

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 200 of 2018

1. Helarius Kujur S/o L. Kujur Aged About 59 Years R/o Quarter No. N C -9, C S E B Colony, Jagdalpur, Police Station Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh
2. Albinus Tirkey S/o L Tirkey Aged About 59 Years R/o Quarter No. 253, K Jamgudapara, Village Niyanar, Police Station Parpa, Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh --- **Petitioners**

Versus

1. State of Chhattisgarh Acting through In Charge Police Station Bodhghat, District Bastar, Civil & Revenue District Jagdalpur Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh
2. Narayan Singh Bisht S/o Shri B. S. Bisht Ex Executive Engineer, Chhattisgarh State Power Distribution Company Ltd. At Present Posted as Assistant Engineer, Project Division C S P D C L Jagdalpur District : Bastar(Jagdalpur), Chhattisgarh --- **Respondents**

For Petitioner : Mr. K. A. Ansari, Sr. Advocate with
Mr. Devesh Kela, Advocate.

For Respondent No.1/State : Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21.2.2018

1. The instant petition is to quash the FIR No.360 of 2014 registered at Police Station Bodhghat Distt Bilaspur and the proceedings pending in Criminal Case No.1326/2015 before JMFC, Bastar, Jagdalpur.
2. Learned counsel for the petitioner submits that the present petitioners are the Senior Accounts Officers of the Chhattisgarh State Power Distribution Company Ltd and the

allegations of prosecution is that the payments were made over fake bills. He submits that the said bills are not subject to scrutiny by the present applicants and if the bills are loaded in the system, the accounts officer is duty bound to make payment. He submits that the present petitioners have discharged their duty on the basis of bills which were produced before them and they cannot be expected to verify the fact on the field level as the work for which the payment is being made is carried out or not. It is stated that it is the duty of Executive Engineers to verify whether the work has been carried out or not. Therefore, under the facts and circumstances of the case, no offence can be attributed to the present petitioners.

3. Per contra, learned State Counsel opposes the petition.
4. Perused the FIR. The FIR purports that fake bills of Metre shifting and other works were placed with the department and thereafter on the basis of the said bills Rs.1,38,86,538/- was paid. It is alleged that the said payments was made on the basis of forged documents which were passed by the petitioners also along-with other officers. The FIR further shows that the bills were prepared for payment in a single day i.e., 05.01.2013 for all the works work done in respect of Kondagaon and the work order was shown to be issued in one month. The FIR further records that when the work order issued the same is entered into accounts office but the payment of the work order was not entered into the office. Therefore, despite the fact that there are no documents, payment of 63 bills were made by the present petitioners and

other officers.

5. A perusal of the charge sheet would show that the offense u/s 120-B is also registered against the petitioners. The final report also purports that for the payment which was made the entire documents which ought to have been attached with the vouchers were not attached. It further records that when the bill is entered into the register, it is subject to audit. Thereafter, it is compared with the M.B. Book and consequent thereto the formalities of SAP are completed and the bills are paid. However, the same was attributed to present petitioners being the accounts officers. The report shows that though the payments which were made, but the document about the work carried out i.e., *Maha Pustika* were not attached.

6. The Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Another***¹ has laid down the following principles :

“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

1 (2012) 10 SCC 303

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 predominatingly 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.

7. Recently, in *Cr.A.No.1723 of 2017 - Parbatbhai Aahir @ Parbatbhai Bhimsinghbhai Karmur Vs. State of Gujarat* arising out SLP (CRL) No.9549 of 2016 (decided on October 04, 2017), the Supreme Court summarized the following broad principles which emerge from the precedents on the subject :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court.

(ii) The invocation of jurisdiction of the High Court to quash a First information Report or a Criminal Proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to

be exercised ; (i) to secure the ends of justice or (ii) prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court

may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in any activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

8. If the aforesaid principles are applied to the facts of the present case, prima facie it appears that the allegations levelled against the petitioners are akin to financial or economic fraud or misdemeanor as the instant case involves allegations of utilization of fabricated documents whereby huge amount was paid for the works which were not carried out by the respective contractor. The charges are also leveled under section 120-B of the IPC. Therefore, considering the entire documents on record, I do not find any merit in the petition to quash the FIR and the criminal proceedings in exercise of the powers conferred under section 482 of the Code of Criminal Procedure. Accordingly, this petition is dismissed.

Sd/-

(GOUTAM BHADURI)
JUDGE