

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6607 OF 2015

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No. 34 of 2004, pending on the file of Special Judge for CBI Caes, Nampally, Hyderabad, registered for the offences punishable under Sections 120-B read with 420, 468, 471 read with 468 IPC, Section 13(2) read with 13(1)(D) of the Prevention of Corruption Act.

Though the petition is filed raising several contentions, during hearing, learned counsel for the petitioners limited his argument to only one ground i.e discharge of the debt due to the bank, as nothing is to be adjudicated by the Court below and requested to quash the proceedings against the petitioners.

Learned counsel for the petitioners relied on judgment of the Apex Court in **Gian Singh v State of Punjab and another¹** and **B.S.Joshi and others v State of Haryana and another²**. On the strength of the principles laid down in the above judgments, learned counsel for the petitioners requested the Court to quash the proceedings.

Whereas, learned Special Public Prosecutor for CBI contended that the offences allegedly committed by the petitioners are serious economic offence against the bank and it cannot be quashed and placed reliance in **Gopakumar B.Nair v Central Bureau of Investigation and another³**, **Sushil Suri v Central Bureau of Investigation and another⁴**, **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others v State of Gujarat and another⁵** and **State of Tamilnadu v R.Vasanthi**

¹ (2012) 10 SCC 303 (F.B)

² (2003)4 SCC 675

³ (2014) 5 SCC 800

⁴ (2011) 5 SCC 708

⁵ (2017)9 SCC 641

Stanley and another⁶. On the basis of the principles laid down in the above judgments requested to dismiss the petition.

The petitioners and the other accused were charge sheeted for the above offences on the ground that they borrowed amount from the bank in collusion with the Manager of the Bank without providing necessary security for due payment and that he created allegedly three fictitious companies and operated the account enabling the bank to issue cheques towards purchase of raw-material etc.

Learned counsel for the petitioners though relied on **Gian Singh's** case referred supra, where certain guidelines were laid down by the Apex Court to exercise power under Section 482 Cr.P.C. The Apex Court sufficiently held that when there is no possibility of conviction even contrary when the offence is not against the societal interest, the Court can exercise power under Section 482 Cr.P.C. Here, the offence allegedly committed by the petitioners is against the bank i.e. serious economic offence. The Apex Court in **Central Bureau of Investigation v Narendralal Jain and others**⁷. That when the loan due to the bank was discharged the Court can exercise power under Section 482 Cr.P.C and quash the proceedings. But the judgment of the Division Bench though subsequent to judgment of the Apex Court in **Sushil Suri's** case referred supra, this was not considered and held that when there is overwhelming material available on record, clearly showing that company and its directors along with other persons, conspired to forge, fabricate and use documents, in order to avail loan from bank, and had opened or caused to be opened fictitious bank accounts in names of suppliers, to encash pay orders/demand drafts issued by bank, and played fraud with bank, as also on public exchequer, by claiming depreciation of machinery, which was never purchased.

⁶ (2016) 1 SCC 376

⁷ (2014) 5 SCC 364 (F.B.)

In such a case, mere payment of amount is not ground to quash the proceedings and therefore, the **Sushil Suri's case** referred supra declined to quash the proceedings. Earlier, in **CBI v Jagjit Singh** (Criminal Appeal No.1580 of 2013), so also in **State of Maharashtra through C.B.I v Vikram Ananthrai Doshi and others** (Criminal Appeal No.2048 of 2014), the Apex Court expressed the same view as in **Sushil Suri's case** referred supra.

In **Gopikumar B. Nair's** case referred supra, in para 14 held that though the amounts due have been paid the same is under a private settlement between the parties unlike in **Nikhil Merchant v CBI**⁸ where the compromise was a part of the decree of the Court. There is no acknowledgment on the part of the Bank of the exoneration of the criminal liability of the appellant unlike the terms of compromise decree in the aforesaid cases, are sustained, dismissed the appeal filed by the accused.

In the recent judgment, the Full Bench of the Apex Court in **Parbatbhai Aahir 's case** referred supra, laid down the ten guidelines to exercise power under Section 482 Cr.P.C to quash the proceedings. Guideline No.16.10 is relevant for the purpose of deciding the present issue and the same is extracted hereunder:

“There is yet an exception to the principle set out in propositions 16.8 and 16.9 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.”

⁸ (2008) 9 SCC 677

Earlier judgments of the Full Benches consisting of some Judges in **Narendralal Jain's** case and **Gopikumar B. Nair's** case referred supra, expressed diagonally opposite views. In the later judgment in **Parbatbhai Aahir's** case referred supra, clear guidelines were issued as to how the power under Section 482 Cr.P.C. can be exercised carving out an exception i.e. economic offences. Hence, in view of the conflicting views of same Full Bench, the later judgment in **Parbatbhai Aahir's** case referred supra, which is recent in point of time is the binding precedent.

Applying the principles laid down in the above judgment of the Full Bench to the present facts of the case, the proceedings against the petitioners cannot be quashed by exercising power under Section 482 Cr.P.C. Therefore, I find no ground to quash the proceedings against the petitioners. However, it is left open to the petitioners to raise these grounds before the Court below.

With the above direction, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

05.09.2018

Note: issue c.c. by day-after-tomorrow

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