

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

% Judgment Reserved On: 03.09.2019
Judgment Pronounced On: 19.11.2019

+ W.P.(CRL) 1280/2019

M/S VASHISHT INFRATECH PVT. LTD. & ORS.

..... Petitioners

Through: Mr. Rajesh Ranjan, Mr. Attin
Rastogi, Mr. Shiv Kumar, Mr.
R. K. Singh, Ms. Beauty
Singh and Mr. Randeep
Punder, Advs.

versus

STATE & ANR

..... Respondents

Through: Ms. Sanjay Lao, ASC for
State with Mr. Karan Jeet Rai
Sharma with SI Vinod Yadav
from EOW.
Mr. Sunil Dalal and Mr.
Vivek Jain, Adv. For R-2

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. This is a writ petition under Article 226 of the Constitution of India r/w. Section 482Cr.P.C. filed by the petitioners for quashing of

FIR No.0767/15 u/s 420/468/471/34/120B IPC, PS Najafgarh, New Delhi.

2. While praying for quashing of FIR, the petitioner has pleaded that petitioner no.1 who is a Pvt. Ltd. company through its Director/AR Mr. Karan Vashishta @ Madhup Vashisht i.e. petitioner no.2 availed a Cash Credit Limit of Rs.2.97 Crore from the respondent no.2 bank vide A/C no. 1519008700002005 and due to financial crunch the petitioner no.1 failed to deposit the amount in time.

3. It is further submitted that bank official filed a complaint against the petitioners no.1 to 4 and on the basis of a complaint filed by the Principal Officer G.L. Arora, Chief Manager, Punjab National Bank and an FIR bearing no. 0767/2015, U/Sec 420/468/471/34/120-B IPC, P.S. Najafgarh was registered. Thereafter, the case was transferred to EOW Mandir Marg, N. Delhi and the same is pending investigation.

4. It is submitted that petitioners have settled the account with the Bank by One Time Settlement (OTS) and the bank has adjusted the same in the account of petitioner no.1 on 30.12.2017 and issued

‘No Outstanding Due Certificate’ on 19.01.2018 to the petitioner no.1 and thus, nothing remains unsettled between them and since there is no grievances pending between them, it is, therefore, prayed that FIR bearing No.0767/15, u/s 420/468/471/34/120B IPC, PS Najafgarh, New Delhi be quashed.

5. On the other hand, Ld. APP for the state has opposed the petition and submitted that M/s. Vashisht Infratech Pvt. Ltd. availed the cash credit facility of Rs. 2.97 Crores through its directors namely Madhup @ Karan Vashisht and Sunil Kumar Singh by mortgaging two properties i.e. (1) Flat no. 803, Block-B-1 (M), Pitam Pura, Delhi and (2) Flat No. 102, Block B-1 (M), Pitam Pura, Delhi and on 12.05.2014, Madhup @ Karan Vashisht wrote a letter to the Bank regarding change of existing collateral/ mortgage security with new one and petitioners changed their collateral/ mortgage security with the document of a third property i.e. H. No. 32, Pocket No. 5A, Sector-25, Rohini, Delhi.

6. Ld. APP for the State has submitted that during investigation certified copy of conveyance deeds of all the three properties were taken from the office of Sub-Registrar and **it was found that all**

three conveyance deed submitted by the accused persons are forged as photographs are different than the photographs of certified copies. He further submitted that petitioners Karan @ Madhup Vashisht and Sunil Kumar Singh had joined the investigation and stated that they submitted forged documents in the complainant bank and all the documents of above mentioned three properties were prepared by one of their friend namely Sunil @ Samunder Chikkara and, thereafter, **Section 467 IPC** was added in the case. During investigation, it came into notice that Sunil @ Samunder Chikkara has expired on 12.04.2019. It is submitted that petitioners have submitted forged documents for obtaining loan from PNB, Najafgarh. **The forged papers pertain to the property owned by Ms. Shikha Prasad, Suneet Mishra and Dr. Naveen Bansal and as per their submission they had never mortgaged the property neither they knew the petitioners. He further submitted that petitioners have used forged documents for procuring loan of Rs. 2.97 Crore and have settled the loan for Rs. 1.25 crore only.**

7. I have considered the rival submissions and also gone through the record. A case FIR No.0767/2015 under Sections 420/468/471/120-B/34 IPC was registered at PS Najafgarh on 20th September, 2015 on the basis of statement made by complainant Sh. G.L. Arora, Principal Officer/ Chief Manager, Punjab National Bank, New Delhi. Section 467 IPC was added later on.

8. In the decision reported as **Parbathhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.,** Crl. A. No. 1723 of 2017, the Hon'ble Supreme Court has discussed the scope and power of the High Court under Section 482 CrPC to quash the criminal proceedings on the basis of settlement in a heinous/serious offence has been dealt with.

(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 recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the 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) to 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 the 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 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.(emphasis supplied)

9. In Narinder Singh & Ors. Vs. State of Punjab & Anr., (2014) 6 SCC 466, the Hon'ble Supreme Court has held that in respect of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime.

10. Thus, in view of the above law laid down by the Hon'ble Supreme Court, criminal proceedings cannot be quashed by invoking the jurisdiction of High Court under Section 482 CrPC.

11. In the case in hand, it is the case of the petitioner that they have settled the account with the Bank/respondent no.2 in One Time Settlement (OTS) and the bank has adjusted the amount paid by them in the account of the petitioner no.1 on 30.12.2017. The facts of the case reveal a very well planned criminal conspiracy vide which bank has been cheated by taking a loan/cash credit limit on the basis of forged documents. The appellants were beneficiary of a sum of Rs. 2.97 Crore by committing offence of cheating and

forgery and have only paid back an amount of Rs. 1.25 Crore to the bank. They are in fact still beneficiary of an amount of Rs. 1.72 Crore. Thus, a wrongful loss has been caused to the bank to the tune of Rs. 1.72 Crores approximately and a wrongful gain to the petitioners has accrued on account of above settlement of loan/cash credit facility on the basis of forged documents. The offences alleged against the petitioners are serious and grave in nature and it affects the public at large and economy of the nation. One of the offence u/s 467 IPC is punishable with life and shows the magnitude of the alleged offence committed by the applicants. In such circumstances and in view of the law laid down by the Hon'ble Supreme Court, this court cannot allow the Writ Petition praying for quashing of FIR no. 0767/15 u/s 420/468/471/34/120B IPC registered at PS Najafgarh, New Delhi.

12. Ld. Counsel for the petitioner has, however, relied upon '**CBI vs. Sadhu Ram Singla & Ors., Criminal Appeal No. 396/2017, arising out of SLP (Crl.) No. 1010 of 2012, decided on 23.02.2017.**

13. I have considered the above judgment. In the said case, the petitioners were charged with offences u/s. 420/471 IPC read with Section 120-B of IPC. However, as discussed above, the petitioners in this case have been charged with offences under Section 420/467/468/471/34/120-B IPC. There are serious allegations that on the basis of forged documents, the loan was obtained by the petitioners. One of the offence under Section 467 IPC for which the petitioners are charged is punishable with a sentence up to life. Thus, the facts of the present case are clearly distinguishable and the authority cited by Ld. Counsel for the petitioner, therefore, does not help the petitioners.

14. In view of the above discussion, the petitioners cannot be let off under the garb of a resolution of a One Time Settlement. The petition for quashing of FIR bearing no. 0767/15 u/s 420/467/468/471/34/120B IPC, PS Najafgarh, New Delhi, is, therefore, dismissed.

15. The petition stand disposed of accordingly.

BRIJESH SETHI, J.

November, 19, 2019
(AP & Dh.)