HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.9509 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in Calendar Case No.13 of 2013 on the file of the Principal Special Judge for CBI Cases, Nampally, Hyderabad.

2. Petitioner herein is arraigned as accused No.3 in the aforesaid Calendar Case. He along with four others alleged to have committed offences punishable under Sections 120-B read with 420 IPC and under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. Heard Sri P. Vishnuvardhana Reddy, learned counsel for the petitioner, and Sri K. Surender, learned Special Public Prosecutor for CBI Cases appearing for respondent No.1.

4. Main submissions of the learned counsel have been, that a loan of Rs.25,25,000/- was obtained by the petitioner in his name from Syndicate Bank, Basheerbagh in the year 2008 and, thereafter, the installments were paid regularly as long as business was running successfully, and since the business was not going on well, One Time Settlement (OTS) Scheme for Rs.25,25,000/- was proposed by the petitioner in the year 2012, and the Bank has agreed to it, and the

petitioner has paid the entire amount of Rs.25,25,000/- and, therefore, no amount is outstanding to be paid to the Bank. Even otherwise, the entire claim of the bank was based on an agreement between the petitioner and the bank, and the transaction is, therefore, purely a loan transaction and thus, no element of cheating can be attributed to him.

i) The learned counsel also refers to a ruling of the Hon'ble Supreme Court in **Nikhil Merchant v. Central Bureau of Investigation**[1]. He also places reliance in **Central Bureau of Investigation v. Sadhu Ram Singla & others**[2] for the proposition that where offences under Sections 420 and 471 IPC were laid in the context of compounding of offences under Section 320 of the Code, the Hon'ble Apex Court observed that during pendency of proceedings when compromise was arrived at between Bank and Company under OTS Scheme of Bank, continuance of criminal proceedings after compromise of matter between parties amounts to abuse of process of Court.

5. Per contra, the learned Special Public Prosecutor for CBI Cases would submit that the petitioner has failed to file any receipt or any document to show that the amount was cleared under OTS Scheme, or at least he has not placed any material to show what was the amount that was due and what was the amount paid in case there was really OTS Scheme and the petitioner cleared the outstanding.

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[1]. 2008 LawSuit (SC) 1292
[2]. AIR 2017 SC 1312

i) The learned Special Public Prosecutor also would submit that the petitioner with an intention to get over the criminal liability has come up with the story that other accused have prompted him to contract the loan which is not tenable. There has been cheating on the part of the petitioner. According to him, the details have been mentioned in paragraph No.7 of the charge sheet as to 30 borrowers being projected and even enhanced secured overdraft limits was availed by the petitioner's Restaurant & Bar i.e., M/s. Sri Sai Restaurant & Bar, located at Malakunta, and in connivance with accused No.1, who is the Chief Manager of the Bank, all the four accused including the petitioner herein resorted to deception and despite the instructions from the Syndicate Bank, Regional Office, Hyderabad to stop further exposure to the said group constituted by the petitioner and other accused and, therefore, there is clear criminal conspiracy that has come into vogue.

ii) The learned Special Public Prosecutor also would submit that in fact most of the witnesses have been examined and trial is almost at the verge of completion and the petitioner at this stage deliberately has come up with the present Criminal Petition to stall the proceedings and there is no merit in it.

6. Instead of probing into the allegations in the charge sheet and other details, it would be suffice to state that what has been alleged by the CBI is that all the five accused dishonestly and

fraudulently sanctioning and availing excess credit facilities from Syndicate Bank, Basheerbagh Branch by projecting huge sales turnover and by dishonestly suppressing the information that working limits for the same business have been availed from Allahabad Bank, by dishonestly offering collateral security by falsely stating that the property is devoid of litigation and utilizing the proceeds of loan for the business of other entities and further availing working capital limits for the same business from Indian Bank by alienating the primary security of stock hypothecated to Syndicate Bank and default in repayment resulted in a wrongful loss of Rs.16,05,76,834/- as on 08.04.2013 apart from interest to be paid from 01.02.2013, and thereby made wrongful gain to themselves. The names of various concerns numbering thirty (30) have been mentioned in the table shown in the charge sheet.

i) The learned Special Public Prosecutor also placed reliance in **Gopakumar B. Nair v. Central Bureau of Investigation and another**[3], for the proposition that when amounts due were paid pursuant to a private settlement between parties and not under a compromise decree, and when there was no acknowledgment on the part of Bank, the Hon'ble Apex Court declined to interfere with the judgment impugned refusing to quash criminal proceedings in exercise of power under Section 482 of the Code where the offences are punishable under Sections 420 and 471 read with 120-B IPC and

3. (2014) 5 SCC 800

Section 13 (2) read with 13 (1) (d) of Prevention of Corruption Act read with 120-B IPC

ii) The learned Special Public Prosecutor also refers to the ruling in **State of Tamil Nadu v. R. Vasanthi Stanley and others**[4], for the proposition that in a grave criminal offence or serious economic offence or for that matter offence that has potentiality to create a dent in financial health of institutions, is not to be quashed on ground that there is delay in trial or principle that when the matter has been settled, it should be quashed to avoid load on the system, and that it can never be an acceptable principle or parameter or it would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of unscrupulous litigations, and such a situation should never be conceived of.

iii) He further relied on a ruling in **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another**[5], for the proposition that 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, and the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor, and the consequences of the act

4. (2016) 1 SCC 376
5. 2017 LawSuit (SC) 990

complained of upon the financial or economic system will weight in the balance.

7. Now, the point that arises for consideration is:

> Whether the request of the petitioner to quash the proceedings in C.C. No.13 of 2013 can be acceded to?

8. The petitioner maintains silence whether he has made such an application earlier in the very same Calendar Case. But, the case details of the High Court would clearly indicate that the petitioner herein filed Criminal Petition No.1109 of 2017 with Criminal P.S.R. 4131 of 2017 on 07.02.2017, which appears to be still pending. The said petition was filed by the petitioner along with Sri S. Venkateshwarlu and Sri P.Y. Srinivas Goud, who are arraigned as accused Nos.4 and 5. But, in the present Criminal Petition, he did not even whisper as to filing of the said Criminal Petition along with accused Nos.4 and 5. Thus, it is nothing but suppressing material facts. The petitioner has completely failed to disclose whether he was unsuccessful in the said Criminal Petition or whether the said Criminal Petition is still pending. Somehow, the learned Special Public Prosecutor also did not pay attention to this particular aspect of the case. In such an event, without even looking at the merits or discussing the submissions made by the learned counsel for the petitioner and the learned Special Public Prosecutor, the present Criminal Petition is to be dismissed in *limini* out rightly.

9. However, touching merits, the ground of abuse of process of Court is totally unavailable without entering into arena of merits for the reason the trial is still pending and most of the witnesses have already been examined.

10. Now, turning to the rulings relied on by the petitioner;

i) In **Sadhu Ram Singla'[2]**, the Hon'ble Apex Court held in paragraph No.15 thus:

> "15. Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma's case (AIR 2008 SC (Supp) 1171) (supra) and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of the criminal proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of Court and an exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which may be of no consequence to any of the parties."

ii) In **Nikhil Merchant[1]**, the Hon'ble Apex Court in paragraph Nos.30 and 31 held thus:

> "30. 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?

31. On an overall view of the facts as indicated hereinabove 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 the 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."

iii) In **Gopakumar B. Nair**[3], the Hon'ble Three-Judge Bench of Apex Court held in paragraph No.14 thus:

"14. The aforesaid principle of law may now be applied to the facts of the present case. At the very outset a detailed narration of the charges against the accused-appellant has been made. The appellant has been charged with the offence of criminal conspiracy to commit the offence under Section 13(1)(d). He is also substantively charged under Section 420 (compoundable with the leave of the Court) and Section 471 (non- compoundable). A careful consideration of the facts of the case would indicate that unlike in Nikhil Merchant (supra) no conclusion can be reached that the substratum of the charges against the accused-appellant in the present case is one of cheating nor are the facts similar to those in Narendra Lal Jain (supra) where the accused was charged under Section 120-B read with Section 420IPC only. 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 Merchant (supra) and Narendra Lal Jain (supra) where the compromise was a 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 two cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in Gian Singh (supra) (para 61) applies to the present case and on that basis had come to the conclusion that the power under Section 482 CrPC should not be exercised to quash the criminal case against the accused, we cannot find any justification to interfere with the said decision."

iv) In the present case, since no documentary proof at all is filed by the petitioner to find that the entire amount was cleared under OTS Scheme, it is to be stated that a bald statement is made to make out a ground for either stalling or stultifying the proceedings in the aforesaid Calendar Case. No other view can be arrived at. Even the ruling in **R. Vasanthi Stanley**[4], the Hon'ble Apex Court in the context of delay in criminal trial in relation to special trial while holding that the same cannot be an acceptable principle of parameter, held in paragraph Nos.13, 14 and 15 thus:

"13. Testing the present controversy on the anvil of the aforesaid principles, we are disposed to think that the High Court has been erroneously guided by the ambit and sweep of power Under Section 482 Code of Criminal Procedure for quashing the proceedings. It has absolutely fallaciously opined that the continuance of the proceeding will be the abuse of the process of the Court. It has been categorically held in ***Janta Dal v. H.S.Chowdhary*** [(1992) 4 SCC 305], that the inherent power Under Section 482 Code of Criminal Procedure though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito* justitiae to do real and substantial justice for the administration of which alone the courts exist. In ***Inder Mohan Goswami*** [(2007) 12 SCC 1], it has been emphasised that inherent powers have to be exercised sparingly, carefully and with great caution.

14. We will be failing in our duty unless we advert to the proponements propounded with regard to other aspects. They are really matters of concern and deserve to be addressed. The submission as put forth is that the first Respondent is a lady and she was following the command of her husband and signed the documents without being aware about the transactions entered into by the husband and nature of the business. The allegation in the charge-sheet is that she has signed the pronotes. That apart, as further alleged, she is a co-applicant in two cases and guarantor in other two cases. She was an Assistant Commissioner of Commercial Taxes and after taking voluntary retirement she has joined the public life, and became a member of the 'Rajya Sabha'. Emphasis is also laid that she is a lady and there is no warrant to continue the criminal proceeding when she has paid the dues of the banks, and if anything further is due that shall be made

good. The assertions as regards the ignorance are a mere pretence and sans substance given the facts. Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score.

15. As far as the load on the criminal justice dispensation system is concerned it has an insegragable nexus with speedy trial. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system. That can never be an acceptable principle or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations. Such a situation should never be conceived of."

v) In **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur**[5], once again the Hon'ble Apex Court reiterates what has been declared in **R. Vasanthi Stanley**[4] in proposition No.(ix) of paragraph No.15 and paragraph No.16 thus:

> "(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 an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.
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> "16 Bearing in mind the above principles which have been laid down in the decisions of this Court, we are of the view that the High Court was justified in declining to entertain the application for quashing the First Information Report in the exercise of its inherent jurisdiction. The High Court has adverted to two significant circumstances. Each of them has a bearing on whether the exercise of the jurisdiction under Section 482 to quash the FIR would subserve or secure the ends of justice or prevent an abuse of the process of the court. The first is that the appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973. The second is that the appellants have criminal antecedents, reflected in the chart which has been extracted in the earlier part of this judgment. The High Court adverted to the modus operandi which had been followed by the appellants in grabbing valuable parcels of land and noted that in the past as well, they were alleged to have been connected with such nefarious activities by opening bogus bank accounts. It was in this view of the matter that the High Court observed that in a case involving extortion, forgery and conspiracy where all the appellants were acting as a team,

> it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant. We agree with the view of the High Court. The present case, as the allegations in the FIR would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. The case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. If the allegations in the FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal interest in prosecuting serious crime. In these circumstances, the High Court was eminently justified in declining to quash the FIR which had been registered under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code."

11. Thus, the petitioner is absolutely unsuccessful in making out any ground for exercise of extra ordinary power under Section 482 of the Code. On the other hand, as observed in the above, the petitioner's conduct in suppressing the filing of earlier Criminal petition is also yet another circumstance to decline the relief sought for by him in the present Criminal Petition, besides substantial number of witnesses have already been examined.

12. Therefore, the present Criminal Petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Petition, stand disposed of.

A. SHANKAR NARAYANA, J

June 04, 2018.
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