.

11. The Supreme Court in INDIAN OIL CORPN.'s case (2 supra) has explained the criminal breach of trust as follows:

> "22. A careful reading of the section shows that a criminal breach of trust involves the following ingredients : (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under section 405) where there is 'entrustment':
>
> (i) An 'Executor' of a will, with reference to the estate of the deceased bequeathed to legatees.
>
> (ii) A 'Guardian' with reference to a property of a minor or person of unsound mind.
>
> (iii) A 'Trustee' holding a property in trust, with reference to the beneficiary.
>
> (iv) A 'Warehouse Keeper' with reference to the goods stored by a depositor.
>
> (v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
>
> (vi) A servant or agent with reference to the property of the master or principal.
>
> (vii) A pledgee with reference to the goods pledged by the owner/borrower.
>
> (viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed

> a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor).

The examples given by the Supreme Court are not exhaustive and the trust that was reposed in the bank while the bank guarantee was taken, would be similar to the trust, which is the third example cited by the Supreme Court. When once OCA has taken the bank guarantee in pursuance of an agreement with the complainant, the interest in the bank guarantee would become a property of the beneficiary and the breach of trust involved in the said bank guarantee would definitely be an offence against the beneficiary. It is after all taken as a guarantee for the performance of the part of the beneficiary, in the contract. If the bank guarantee becomes a basis of the contract, it would definitely become a property, held by the bank, as a trustee of the beneficiary. Hence, the above discussion would satisfy this Court to come to the conclusion that the monetary interest involved in the bank guarantee, which is to the benefit of the beneficiary, would fall within the definition of property under Section 405 IPC.

12. As regards Section 420 IPC, the counsel for the petitioners contends that in order to constitute the said offence, the complainant has to prove that there was an intention on the part of the petitioners, from the inception of the bank guarantee, to cheat the complainant. In support of his argument, he takes the help of the decision of the

Supreme Court in INDIAN OIL CORPN.'s case (2 supra) wherein the Supreme Court, by cogitating Section 415 IPC and by referring to it's earlier decision in *RAJESH BAJAJ v. STATE OF NCT OF DELHI* [(199) 3 SCC 259] observed that it is not necessary that a complainant should verbatim reproduce in the body of the complaint, all the ingredients of the offence he is alleging nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. It also observed that the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

13. In order to understand whether such element of cheating existed in the minds of the petitioners in this case, it would be beneficial to refer to the contents of the complaint. Except mentioning that the first petitioner bank has revoked the bank guarantee without intimating the same to the complainant, there is no averment in the complaint that they had an intention to cheat the complainant, from the inception of the bank guarantee. It is only by virtue of the act of the petitioner bank, in cancelling the bank guarantee, that the complainant infers that the petitioner bank has cheated it. The correspondence between the complaint and the Ombudsman of the RBI is filed by the counsel for the petitioner. The same is not refuted by the complainant. By virtue of the decision in RAJIV

THAPAR v. MADAN LAL KAPOOR[3], the apex court permitted certain documents to be relied upon. Relevant paragraph reads as follows:

> "29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The 1same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the

---

[3] 2013(3) SCC 330

Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

14. The material now relied upon by the petitioners in this case, would fall within the categories of the material permitted by the Apex Court, in the above ruling. The complainant reported the matter to

RBI, which acknowledged the receipt of the letter of the complainant dated 31.10.2004 and mentioned that the complaint was referred to the concerned bank as per the usual procedure, for necessary action. The office of the banking Ombudsman addressed a letter to the complainant referring to the complaint given by the complainant and calling upon the Branch Manager, UTI Bank Limited, Bhuvaneshwar Branch and called upon the complainant to be present on a scheduled date. The findings of the Ombudsman, as reflected in the complaint given by the complainant, are as under:

> "(v) It is also a fact that once the LC was established a transaction had commenced, and on the establishment of the LC the beneficiary rights under the Bank Guarantee automatically devolve on the LC opener. There can be no other interpretation of clause 7 of the Bank Guarantee. Further, nowhere in the BG it is stated that the original BG is required for invoking. In banking law and practice it is amply clear that there should be proof of the identity of the person who invokes the guarantee and not the mere possession of a certain document. A document may be lost or misplaced but this in no way negates the ownership in the eyes of the law. This applies not only to guarantees but also to other negotiable instrument. Once it is clear who the beneficiary is he and only he will the powers to invoke or for that matter revoke the instrument.
>
> (vi) We cannot understand, how UTI bank can come to the conclusion that whoever have in their possession the original BG has a right to revoke it even if the beneficiary of the BG is different. It that were the case then the entire concept, of the BG mentioning the name and address of the beneficiary is vitiated and in fact, the entire concept purpose of a BG is defeated. Whether or not the beneficiary insists on obtaining the "original BG' is not a matter for UTI Bank consider. Further, the UTI Bank is no one to tell how business is to be carried out. The matters of "trust" and "good faith" are as much implicit in a business as others.

(vii) In para 4 of the letter issued by UTI Bank, on UTIB/CO/LEG/04/3329 dated 27th May 2004, the bank states "... A mere letter from the client stating that he has obtained a Bank Guarantee is not sound proof to quote the alleged clauses of the Bank Guarantee ..." It would seem that UTI Bank has forgotten that they issued a letter confirming the issue of a Bank Guarantee with a slight amendment to clause 7 of the BG.

(viii) UTI Bank in their above mentioned letter also states that the undertaking given by them in clause 2 of the BG (Sec 7(a) is only applicable when the beneficiary has the "original guarantee". This contention is absurd to say the least.

(ix) Lastly, we would like to make it very clear that it is the bank's duty to get written permission of BG beneficiary, before any attempt of cancellation is made. We at no time gave any authority to UTI Bank to hand over the original BG to the applicant. Does the bank hand over the original LC to the opener?"

15. From the said complaint, it can be understood that the defence taken by the petitioner bank, before the ombudsman, is that the revocation of bank guarantee is based on the production of original bank guarantee by OCA. But the fact remains that the original bank guarantee was not received by the complainant before it was revoked. Hence, whether the letter of credit taken by the complainant is based on the assurance underlying the bank guarantee is no understandable. It also can be understood that the plea of the petitioners before the ombudsman is that in the usual course, the bank guarantee would be revoked on the production of original bank guarantee. But, however, by virtue of the clause under the bank guarantee that the same shall not be revoked without information to the beneficiary, the bank is obliged to inform the complainant before the bank guarantee is

revoked, irrespective of at whose instance it is being revoked and irrespective of the production of original B.G. Whether the element of cheating was read into the said act of the bank, by the complainant, and whether it was conceived, as an act of cheating, can be understood by conduct of the complainant, subsequent to the revocation of the bank guarantee.

16. As observed earlier, the matter was taken to the Ombudsman and a letter written to the Ombudsman by the complainant on 05.04.2005 would show that the complainant did not treat the act of the petitioner bank as an act of cheating and it was satisfied with an effort to realize the loss caused to it, by way of damages. The letter stipulates that they are interested in keeping good banking relationship with UTI Bank and they called upon the UTI to indicate the compensation amount for the actual loss, which they fondly hope, would be much reasonable. Hence, the said letter is an evidence of the satisfaction of the complainant, after the deliberations with Ombudsman and that it wanted to rest content with recovery of damages. The complainant also gave another report to the police in the year 2004 but it appears that it did not go ahead with pursuing the said report and it took a different course of action by referring the matter to the Ombudsman and making an effort to realize the amount from the petitioner bank and it is not known as to what happened to the above mentioned letter and in the year 2010, the complainant comes up with filing of this complaint.

POINT No.2: The complaint is assailed by the petitioners as hit by *laches*.

17. In M/s. THERMAX LTD.'s case (1 supra) the Court came to deal with the aspect of inordinate delay and *laches* in the complaint and held that such delay itself would show that the complaint is inherently improbable; contains the flavour of civil nature and considering as such, the Supreme Court held that the Magistrate committed grave error in calling for a report under Section 156(3) of the Criminal Procedure Code. In the said case, the dispute related to the years 1993 – 1995 and complaint was filed in the year 2002. In this case, even if the period is construed from the date of filing of the earlier report i.e. in the year 2004, the delay is about six years.

18. The counsel for the petitioners argues that since the complainant lost his civil right, he has come up with this compliant after such a long time.

19. When once the complainant has changed his course of action, from that of a criminal complaint to that of a civil dispute, by giving up the earlier complaint and by making effort to realize the damages, the dispute remains to be only civil dispute thereafter. The Supreme Court in V.Y. JOSE v. STATE OF GUJARAT[4] observed that there exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract *per se* would not come in the way of initiation of criminal proceedings, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can

---

[4] (2009) 3 SCC 78

be found out, the Court should not be hesitate to exercise its jurisdiction under Section 482 C.P.C.

20. The counsel for the respondent No.2 furnishes several decisions, all of which are on the parameters for quash of criminal proceedings. This Court is aware of the parameters on the basis of which quash of the proceedings can be done, which were laid down by the Apex Court in STATE OF HARYANA v. CH. BHAJANLAL[5], wherein it was held that in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised;

> a) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> b) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
>
> c) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

[5] AIR 1992 SC 604

not disclose the commission of any offence and make out a case against the accused;

d) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the Code;

e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

g) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The above decision is the basis on which the decision reported in STATE OF BIHAR v. MD. KHALIQUE[6] is rendered. The decision in S.M. DATTA v. STATE OF GUJARAI[7] considered the decision in CH. BHAJANLAL's case (5 supra) and the proposition laid down therein are reiterated. So also, the decision of the Supreme Court in J.P. SHARMA v. VINOD KUMAR JAIN[8], though the decision does not refer to CH. BHAJANLAL's case (5 supra), the principles laid down are the same.

---

[6] (2002) 1 SCC 652
[7] (2001) 7 SCC 659
[8] (1986) 3 SCC 67

21. The counsel for the respondents also relied on the decision of the Supreme Court in LALMUNI DEVI v. STATE OF BIHAR[9] in support of his contention that merely because the complaint spells out a civil wrong, it is not justified to quash the complaint, if the alleged acts make out an offence. But, in this case, it s not on the basis of that the complaint spells out a civil wrong that the crime is held to be liable as quashed but for the reasons mentioned above. Hence, the said decision does not bear any relevance. The decision of this Court in L. RAJA KRISHNA REDDY v. STAWIK DRUGS LIMITES[10] is also on the same lines and it also referred to CH. BHAJANLAL's case (5 supra).

POINT No.3:

22. With regard to the petitioners being brought to book, the counsel for the petitioners relied on a decision of the Supreme Court in SUNIL BHARTI MITTAL v. CENTRAL BUREAU OF INVESTIGATION[11] wherein an observation that the principle that criminal intent of person(s) controlling company can be imputed to company based on the principle 'alter ego' cannot be applied reversely and when the company is the accused its directors can be roped in only if there is sufficient incriminating evidence against them, coupled with intention, is made. In this case, except against A1 and A2, no allegations against A3 to A6 are made. They are not termed to be the people, who are in-charge of the day-to-day affairs of the petitioner bank. The persons, who signed on the bank guarantee, are

---

[9] (2001) 2 SCC 17
[10] 1998 CRLJ 4865
[11] (2015) 6 SCC 287

the Manager and the Vice President. The manager is not shown in the list of the accused, though the vice president's signature is found. Whether it is of the second petitioner herein or not is not decipherable.

23. However for the reasons aforementioned, prosecution cannot be sustained against any of the petitioners. It can be further said that the conception of the respondents of the act of the petitioner Bank as a criminal act stands erased, by his act of taking a civil course of action i.e. to realize damages. It implies that he has condoned the criminality, if any, in the act of the accused. He cannot, by the manner in which his grievance is addressed, change his line of action and paint the act of the accused, with a brush of criminality as and when he chooses.

POINT No.4:

In the result, the criminal petition is allowed and the proceedings in Cr.No.57 of 2011 on the file of the Police Station Panjagutta, Hyderabad, against the petitioners, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

____
T. RAJANI, J

December 22, 2017
DSK