

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 05.01.2018

% **Judgment delivered on: 23.01.2018**

+ **CRL.M.C. 2345/2015 and Crl. M.A. Nos.8181/2015 & 11749/2015**

VIPUL GUPTA

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate
along with Mr. Gurpreet Singh and
Mr. Jatin S. Sethi, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Rajat Katyal, APP for the State.
Mr. Dayan Krishnan, Senior
Advocate along with Mr. Harish
Pandey, Mr. Rajbir Singh Gulia, Mr.
Ashok Kumar Sharma, Mr. Vikram
Singh Panwar, Mr. Raghvendra
Mishra & Ms. Vedika Mittal,
Advocates for respondent No.2.

+ **CRL.M.C. 2365/2015 and Crl. M.A. Nos.8240/2015 & 11755/2015**

S P GUPTA

..... Petitioner

Through: Mr. Sunil Mittal & Mr. Gurpreet
Singh, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Rajat Katyal, APP for the State.

Mr. Dayan Krishnan, Senior Advocate along with Mr. Harish Pandey, Mr. Rajbir Singh Gulia, Mr. Ashok Kumar Sharma, Mr. Vikram Singh Panwar, Mr. Raghvendra Mishra & Ms. Vedika Mittal, Advocates for respondent No.2.

+ **CRL.M.C. 2366/2015 and Crl. M.A. Nos.8242/2015 & 11744/2015**

S P GUPTA

..... Petitioner

Through: Mr. Tarun Chandoik & Mr. Yudvir Singh Dalal, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr. Rajat Katyal, APP for the State.
Mr. Dayan Krishnan, Sr Advocate along with Mr. Harish Pandey, Mr. Rajbir Singh Gulia, Mr. Ashok Kumar Sharma, Mr. Vikram Singh Panwar, Mr. Raghvendra Mishra & Ms. Vedika Mittal, Advocates for respondent No.2.

+ **CRL.M.C. 2369/2015 and Crl. M.A. Nos.8246/2015 & 11747/2015**

M/S SUNAIR HOTELS LTD

..... Petitioner

Through: Mr. Tanvir A. Mihir, Mr. Gurpreet Singh & Mr. Jatin S. Sethi, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Rajat Katyal, APP for the State.

Mr. Dayan Krishnan, Senior Advocate along with Mr. Harish Pandey, Mr. Rajbir Singh Gulia, Mr. Ashok Kumar Sharma, Mr. Vikram Singh Panwar, Mr. Raghvendra Mishra & Ms. Vedika Mittal, Advocates for respondent No.2.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The aforesaid petitions have been preferred by the petitioners Vipul Gupta, S.P. Gupta and M/s Sunair Hotels Ltd. (herein after referred to as Sunair) under Section 482 Cr.P.C. praying for quashing the FIR No. 99/2002 registered at PS Connaught Place, New Delhi; FIR No. 148/2002 registered at PS Defence Colony, New Delhi, FIR No. 315/2005 registered at PS Naraina, New Delhi; and FIR No. 90/2002 registered at PS Connaught Place, New Delhi; the charge sheets filed in the said cases; the orders taking cognizance/ summoning passed by the Ld. ACMM, and every other proceeding undertaken in the said cases respectively, on the grounds that the FIRs do not disclose commission of any cognizable offence as the dispute between the parties is purely civil in nature. The petitioners are co-accused in the aforesaid cases, in respect whereof they have preferred these petitions. The particulars of each of these cases are tabulated hereinbelow. The names of the respective petitioners have been highlighted for facility, as appearing in the column of "Accused":

S. No.	FIR No./Date	Police Station	Accused (as per charge sheets)	Under Sections (as per charge sheets)	Petition No.
1.	90/2000 14.02.2000	Connaught Place	1. Satya Pal Gupta 2. Kaveen Gupta 3. Vipul Gupta 4. M/s Sunair Hotels Ltd. through its director Satya Pal Gupta	420/ 406/ 409/ 468/ 471/ 477- A/ 120-B IPC	Crl. M.C. No. 2369/2015
2.	99/2002 19.02.2002	Connaught Place	1. S.P. Gupta 2. Kaveen Gupta 3. Vipul Gupta 4. V.K. Bindal 5. Sanjiv Kr Bindal 6. Pradeep Dhingra 7. Birender Kumar Jain 8. Asha Ram Kakar	120-B/ 406/ 409/ 420/ 424/ 467/ 468/ 471/ 477A IPC	Crl. M.C. No. 2345/2015
3.	148/2002 28.02.2002	Defence Colony	1. S.P. Gupta 2. S.H. Siddiqui 3. Giriraj Singh 4. Pradeep Kumar Dhingra	384/ 406/ 409/ 417/ 422/ 465/ 468/ 471/ 500/ 120- B IPC	Crl. M.C. No. 2365/2015
4.	315/2005 24.10.2005	Naraina	1. Satya Pal Gupta 2. Pradeep Kr Dhingra	380, 411/ 120-B IPC	Crl. M.C No 2366/2015

2. As per the case of the prosecution, the petitioners – who are the Directors and Promoters of Sunair, and Sunair approached VLS Finance Ltd (VLS, for short), respondent No. 2 herein around December 1994, with a proposal to finance their hotel project. VLS, Sunair, Vipul Gupta and S.P. Gupta entered into an MOU dated 11.03.1995. The petitioners represented

that they would invest Rs. 21 Crores towards equity share capital in the company, namely Sunair, in case VLS invests Rs. 7 Crore towards 25% equity share capital in Sunair. As per the prosecution, VLS invested the said amount of Rs. 7 Crores.

3. VLS made complaints alleging the commission of offences under various sections of the IPC, including Sections 420, 406, 409, 468, 471 and 120B by the petitioners, on the ground that the petitioners had not made their contribution of Rs. 21 Crores in the equity share capital of Sunair and had manipulated their accounts to show the making of such share capital investment. On the basis of the complaints made by the complainant VLS, the aforesaid FIRs came to be registered and investigated. The last FIR, i.e. FIR No.315/2005 was registered on the basis of a subsequent event/ cause of action under Section 380, 411 read with Section 120B IPC.

4. Initially, a quashing petition being W.P. (CRL.) No. 1163/2003 (which appears to have been wrongly mentioned in the aforesaid petitions as Cr. Misc(M) 1163/2003) was filed vis-à-vis FIR No. 99/2002, which was dismissed on 24.03.2005. The Special Leave Petition being SLP Crl MP No.14246/2005 was also dismissed by the Supreme Court vide order dated 03.07.2006.

5. The petitioner S.P. Gupta, preferred a writ petition, being W.P.(Crl.) No. 498/2005 for quashing of FIR No 148 of 2002 in this Court. After filing of the charge sheet in FIR No. 99 of 2002, the accused in the said FIR No. 99/2002 including the petitioner Vipul Gupta, preferred quashing petitions before this Court being Crl. M.C. Nos. 2142/2007, 2229/2007 and

1988/2008. The petitioner S.P. Gupta withdrew the aforesaid petition being W.P. (Crl) 498/2005, and the Court vide order dated 04.03.2010 granted liberty to the petitioner to raise all issues before the learned Trial Court at the stage of consideration on charge, or at the appropriate stage. The relevant extracts of the order is reproduced below:

“ 3. Taking all these facts into consideration including the factum of pendency of the case for a period of more than five years and taking into consideration that ultimately it is for the trial Court to decide as to whether a charge is to be framed or not in the aforesaid case against the petitioner and to further decide whether the case should proceed or not in view of some of the objections raised on behalf of the petitioner about the propriety of issuance of summoning order etc., it would be appropriate to grant liberty to the petitioners to raise all the issues which have been raised in this petition before this Court at the appropriate stage/stage of framing of charge before the concerned Court.”

6. The other quashing petitions mentioned in the previous paragraph – being Crl. M.C. 911/2003 vis-à-vis FIR No. 90/2000; Crl. M.C. No 1992/2006 vis-à-vis FIR No. 148/2002; W.P. (Crl) No. 208/2006 vis-à-vis FIR No. 315/2005 were also similarly disposed of on 04.03.2010.

7. While the matter was pending consideration, an application was filed by the learned APP on 24.11.2011 in the Court of ACMM, stating that the prosecution had decided to withdraw from prosecution u/s 321 Cr.P.C. in case FIR Nos. 90/2000, 99/2002 and 148/2002, on the ground that the matter in issue was of a civil nature. Shortly afterwards, on 16.12.2011 another application was filed by learned APP that they would not press the earlier application under section 321 Cr.P.C., withdrawing from prosecution. The

Trial Court entertained this subsequent application made by the learned APP, and the subsequent application was allowed vide order dated 07.01.2012.

8. This order dated 07.01.2012 was challenged by the accused by preferring five separate revision petitions before learned ASJ, which were dismissed vide common order dated 15.11.2014. The same was further challenged before this Court vide Crl. M.C. 2055/2015, Crl. M.C. 2054/2015 and Crl. M.C. 2053/2015. The aforesaid orders were quashed, and the petitions were disposed of vide order dated 30.07.2015. The relevant extract of the said order is produced hereinbelow:

“Consequentially, impugned orders are quashed with direction to the trial court to decide within four weeks the second application of 16th December, 2011 (Annexure P-13) i.e. the one for withdrawal of application under Section 321 of the Cr.P.C. in the light of the legal position as highlighted above and after taking it into consideration, the document(s) filed by petitioner along with application under Section 91 of Cr.P.C. With aforesaid directions, the above captioned three petitions and applications are disposed of.”

9. To assail the order dated 30.07.2015 Criminal Appeals were preferred before the Supreme Court by VLS, vide Criminal Appeal Nos. 99/2016, 100/2016, 101/2016, 102-104/2016, which were disposed of vide judgment dated 05.02.2016. The Supreme Court referred to the earlier order of the High Court dated 04.03.2010 – taken note of hereinabove, and observed:

“34. It is imperative to state here that the factual narration depicts a sorrowful state and simultaneously, a puzzling one. It is not easy to spend twelve years of time, “a yuga”, in the non-

classical sense unless the personalities engaged in spending time have contrived intelligence to constantly play the “Snake and Ladder Game”. Such kind of litigations clearly show that there are certain people who possess adamant attitude to procrastinate the proceeding in a court of law on the base that each order is assailable and each step is challengeable before the superior courts. It is not to be understood that a litigant is not entitled in law to challenge the orders, but the legal process cannot be allowed to be abused. In the case at hand the process has definitely been abused.”

10. In the aforesaid background, the petitioners have, once again, preferred the present petitions in this Court, praying for quashing of aforementioned FIRs.

11. The question which arises for consideration is, whether this Court should entertain the present petitions under Section 482 Cr.P.C. at this stage, in view of the fact that the earlier preferred petition under Section 482, i.e. W.P.(Crl.) No. 498/2005, and the other petitions mentioned in paragraph 5 above were withdrawn with liberty to agitate all issues before the Trial Court at the appropriate stage/ stage of consideration of charge, and the Supreme Court – while deciding Criminal Appeals Nos. 99-104/2016 (05.02.2016) rued the delay in the progress of the cases at the instance of the accused in the FIRs in question.

12. In support of the submission, that the present petitions are maintainable, learned counsels for the petitioners have relied on ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla And Anr.***, (2007) 4 SCC 70, wherein this issue of maintainability of a second quashing petition before the High Court was dealt with as follows:

*“28. Another submission of Mr Mishra was that the second application was not maintainable. Such a question had not been raised before the High Court. **Even otherwise, the High Court was not denuded from exercising its inherent jurisdiction in a matter of this nature. The principles of res judicata are not attracted.** Reliance placed by Mr Mishra on *Simrikhia v. Dolley Mukherjee* [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] is misplaced. The question which arose for consideration therein was as to whether despite dismissal of an earlier application, a second application would be maintainable which would virtually amount to review of the earlier order which would be contrary to the spirit of Section 362 of the Code of Criminal Procedure. It was held: (SCC p. 440, para 7)*

*“7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in *Sooraj Devi v. Pyare Lal* [(1981) 1 SCC 500 : 1981 SCC (Cri) 188] that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage.”*

*29. We have noticed the previous order passed by the High Court. The High Court gave liberty to Respondent 1 to agitate the matter once again. Respondent 1 merely took recourse thereto. Equally misplaced is the judgment of this Court in *Rajinder Prasad v. Bashir* [(2001) 8 SCC 522 : 2002 SCC*

(Cri) 28] . Although therein it was held that when an earlier revision application under Section 397 of the Code of Criminal Procedure has been dismissed, as not pressed, a second application under Section 482 thereof for grant of same relief should not have been entertained, this Court opined: (SCC p. 527, para 8)

“8. We are of the opinion that no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code and the impugned order is liable to be set aside on this ground alone.”

30. It is, therefore, an authority for the proposition that the High Court is not completely denuded of its power to exercise inherent jurisdiction for the second time.

31. Furthermore, this Court therein also went into the merit of the matter. In this case, not only the merit of the matter had been gone into by the High Court as also by this Court, the questions raised in the petition had been referred to a larger Bench for obtaining an authoritative pronouncement. It is, therefore, too late in the day for the appellant to contend that the application under Section 482 of the Code of Criminal Procedure was not maintainable.” (emphasis supplied).

13. Learned counsel for the petitioners have also relied on ***Krishna Narain Lal And Another Versus State Of Bihar And Another***, (1999) 9 SCC 247. In this case, the High Court dismissed an application under Section 482 Cr.P.C. for quashing of FIR, on account of default of appearance. The appellant then preferred a second application for the same relief before the High Court. The High Court dismissed the second application on the ground that the earlier application having been dismissed, there was no scope for entertaining the second one. The High Court further

observed that the appellants could disclose their defence to the investigating agency. In appeal, the Supreme Court disapproved of the approach of the High Court. It observed:

“5. The learned counsel for the appellants is right in his submission that the High Court ought not to have rejected the application on the ground that it was not maintainable. We also agree with him that the contentions raised by the appellants should have been considered by the High Court before rejecting their application. As that has not been done by the High Court, we allow this appeal, set aside the judgment and order passed by it and remit the matter back to it for deciding it afresh after hearing the parties.”(emphasis supplied).

14. The petitioners submit that since the withdrawal of the quashing petitions on 04.03.2010, there have been further developments, which justify the filing of the present petitions. These developments are (i) The dismissal of the appeal preferred by VLS under Section 10F of the Companies Act against the order of the Company Law Board (CLB) on 23.04.2012, and; (ii) the dismissal of the Special Leave Petition against the said order dated 23.04.2012, by the Supreme Court on 21.01.2013.

15. In support of this submission, apart from placing reliance on ***SMS Pharmaceuticals Ltd.*** (supra), reliance is also placed on ***Superintendent And Remembrancer Of Legal Affairs, West Bengal Versus Mohan Singh And Others***, (1975) 3 SCC 706, a case dealing with Section 561A of the Code of 1989, which corresponds to Section 482 of the present case, wherein the Supreme Court, inter alia, observed:

“2. The main question debated before us was whether the High Court had jurisdiction to make the order dated April 7, 1970 quashing the proceeding against Respondents 1, 2 and 3 when on an earlier application made by the first respondent, the High Court had by its order dated December 12, 1968 refused to quash the proceeding.

*...Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and **the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of Respondents 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and half years. It was for this reason that, despite the earlier order dated December 12, 1968, the High Court proceeded to consider the subsequent application of Respondents 1 and 2 for the purpose of deciding whether it should exercise its inherent jurisdiction under Section 561-A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the order of the High Court**” (emphasis supplied).*

16. In support of the same proposition, reliance was also sought to be placed on *State Versus K. V. Rajendran And Others*, (2008) 8 SCC 673.

17. Mr. Mittal, learned counsel on behalf of petitioner S.P. Gupta argued that the petitioners are entitled to maintain the present petitions even after withdrawal of the earlier petitions, since, it is their case that even on a reading of the FIRs, no criminal offence is disclosed, and that the disputes between the parties are purely civil in nature. He placed reliance on ***Mrs. Nanda Khemka & Anr. Versus State (NCT) Delhi & Anr.***, 2016 (155) DRJ 544, which is an instance of quashing of the FIR by this Court, where the dispute between the complainant and the accused was of pure civil nature.

18. Mr. Mittal further places reliance on ***Yelchuri Ranganayakalu Chetty Versus Gopala Chetty***, AIR 1953 MADRAS 439, to submit that the proceedings before the Trial Court ought to be stayed in the facts and circumstances of the case, since both civil and criminal proceedings are pending in respect of the alleged breach of the same transaction. He submits that the civil proceedings should first be decided, before proceeding with the criminal proceedings.

19. The petitioners also place reliance on ***Zal Balsara Versus State Of Delhi***, (2008)102 DRJ 65, to submit that a second quashing petition would be maintainable, even after rejection of the first one on merits, if there is a change in the material circumstances. This Court, inter alia, observed in this decision:

“6. As regards the maintainability of the present petition, learned Senior counsel for the Petitioner is right in his contention that the changed circumstance in the form of the law as explained in Neeta Bhalla I would enable the Petitioner to file another petition Section 482 CrPC. In

Superintendent & Remembrancer of Legal Affairs, West Bengal v. Mohan Singh the Supreme Court explained the position in relation to the erstwhile Section 561 A of the Code of Criminal Procedure 1898 (which corresponds to Section 482 CrPC) as under: (SCC, pp 709-10) “Section 561A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of respondent Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondent Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over and half years.” The Supreme Court has reiterated the above observations in *Neeta Bhalla II* while rejecting a similar contention as to maintainability of a second petition under Section 482 CrPC. Therefore, the objection to the maintainability of the present petition is negative.” (emphasis supplied)

20. The maintainability of these petitions is vehemently opposed by VLS. Mr. Krishnan on behalf of the respondent VLS argues that *Yelchuri Ranganayakalu Chetty* (supra) is no more good law in view of *Kishan*

Singh (Dead) Through LRs. Versus Gurpal Singh And Others, (2010) 8 SCC 775, wherein the Supreme Court observed:

“18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

21. Mr. Krishnan submits that the conduct of the petitioners is incorrigible, since they are hell bent on somehow stalling the proceedings in the aforesaid cases. He submits that there is no justification whatsoever for moving the present petitions to seek quashing of the FIRs at this stage, since there has been no subsequent material development to justify the same, after rejection/ withdrawal of the earlier petitions. The dismissal of the appeal preferred by VLS under Section 10F of the Companies Act against the order of the CLB on 23.04.2012, and the further dismissal of the SLP is wholly inconsequential so far as the present cases are concerned. He has argued that these orders are in the nature of interlocutory orders, and do not return any finding of fact, much less a finding of fact which would bind the criminal Courts. Respondent VLS has tabulated the repeated endeavours

made by the petitioners/ other co-accused to, inter alia, seek the quashing of the aforesaid FIRs, charge-sheets filed therein, and the summoning orders issued by the learned Magistrates. Other unsuccessful endeavours made by the petitioners and their co-accused in respect of the aforesaid FIRs qua the proceedings under Section 321 Cr.P.C. have also been tabulated. I may only take note of some of the other proceedings undertaken by the petitioners/ their co-accused in respect of the aforesaid FIRs, which form part of the said tabulation.

22. CrI.M.C. Nos. 352/2009 and 1021/2009 had been preferred by the other co-accused to assail the summoning order issued in respect of case FIR No.148/2002, which was dismissed on 02.07.2009 by *M.C. Garg, J.* CrI.M.C. No.2040/2010 was filed by some of the accused in respect of case FIR No.90/2000 to assail the summoning order, which too was dismissed by *Sanjeev Khanna, J.* on 04.06.2010. The SLP being SLP (CrI.) No.6336/2010 preferred to assail the order dated 04.06.2010 was dismissed by the Supreme Court on 09.08.2010. The order dated 24.03.2005 passed in W.P.(CrI.) No. 1163/2003 was assailed before the Supreme Court vide SLP (CrI.) No.14264/2005, which was dismissed by the Supreme Court on 03.07.2006. Similarly, the order passed in CrI.M.C. Nos.352/2009 and 1021/2009 dated 02.07.2009 (in respect of the summoning order in case FIR No.148/2002) was dismissed by the Supreme Court vide SLP No.127/2010 on 29.01.2010. Another CrI.M.C. No.3694/2011 was preferred to assail the charge-sheet and summoning order in respect of case FIR No.315/2005. The same was dismissed with costs of Rs.25,000/-, with the observation that the petition is an abuse of the process of the Court, on 09.11.2011 by *M.L. Mehta, J.* It is

pointed out by the respondent VLS that the same petitioner Pradeep Dhingra had earlier preferred a petition under a different name, i.e. Pradeep Kumar, like the other petitioner S.P. Gupta.

23. Having heard the submissions of learned counsel for the petitioners, the learned APP and the learned counsel for respondent No.2/VLS, I am of the considered opinion that the present petitions are completely misconceived and the petitioners are not entitled to seek quashing of the aforesaid FIRs, particularly in the facts and circumstances taken note of hereinabove.

24. Pertinently, the earlier quashing petition being W.P.(Crl.) No.1163/2003 filed in relation to FIR No.99/2002, already stands dismissed on 24.03.2005. The said order was upheld by the Supreme Court when the Special Leave Petition against the same was also dismissed.

25. Yet another attempt of the accused to seek the quashing of the FIR No.148/2002 vide W.P.(Crl.) No.498/2005 preferred by the petitioner/ S.P. Gupta again proved to be futile when the said petition was withdrawn by S.P. Gupta on 04.03.2010 with liberty to raise all issues before the Trial Court at the stage of consideration of the charge, or at the appropriate stage.

26. Simultaneously, the challenge to FIR No.99/2002 vide Crl.M.C. Nos. 2142/2007, 2229/2007 and 1988/2008 also did not succeed, and these petitions were also disposed of. This Court observed that it was for the Trial Court to decide as to whether the charge has to be framed or not in the said cases against the petitioners/ accused, and to further decide whether the case

should proceed or not in view of the objections raised by the accused/ petitioners.

27. Other quashing petitions preferred in respect of FIR No.90/2002 (CrI.M.C. No.911/2003), FIR No.148/2002 (CrI.M.C. No.1992/2006) and, FIR No. 315/2005 (W.P.(CrI.) No. 208/2006) were also similarly disposed of on 04.03.2010.

28. Pertinently, the petitioners have not even disclosed the further and other steps taken by them and their co-accused to assail the FIRs in question; the charge-sheet filed therein, and the summoning orders issued to the accused which are taken note of in paragraph 21 and 22 hereinabove. As noticed hereinabove, all the said proceedings were decided against the petitioners/ their co-accused. The petitioners should have, in all fairness, made a full and complete disclosure of the said proceedings as well, and their failure to do so, appears to be intentional and deliberate.

29. As noticed hereinabove, while dealing with CrI. Appeal Nos. 99/2016, 100/2016, 101/2016 and 102-04/2016 – wherein the issue of withdrawal from prosecution under Section 321 Cr.P.C. was raised, the Supreme Court in its judgment dated 05.12.2016 deprecated the conduct of the petitioners as abuse of the process of the Court.

30. Despite that being the position, the petitioners have tenaciously again approached this Court by way of these petitions. Several decisions, as taken note of hereinabove, have been cited by learned counsel for the petitioners to contend that the present petitions are maintainable despite the background

taken note of hereinabove. In my view, none of these decisions come to the aid of the petitioners and support their claim with regard to maintainability of the present petitions in the fact and circumstances of the case.

31. ***SMS Pharmaceuticals Ltd.*** (supra) holds that the High Court is not completely denuded of its power to exercise its inherent jurisdiction for the second time, despite the earlier petition having been dismissed as not pressed, but while holding so, the Supreme Court highlighted the distinguishing feature in ***Rajinder Prasad*** (supra) namely that “*no special circumstances were spelt out in the subsequent application for invoking the jurisdiction of the High Court under Section 482 of the Code*”.

32. ***Krishna Narain Lal*** (supra) also holds that the High Court should not have rejected the second quashing petition under Section 482 Cr.P.C. merely on the ground that the earlier one had been dismissed on account of default of appearance, and that a subsequent petition was not maintainable.

33. Similarly, in ***Superintendent And Remembrancer Of Legal Affairs, West Bengal*** (supra), the Supreme Court observed that the High Court was entitled to entertain a subsequent application and consider whether, on the facts and circumstances then obtaining, the continuance of the proceedings against the accused constitute an abuse of the process of the Court, or its quashing was necessary to secure the ends of justice. The Supreme Court observed that the facts and circumstances obtaining at the time of the subsequent application of the accused were clearly different from what they were at the time of the earlier application of the respondent accused.

34. Even in *Zal Balsara* (supra), this Court entertained the subsequent petition for quashing of the complaint in view of the judgment rendered by the Supreme Court in *SMS Pharmaceuticals Ltd.* (supra), wherein the Supreme Court had explained the law with regard to the minimum averment to be made mandatorily in a complaint for the offence under Section 138 read with Section 141 of the Negotiable Instruments Act.

35. Faced with the aforesaid limitation in relation to maintainability of the subsequent petition, the petitioners have submitted that the so-called further development, justifying the filing of the present petitions, is the dismissal of the appeal preferred by the VLS under Section 10F of the Companies Act by the High Court on 23.04.2012 against the order of the CLB, and the further dismissal of the Special Leave Petition by the Supreme Court on 21.01.2013.

36. The order dated 23.04.2012 passed in the Company Appeal (SB) No.16/2007 has been placed on record and perused by this Court. The said appeal had been preferred to assail the order passed by the CLB on 16.05.2007. By the order dated 16.05.2007, the CLB dismissed, firstly, the application filed by the Central Government seeking permission of the CLB under Section 235(b) of the Companies Act to investigate into the affairs of the Sunair, and secondly, the application preferred by VLS under Section 340 Cr.P.C. against the non-applicants. A perusal of the order dated 23.04.2012 shows that neither the CLB, nor this Court while deciding the aforesaid company appeal returned any findings of fact in favour of Sunair and against the complainant VLS. In fact, the said order dated 23.04.2012 itself records in paragraph 20 the view of the Court that:

“20. the CLB cannot be said to have really rejected the allegations of VLS against SUNAIR and Guptas as being not well founded and final decision has been kept pending there cannot be any perversity in the impugned order. So, all the allegations made by VLS are yet to be decided afresh by CLB while disposing of C.P. No.45/98 and since VLS shall have all the opportunity of substantiating the same before the CLB it cannot have any grievance against the impugned order nor can it have any effect on its case since the CLB has not at all gone into the merits of the allegations of VLS while rejecting the Government’s petition under Section 237(b) of the Act.”

37. I may also observe that the issue that arose for consideration by the CLB while considering the application of the Central Government under Section 235(b) of the Companies Act and the application preferred under Section 340 Cr.P.C. preferred by VLS, in any event, would not be the same as the issues which would arise for consideration before the Court dealing with the aforesaid criminal cases.

38. Moreover, as held in **Kishan Singh** (supra) by the Supreme Court, the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa, as the standard of proof is different in civil and criminal cases.

39. In this regard, I may also refer to the observations made by the Court in **Nanda Khemka** (supra), relied upon by the petitioners. In **Nanda Khemka** (supra), this Court observed as follows:

“4. It is established law that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at the face value and

*accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. However, there are some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. Where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. **But at the same time merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature or in a case where the accused alleges that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the Civil Court. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a Criminal Court has to exercise a great deal of caution. For the accused it is a serious matter.**" (emphasis supplied)*

40. Thus, the dismissal of the appeal preferred by the VLS under Section 10F of the Companies Act by this Court, or the further dismissal of the SLP by the Supreme Court has absolutely no bearing on the continuation of the criminal proceedings since the said development cannot be said to be

relevant or material development qua the criminal proceedings undertaken in respect of the aforesaid FIRs.

41. The further submission of learned counsel for the petitioners is that the nature of the dispute is primarily civil. This aspect, in my view, cannot be permitted to be agitated by the petitioners in the present petitions since the said aspect was raised by them in the earlier rounds, as taken note of hereinabove, and this Court did not find favour with the same. This is evident from the fact that the earlier preferred quashing petitions have repeatedly been rejected by this Court, or have been withdrawn by the concerned petitioners by stating that they shall pursue their remedy before the Trial Court.

42. In view of the aforesaid, I am of the view that the present petitions are completely misconceived and they are liable to be dismissed. In the facts and circumstances and the background taken note of hereinabove, I am also of the view that the petitioners should be subjected to appropriate costs for repeatedly resorting to frivolous petitions and abusing the process of the Court. The conduct of the petitioners has already been commented upon by the Supreme Court and by this Court, as taken note of hereinabove. The petitioners have left no stone unturned and have tried to put a spoke in the wheels of justice at every stage, to somehow stall the progress of the criminal cases and have successively failed.

43. Accordingly, each of these petitions is dismissed with costs of Rs.50,000/- each. Half of the said costs shall be paid to VLS, and the remaining half to the Delhi State Legal Services Authority. The respective

petitioners shall deposit the costs within two weeks with the respondent No.2 and the Delhi State Legal Services Authority. Interim orders stand vacated.

(VIPIN SANGHI)
JUDGE

JANUARY 23, 2018

