

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 56 OF 2018

- 1) Radhika @ Radha w/o Bhanudas Salunke,
Age 32 years, Occ. Household & President
of the Society – Shri Maharashtra Nagri
Sahakari Path Sanstha, Aurangabad.
R/o Jadhavwadi, Jalgaon Road, Harsul,
Aurangabad.
- 2) Bhanudas s/o Laxman Salunke,
Age 38 years, Occ. Secretary of the
above said Society.
R/o as above.
- 3) Dnyaneshwar s/o Pundlik Pandhare,
Age 26 years, Occ. Service in the office
of above said society.
R/o Mayur Park, Harsul,
Aurangabad. .. Petitioners.

VS.

- 1) The State of Maharashtra,
Through The Police Station
Harsul, Aurangabad.
- 2) Prakash s/o Pundlikrao Muley,
Age 62 years, Occ. Pensioner,
R/o Plot No.12, Ranjanwan
Housing Society, M-2 road, N-9,
CIDCO, Aurangabad. .. Respondents

Mr. S. G. Magre, Advocate for petitioners.
Mr. S. B. Pulkundwar, Additional Public Prosecutor for
respondent No. 1 / State.
Mr. D. K. Rajput, Advocate for respondent No.2.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 23-04-2018

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Present petition has been filed for quashing of First Information Report (hereinafter referred to as 'FIR') lodged at the instance of respondent No.2 with the Harsul Police Station Tq. and Dist. Aurangabad. The quashment is sought by invoking powers of this Court under Article 226 and 227 of the Constitution of India, and Section 482 of the Code of Criminal Procedure.

2. The respondent No.2 has lodged a report vide Crime No. I-150/ 2017 on 28-11-2017 under Section 409, 420, 418 read with 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In financial establishments) Act, 1999 (hereinafter referred to as "MPID Act"). He contended that, he retired in March 2015 from Motherson Advance Tooling Solution Ltd. Company. His cousin brother Prabhakar Tukarampant Muley also retired from one A.P.I. Company, Aurangabad in 2003. After the retirement, respondent No.2 got amount of Rs.12,00,000/- towards provident fund. He was advised by his friend Shri. Waghmare and Shri Joshi, and on the said advise, for getting better investment results, he kept the amount in fixed deposit for 13 months in Shri

Maharashtra Nagri Co-Op. Society, Jalgaon Road, Auranbgabad, as follows ;

- 1) F.D.No.118, Dt.21-04-2016, Rs.1,00,000/-,
- 2) F.D.No.119, Dt.21-04-2016, Rs.1,00,000/-,
- 3) F.D.No.1135, Dt.08-11-2016, Rs.1,00,000/-,
- 4) F.D.No.1125, Dt.17-05-2016, Rs.50,000/-.

His cousin brother also kept amount in two fixed deposits as follows ;

- 1) F.D.No.1115, Dt.25-01-2016, Rs.65,000/-,
- 2) F.D.No.1124, Dt.17-05-2016, Rs.65,000/-.

It was told to both of them that, in the certificate for fixed deposit the financial institution cannot write 20 % of interest, and therefore, they had written that the matured amount will be given with 14 % of interest per annum.

3. After duration of the fixed deposit when both of them went to encash the fixed deposits and also gave written request to withdraw the amount, yet the accused persons who are President, Secretary and Manager of the institution, avoided to pay the amount on one or the other pretext. Ultimately on 05-05-2017 the financial institution gave a cheque drawn on Vikas Nagri Sahakari Bank Ltd. Aurangabad for an amount of Rs.2,00,000/-, however it bounced back, and therefore it was alleged that the accused persons have committed offence punishable under Section 409, 420, 418 read with 34 of the Indian Penal Code.

4. The petitioners have contended that, the petitioner society is registered under the Maharashtra Co-operative Societies Act and it is also doing business under the Maharashtra State Co-Operative Tribunal Regulation 1962. It is stated that, respondent No.2 has filed a false complaint against them. Nobody else has made any such kind of complaint about their working. If the respondent had any grievance, he ought to have approach the competent authority. Section 3 of the MPID Act is not applicable to the co-operative societies registered under the Maharashtra Co-Operative Societies Act. They have therefore, prayed for quashment of the report.

5. It is to be noted that, during the pendency of the present petition, a compromise has taken place between petitioners, respondent No.2 and the cousin brother of respondent No.2. The joint compromise pursis has been filed which has been marked as 'X'. It has been stated in the compromise pursis that, at the time of bail application filed by the present petitioners a condition was imposed that, they should deposit amount of Rs.4,80,000/-, and accordingly the said amount has been deposited with learned Additional Sessions Judge At Aurangabad. The petitioners No.1 to 3 will give consent/ no objection in Criminal Misc. Appln. No. 08 of 2018 filed by respondent No.2 for withdrawal of the said amount. Since the respondent No.2 and his brother in all would be getting the

amount which they had invested, they have stated that, they have no objection to quash and set aside Crime No. 150 of 2017.

6. All the parties were before us. We have confirmed that, they had arrived at the compromise voluntarily. The main contention in the FIR was that, the hard earned money of the respondent No.2 and his brother was invested with the company run by petitioners No.1 to 3, and in spite of the maturity, they were not given back their amount. Since now the respondent No.2 and his brother would be getting that amount, we find this to be a fit case where the FIR should be quash and set aside.

7. A three Judge Bench of this High Court in *Abasaheb Yadav Honmane Versus The State of Maharashtra*, reported in 2008(2) *Mh.L.J.*, 856, dealt with the inherent power of the High Court under Section 482 of the Code vis a vis the express bar for compounding of the non-compoundable offences in Section 320 (9) of the Code of Criminal Procedure. It has been observed in the said case that,

"14. The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter-changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused,

as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order. Edmund Davies, J. (Smith and Hogan Criminal Law, 5th Edition) has said :

"It seems to me that accordingly every Court sentence should primarily be surveyed in the light of one test: is that the best thing to do in the interest of the community ? –always remembering, of course, that the convicted person, despite his wrongdoing remains a member of the community."

After considering the above said observations Hon'ble Apex Court in *Gian Singh Versus State of Punjab and Another*, reported in (2012) 10 Supreme Court Cases 303, has laid down the following ratio;

"51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under

the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 of the IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner. "

"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the

Code. ”

"53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, nothing in this Code which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code. ”

"54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non. ”

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection. "

"56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided. "

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the

power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. "

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or

other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed. "

Further after referring to various other decisions it has been held that,

"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 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. 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. ”

Therefore, taking into consideration the above ratio we find that, this is a fit case where the inherent power of this Court should be exercised in order to secure the ends of justice.

8. At the cost of repetition we would like to say that, exercise of power under Section 482 of the Code in this case is in the interest of the petitioners and informant. If the said power is not exercised, the possibility of conviction would be reduced and even the judicial machinery would be required to waste its time. Hence, following

order.

ORDER

- 1) The petition is allowed.
- 2) The FIR bearing No.I-150 of 2017 lodged with Harsul Police Station Aurangabad Tq. Dist. Aurangabad, is hereby quashed and set aside.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

vjg/-.