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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3007 OF 2021

Mr. Suresh Sundar Shetty, Age : 42 years, Indian Inhabitant, Residing at Girnar Arcade, Flat No. 601, Sector 23, Koparkhairane, Navi Mumbai.	{	...Petitioner
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Versus

1. The State of Maharashtra 2. Mr. Sudhakar Balkrishna Bhosale, Age : 59 years, Occ: Bank Manager, R/a. 8/A, Ciba, Co-op. HSG Society, Amrutnagar, Ghatkopar (West), Mumbai – 400 086	{	...Respondents
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Dr. Abhinav Chandrachud, a/w Mr. Sujay Gawade and Ms. Mudita Pawar i/by M/s. Shree and Co for Petitioner.
 Mr. K. V. Saste, APP, for the Respondent – State.
 Ms. Anusha P. Amin a/w Ms. Dipti Bagwe-Khaire for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : JANUARY 05, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for respective parties, heard finally.

2. By way of present Petition, Petitioner approached this Court for compounding the offences registered against him in connection with Crime No. 63 of 2005, dated 30.03.2005 for the offences punishable under Sections 420, 465, 467, 468, 471, 120(B) of Indian Penal Code registered with Vikhroli Police Station, Mumbai and investigation was further carried out by Economic Offences Wing as such, crime was renumbered as CR No. 26 of 2005 for the offences punishable under Sections 255, 256, 257, 259, 260, 465, 467, 468, 471, 420 and 120(B) of IPC. The Petitioner also prayed for quashing and setting aside the order passed by this Court in Criminal Appeal No. 529/2013, dated 24.09.2019. These prayers are substantiated with the support of consent given by Respondent No.2.

3. It is not in dispute that the Petitioner was arrayed as an accused no. 2 in the said crime along with other accused persons and the complaint was lodged on the basis of Mr. S.B. Bhosale, Branch Manager of Mumbai District Central Co-operative Bank Ltd. It was submitted in the report that the Petitioner and some other borrowers sought loan for different amounts

ranging from 4,00,000/- to 4,50,000/-. Before Mr. S.B. Bhosale one Mr. Aklujkar was working as Branch Manager in Vikhroli Branch of the said bank. In so far as the present Petitioner is concerned, it was submitted in the report that the against one flat number B/302 the Petitioner had obtained loan of Rs. 3.74 lacs. On the very flat Petitioner and another person Mhatarba Padekar obtained loan by mortgaging the same flat to Bhandup branch. It was stated in the report that all the accused persons by hatching criminal conspiracy and by opening bogus accounts in different banks in the name of builder firm by misleading the banks, obtained loan and misappropriated the loan amount. Thus, the accused have cheated the bank to the tune of Rs. 24.67 lacs.

4. Perusal of material placed on record further show that the investigating agency which was set in motion by completing exercise of investigation filed charge-sheet. Accordingly, charges were framed and proceedings were initiated against the accused persons. The Petitioner was an accused in Sessions Case No. 102/2008. Learned Trial Court in detailed judgment

considered the entire evidence i.e., oral as well as documentary and arrived at a conclusion that the accused are guilty for commission of offences and accordingly passed the judgment and order of conviction.

5. Being aggrieved by the said judgment and order the accused including the present Petitioner preferred appeals before this Court and learned Single Judge of this Court vide judgment and order dated 24th September, 2019 dismissed the Appeal. The appellants were directed to surrender. An application was filed on behalf of the Petitioner for seeking extension of time to surrender. The application was allowed by extending period to surrender vide order dated 22nd October, 2019. The Petitioner being aggrieved by the judgment and order passed by the learned Single Judge of this Court preferred Special Leave to Appeal before the Hon'ble the Apex Court. By order dated 28th January, 2020, Hon'ble the Apex Court passed the following order:

We see no grounds to interfere with the impugned judgment passed by the High Court.

The Special Leave Petitions are accordingly dismissed.

Pending Application(s), if any, stand disposed of.

6. Dr. Chandrachud, learned Counsel appearing for Petitioner in his usual fairness admitted all the above referred facts and further submitted that the Petitioner is approaching this Court with a *bona fide* offer to deposit the entire amount of loan with interest accrued. It was further submitted that the allegations against the Petitioner was not of perpetrator of the crime but the allegations against the Petitioner is of obtaining loan by fraudulent means. Learned Counsel also invited our attention to the affidavit-in-reply filed on behalf of Respondent No. 2. Learned Counsel then submitted that even though special leave petition preferred by the Petitioner was a subject matter before the Hon'ble the Apex Court as the SLP is dismissed *in limine*, this Court by exercising the powers under Section 482 of Code of Criminal Procedure can allow the Petition and grant the compounding of the offence and further set aside the order of conviction by accepting the compromise between the parties.

7. In support of his submissions, Dr. Chandrachud, learned Counsel appearing for Petitioner, invited our attention to following judgments: Maya Sanjay Khandare and Another Vs. State of Maharashtra¹, Gian Singh Vs. State of Punjab and Another², State of Madhya Pradesh Vs. Laxmi Narayan and Others³ & Khoday Distilleries Limited and Others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited⁴.

8. The crux of the submissions of Dr. Chandrachud is, as the order passed by the Hon'ble the Apex Court is *in limine*, as such this Court by taking into consideration the various aspects such as, firstly the Petitioner not being the perpetrator of the crime, secondly, there are not criminal antecedents against the Petitioner, thirdly, the Petitioner is ready to deposit entire amount of loan with interest due and payable to show his *bona fide* and fourthly, as it was merely a loan transaction between the borrower and the bank and it cannot be said to be having an impact on the society. Thus, on these submissions learned Counsel

1 2021 SCC OnLine Bom 3

2 (2012) 10 SCC 303

3 (2019) 5 SCC 688

4 (2019) 4 SCC 376

prayed for allowing the Petition.

9. *Per contra*, learned APP vehemently opposed the Petition. It is submitted that the entire material against the Petitioner was assessed by the learned Special Judge at the stage of full fledged trial. Learned APP further submitted that not only the learned Sessions Judge but also the learned Single Judge of this Court found that with support of the substantial evidence the prosecution has proved its case against the accused persons and appeals were dismissed. Learned APP also invited our attention to the observations in paragraph 13 of the learned Single Judge in the judgment dated 24th September, 2019. Learned APP further submitted that the learned Single Judge was pleased to observe that the punishment awarded to the accused persons is disproportionate as compared to the gravity of the offence committed by them. It may not be out of place to refer to those observations and the same reads thus:

33. *It is true that the punishment awarded to the accused is disproportionate compared to the gravity awarded to accused nos. 1,2,5,6,7,8,9,10,11 are*

disproportionate to the gravity of the offence committed by them. That, it is an economic offence, which was well planned and public money has been misappropriated to a large extent. It is sorry state of affairs that the investigating agency could not trace whereabouts of the absconding accused Bisht who had in fact worked as a master mind in the whole scam. However, it needs to be reiterated that in the absence of an appeal by state the punishment cannot be enhanced, and also there is not notice of enhancement.

10. It is also submitted by learned APP that merely because the Hon'ble the Apex Court dismissed the special leave petitions *in limine* cannot be a ground to say that the Petitioner had not committed any offence and only because the Petitioner has shown his willingness to repay the amount of loan with interest to the bank the offence be compounded. Thus, learned APP prayed for dismissal of the Petition.

11. On hearing the learned Counsel appearing for the respective parties, we are of the opinion that though there cannot be any dispute that this Court can exercise its power under Section 482, but the question

before this Court is, whether the facts of the matter would allow us to exercise these powers and our reply to the question is in negative.

12. At the cost of repetition, we may state that the Petitioner was subjected to full fledged trial. The Petitioner at the stage of trial pleaded not guilty and subjected himself along with other accused for a trial. This fact emerged from the following observations of the trial Court and the same reads thus:

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Accused denied the charges so prosecutor was called upon to adduce the evidence. Evidence was submitted by the prosecutor besides documents recorded in the evidence but they are challenged by the advocates for accused by way of cross examination.

13. Learned Sessions Judge found that the charges are proved against the accused persons and accordingly, passed the judgment and order holding the accused persons guilty for commission of offence and awarded punishment. The Petitioner then raised a challenge to

the order passed by the Special Court preferring Appeal. Learned Single Judge of this Court could not find any merit in the Appeal. Resultantly, the Appeal was dismissed and the special leave petitions were also dismissed.

14. Even perusal of the judgment referred to by Dr. Chandrachud, learned Counsel appearing for Petitioner would show that it is consistent view of the Hon'ble the Apex Court as well as this Court that the power under Section 482 of Code of Criminal Procedure is to be exercised carefully and as such, the exercise of power would depend upon the facts each case. It will be useful for our purposes to refer to the observations of the Hon'ble the Apex Court in the oftenly quoted matter of Gian Singh (supra) and the same reads thus:

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.

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15. It will not again out of place to state that in Gian Singh (supra) the Hon'ble the Apex Court referred to the case of Shiji Vs. Radhika⁵ and certain observations are quoted in respect of power of this Court under Section 482 of Code of Criminal Procedure and the same reads thus:

18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it

⁵ (2011) 10 SCC 705

obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked. (Emphasis supplied).

16. Now looking into the facts of the matter on the backdrop of the above referred principles, we are

of the opinion, that there is considerable merit in the submissions of learned APP and in our opinion, this is not a fit case to exercise powers of this Court under Section 482 of Code of Criminal Procedure. We may also state that though the Petitioner submitted on the basis of affidavit on behalf of Respondent No. 2 that Respondent No. 2 is ready to compromise the case. The perusal of affidavit clearly show that statement in affidavit-in-reply are only disclosure of facts and they cannot be termed either as the compromise or by a consent Petitioner for compounding offence.

17. Considering the charges levelled against the Petitioner, we are of the opinion that it is not only a matter of a transaction between the borrower and the bank, but it is a matter where accused person by hatching a conspiracy committed offence and as such the element of fastening the criminal liability against the Petitioner and other accused persons is clearly reflected from the evidence which was resultantly accepted by this trial Court for awarding conviction to accused person including the Petitioner and the judgment of the trial Court was maintained by this

Court as well as by the Hon'ble the Apex Court.

18. Considering all these facts, we are of the opinion that the Petition is devoid of merit, deserved to be dismissed. Accordingly, Writ Petition is dismissed. Rule is discharged.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)