



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2141 OF 2014

1. Dhyan Investments & Trading Company Ltd.,
10th Floor, Tulsani Chambers,
212, Nariman Point, Mumbai – 400 021.
2. Tushar Sarda,
Indian Inhabitant, residing at 11, Geetanjali 73,
Vallabhai Patel Road, Santacruz (West),
Mumbai – 400 054.] .. **Petitioners**

Versus

1. Central Bureau of Investigation,
having it's office at New Hind House,
2nd Floor, Narottam Morarji Road, Ballard Estate,
Mumbai – 400 038.
2. The State of Maharashtra
3. Canbank Financial Services Ltd.,
A company incorporated under the Companies Act,
1956, having it's registered office at Naveen Complex,
14, M.G. Road, Bangalore – 560 001 and Bombay
Office at Rajbahadur Mansion, 1st Floor, 32,
Bombay Samachar Marg, Mumbai – 400 023.
4. Mr. S. Ramesh Kumar,
Age 60 years, R/o. 704, Whispering Palms,
Lokhandwala Complex, Akurli Road,
Kandivali (East), Mumbai – 400 101.
5. Ashish Parthasarathy,
Age 52 years, Indian Inhabitant,
R/o. 501, Shimira, 16th Road, Khar (West),
Mumbai – 400 052.] .. **Respondents**

Mr. Amit Desai, Senior Advocate, with Mr. Dinesh Purandare, Mr. Firdosh Pooniwalla, Mr. Ravi Gandhi, Mr. M.A. Kamdar, Mr. Rashmin Jain, Mr. Karan Thakkar and Mr. Prathamesh Jadhav, i/by Kanga & Co., for the Petitioners.

Mr. Limosin A., with Mr. H.S. Venegavkar, for Respondent No.1-CBI.

Mr. K.V. Saste, APP for Respondent No.2-State.

Ms. Aarti Shah, with Mr. Ramesh Rajput, i/by Mulla & Mulla & Craigie Blunt & Caroe, for Respondent No.3-CFSL.

CORAM : SUNIL B. SHUKRE AND M.M. SATHAYE, J.J.

RESERVED ON : 5TH JUNE, 2023.

PRONOUNCED ON : 22ND AUGUST 2023.

JUDGMENT : (Per SUNIL B. SHUKRE, J.)

1. This is a petition invoking jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973, seeking quashing and setting aside of the charge-sheet filed and Charge framed in Special Case No.2 of 1998 against the petitioners. The facts leading to filing of the present petition are stated in brief as under :

- (i) The petitioner no.1 is a company registered under the Companies Act, 1956 and petitioner no.2 is an individual, who would take care of the transactions of petitioner no.1. The petitioners are accused nos.3 and 4, respectively, in Special Case No.2 of 1998 filed before the Special Court constituted under the Special Court (Trial of Offences

Relating to Transactions in Securities) Act, 1992, (*hereinafter called as “Special Court Act.”, for short*). Respondent no.1 is the informant in Special Case No.2 of 1998, which registered the FIR against the petitioners and other accused persons at the behest of Respondent no.3 – Canbank Financial Services Ltd., (*hereinafter called as “CANFINA Services”, for short*), a company to whom the alleged financial loss, on account of fraudulent transactions entered into by the petitioners with other accused persons, has been caused. Respondent no.4 – S. Ramesh Kumar and respondent no.5 – Ashish Parthasarathy are the Executives of Citibank NA and are accused no.5 and accused no.6, respectively, in Special Case No.2 of 1998. The other accused persons in Special Case No.2 of 1998 are one M.K. Ashok Kumar (Accused No.1), S. Mohan (Accused No.2), the officers of CANFINA Services and Hiten Dalal (Accused No.7) – the Share Broker.

- (ii). The case against the petitioners in Special Case No.2 of 1998 is that they were part of the criminal conspiracy, object of which was to dishonestly and fraudulently cause wrongful loss to CANFINA Services and the criminal conspiracy was hatched by the petitioners and the remaining accused persons. The case arose against the petitioners when, some time in May, 1994, CANFINA Services filed a complaint with

respondent no.1 alleging commission of various offences in respect of the transactions in two securities, viz. CANDOUBLE and CANPREMIUM, undertaken by CANFINA Services on 13th May 1992 and 15th May 1992. CANFINA Services alleged that it suffered wrongful loss at the hands of the petitioners and other accused persons in these transactions. On the basis of this complaint, an FIR bearing Crime No.RC.2(BSC)/94-BOM came to be registered on 31st May 1994. The allegations were that on 13th May 1992, M.K. Ashok Kumar (Accused No.1) and S. Mohan (Accused No.2), officers of CANFINA Services, purporting to act on behalf of CANFINA Services, sold 2.8 crore units of CANPREMIUM and 75 lakh units of CANDOUBLE to Citibank NA, out of which the price of CANDOUBLE units sold to Citibank NA was much below the market rate. It is alleged that 75 lakh units of CANDOUBLE were sold on that day to Citibank NA at the rate of Rs.16.50 per unit, though the market value of these units was in the range of Rs.30 to Rs.35 per unit. It was further alleged that on 15th May 1992, petitioner no.1 sold 2 crore units of CANPREMIUM at the rate of Rs.20/- per unit and 75 lakh units of CANDOUBLE at the rate of Rs.30/- per unit to CANFINA Services and this transaction was a fraudulent transaction as there was no delivery of physical

units to CANFINA Services nor was there any intention on the part of the petitioner no.1 to deliver these units to CANFINA Services. It is further alleged that petitioner no.1 had, in fact, purchased 2 crore units of CANPREMIUM at the rate of Rs.19.75 per unit and 75 lakhs units of CANDOUBLE at the rate of Rs.29.75 per unit from Share Broker – Hiten Dalal by paying him a sum of Rs.61,81.25,000/-towards the purchase of these securities and thereafter, petitioner no.1, on the same day, sold these units to CANFINA Services at the total price of Rs.62.50 crore; but, there was no delivery of the physical units to CANFINA Services. It is also alleged that when Share Broker – Hiten Dalal sold these units to petitioner no.1 on 15th May 1992, the Share Broker – Hiten Dalal did not possess these units and yet, a paper transaction was entered into between petitioner no.1 and Share Broker – Hiten Dalal to show that it was a genuine transaction and then, in order to defraud and cause wrongful loss to CANFINA Services, same units were sold to CANFINA Services at higher price.

- (iii). It is further alleged that since the accused nos.1 and 2 – M.K. Ashok Kumar and S. Mohan – the CANFINA officers were entrusted with the funds of the bank, they were required to utilize the funds only as per the authority given in that

regard to them by the bank, but, in breach of that authority, they purchased 75 lakh units of CANDOUBLE and 2 crore units of CANPREMIUM from petitioner no.1 without any intention to obtain physical delivery of these units. Thus, these accused nos.1 and 2 committed offence of criminal breach of trust and being public servants, committed further offence by, fraudulently misappropriating, for their own use property of CANFINA Services by corrupt or illegal means and by abusing their position as public servants, of criminal misconduct punishable under Section 13(2), read with Sections 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 and this was all done by them by entering into criminal conspiracy, punishable under Section 120-B of the Indian Penal Code, (*"IPC", for short*), with the petitioners and the remaining accused persons. It was further alleged that as the payment made to the Share Broker – Hiten Dalal (Accused No.7) was based upon offence of criminal breach of trust, punishable under Section 409 of IPC, the Share Broker – Hiten Dalal was receiver of the stolen property, which he used for making payment of amount of Rs.21 crore to petitioner no.1 towards purchase of TISCO shares, which was a sham transaction, and for that purpose, a false Contract Note was prepared by these accused showing

purchase of 3,78,000 TISCO shares by the Share Broker – Hiten Dalal, which amount was received by petitioner no.1 through petitioner no.2, knowing or having reason to believe it to be a stolen property, and thereafter petitioner no.1, with the help of petitioner no.2, also falsified or caused to be falsified accounts of petitioner no.1 by making a false document, namely, a Journal Voucher dated 15th May 1992, falsely accounting for the receipt of amount of Rs.21 crore as consideration for spot sale of TISCO shares to the Share Broker – Hiten Dalal on 9th May 1992, knowing that no such spot sale of TISCO shares had taken place either on 9th May 1992 or on 15th May 1992 and thereby committed offences relating to forgery, punishable under Sections 427, 465 and 471, and Falsification of Accounts, punishable under Section 477-A of the IPC, and commission of these offences was also a part of criminal conspiracy entered into between the petitioners and the remaining accused persons.

(iv). On these allegations, Charge was framed by the Special Court on 21st April 2007 in Special Case No.2 of 1998, which was in all on twenty counts and the offences, the commission of which was alleged against the petitioners and remaining accused, were the ones punishable under Sections 409, 465, 467, 471, 477-A of the IPC and Section 13(2),

read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, read with Section 120-B of the IPC.

- (v). Simultaneously, as investigation into FIR bearing Crime No.RC.2(BSC)/94-BOM dated 31st May 1994 was going on, CANFINA Services, on 12th May 1995, filed a civil case before Special Court, which was registered as Miscellaneous Petition No.74 of 1995. Essentially, it was a Civil Suit filed by CANFINA Services for recovery of the loss it had incurred on account of transactions of CANDOUBLE and CANPREMIUM units undertaken on 13th May 1992 and 15th May 1992 and also for recovery of the damages of further loss caused to CANFINA Services. It was filed against the Share Broker – Hiten Dalal (Accused No.7), Citibank N.A. (not the accused), petitioner no.1 herein (Accused No.3), M.K. Ashok Kumar, Officer of CANFINA Services (Accused No.1), S. Mohan, Officer of CANFINA Services (Accused No.2), A.K. Menon, the Custodian appointed under the Special Court Act (not the accused), N. Balasubramaniam, Officer of CANFINA Services (not the accused) and P. Radhakrishnan, Officer of CANFINA Services (not the accused), as respondents therein. This civil case was also based upon the allegation of criminal conspiracy entered into between the respondents to fraudulently cause financial loss to CANFINA Services by

purchasing units of CANDOUBLE and CANPREMIUM at the value much lower than the market value and selling those units back to CANFINA Services on 15th May 1992 at higher price. It was also pleaded in the civil case that CANFINA Services had filed a complaint in respect of these very transactions of 13th May 1992 and 15th May 1992, on the basis of which an FIR had been registered by respondent no.1 herein. The issues that were framed in the said civil case were several, but, their overall emphasis was upon the fact of criminal conspiracy between petitioner no.1 and other accused persons to defraud CANFINA Services through transactions dated 13th May 1992 and 15th May 1992 and thereby causing wrongful loss to CANFINA Services and thus, those issues were substantially similar to the Charge framed by the Special Court on twenty counts against the petitioners.

- (vi). The civil case – Miscellaneous Petition No.74 of 1995 – came to be decreed in favour of CANFINA Services by a Judgment of the Special Court dated 17th January 2001, by which all the respondents were jointly and severally ordered and decreed to pay to CANFINA Services a sum of Rs.38,01,13,561=64, with further interest @ 18% p.a. on the amount of Rs.22,12,50,000/- from the date of the petition till realization of the amount.

(vii). Being aggrieved by the said Judgment dated 17th January 2001, respondents to the civil case filed Appeals before the Apex Court. The appeal filed by Citibank N.A. was Civil Appeal No.2116 of 2001 and the appeal filed by petitioner no.1 herein was Civil Appeal No.2166 of 2001. Similarly, remaining three respondents, i.e. Hiten Dalal, M.K. Ashok Kumar and S. Mohan, also filed civil appeals before the Supreme Court being Civil Appeal Nos.2669 of 2001, 2331 of 2001 and 2548 of 2001, respectively.

(viii).By an order dated 13th November 2007, the Supreme Court disposed of all the above referred appeals on the basis of a settlement arrived at between CANFINA Services and Citibank NA, noting that the settlement so struck by these two parties was for putting an end to the entire dispute. It was further noted in the order of the Supreme Court that Citibank NA had agreed to compensate CANFINA Services for the difference between the market value and the transaction value in the transactions of the two securities, which were the subject matter of the transaction dated 13th May 1992, without, in any manner, admitting culpability of Citibank NA. It was further noted in the order that counsel for both of these parties accepted that on account of such settlement,

CANFINA Services would not have any surviving cause of action. Following this settlement, CANFINA Services sought leave to withdraw the petition, which was granted by the Supreme Court. The Supreme Court accordingly passed an order recording that, upon withdrawal of the petition, the impugned Judgment would not survive and for that reason, the appeal filed by CANFINA Services would also become infructuous. The Supreme Court also held that with withdrawal of the petition and the impugned judgment not surviving and the Citibank NA agreeing to compensate CANFINA Services for difference between the market value and the transaction value, the remaining appeals had become infructuous and they were dismissed as such.

2. According to the petitioners, the cause of action in the civil and criminal cases was the same i.e. the alleged act of the petitioners and other accused persons resulting in alleged wrongful loss to CANFINA Services on account of transactions undertaken on 13th May 1992 and 15th May 1992 and one of the parties to the proceedings, i.e. Citibank NA, having agreed to compensate CANFINA Services, because of which CANFINA Services having agreed to withdraw its proceedings, namely, Miscellaneous Petition No.74 of 1995 and having agreed that there was no surviving cause of action, the criminal proceedings initiated against the petitioners would deserve their quashing by this

court in exercise of its powers under Articles 226 and 227 of the Constitution of India r/w. Section 482 of the Code of Criminal Procedure, 1973. The petitioners maintain that the present criminal proceedings, if allowed to be continued, would become oppressive to the petitioners and would partake the character of a lame prosecution and, therefore, would have to be quashed and set aside in view of the law laid down by the Apex Court in the case of *Central Bureau of Investigation, ACB, Mumbai Vs. Narendra Lal Jain and Ors.*¹ and *B.S. Joshi Vs. State of Haryana*².

3. The petition is vehemently opposed by respondent no.1 on four grounds such as (i) the petition is not maintainable; (ii) there is no settlement between the petitioners and CANFINA Services, rather the settlement is between Citibank NA and CANFINA Services; (iii) even if there is a settlement, that settlement is only with regard to the civil liability and not the criminal liability and; (iv) the settlement, assuming it to be there, cannot be a ground to quash the charge-sheet considering the facts of the case and seriousness of the offences.

4. Learned counsel for respondent no.1-CBI submits that the extra-ordinary jurisdiction of this court under Article 226 of the Constitution and Section 482 of CrPC and supervisory jurisdiction of this court under Article 227 of the Constitution of India cannot be invoked by the petitioners in the peculiar facts and circumstances of this case. He submits that there is an alternate remedy provided under Section 10 of the Special Court Act to question the legality and

¹ (2014) 5 SCC 364

² (2003) 4 SCC 675

correctness of the Charge framed herein and that remedy having not been availed of by the petitioners, this petition is not maintainable. It is further submitted by him that there is an inordinate delay in filing of this petition. He points out that the Charge in the present case was framed against the petitioners on 21st April 2007 and it was almost after a period of seven years thereafter that the petitioners have filed the present petition. He submits that no satisfactory explanation has been submitted by the petitioners explaining the delay, which has occurred in the present case. He further submits that, even otherwise, jurisdiction of this court under Article 226 of the Constitution of India is discretionary and it is not something which must be exercised merely because it is lawful to do so. He further submits that the jurisdiction is subject to certain self-imposed limitations and it is not intended to be an alternate remedy for aggrieved party, if the aggrieved party can obtain the relief by taking recourse to the means of appeal statutorily provided. He further submits that same is the law governing the supervisory jurisdiction of this court under Article 227 of the Constitution of India. He further submits that when there is an alternate remedy available, the supervisory jurisdiction under Article 227 of the Constitution of India, which exists only for enabling the High Court to keep the subordinate courts and tribunals within the bounds of their authority, has to be exercised only in cases occasioning great injustice or failure of justice in relation to the aggrieved persons. He submits that the petitioners have not made out any case to show that the Special Court has assumed a jurisdiction which it does not have, or, has failed to exercise a jurisdiction which it does have inasmuch as there is no

allegation of assuming a jurisdiction by the Special Court, which it does not have in law. He further submits that the petitioners have filed this petition by clubbing Articles 226 and 227 of the Constitution of India together, which is a practice deprecated by the Supreme Court time and again.

5. Learned counsel for respondent no.1-CBI further submits that the petition, as filed under Section 482 of the Code of Criminal Procedure, 1973 is also not maintainable and that the power under Section 482 is not available to countenance the breach of a statutory provision. He further submits that if remedy is available to question the legality and correctness of the impugned order, the court must not exercise its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

6. Learned counsel for respondent no.1-CBI further submits that even though the petitioners are relying upon settlement between CANFINA Services and Citibank NA, wherein CANFINA Services has admitted that there is no surviving cause of action, such settlement and such admission being only between Citibank NA and CANFINA Services, could not be used by the petitioners to say that even for fastening of criminal liability upon the petitioners, there is no surviving cause of action.

7. Learned counsel for respondent no.1-CBI further submits that this is one of the cases, which involves at-least two transactions, which could be said to be

part of a bigger securities scam, which had erupted in the year 1992-93 and its impact was so huge that several lakhs of people had lost their hard-earned money invested in the securities and shares. He submits that this is a case which has impact on the economy of the Nation. He further submits that, in these circumstances, settlement between CANFINA Services and Citibank NA could not be a ground for quashing the charge-sheet. He further submits that, even otherwise, settlement between two parties cannot be used for contending that the victim of conspiracy would have no cause of action even in saying commission of criminal offences by a person with whom no settlement has been arrived at and it is for these reasons, the cases of *Central Bureau of Investigation, ACB, Mumbai Vs. Narendra Lal Jain and Ors.*¹ and *B.S. Joshi Vs. State of Haryana*² relied upon by the petitioners would have no application to the facts of the present case.

8. Learned Senior Advocate for the petitioners submits that the present petition, as filed under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973, is maintainable for the reason that appeal under Section 10 of the Special Court Act lies only from judgment, sentence or order not being an interlocutory order to the Supreme Court and as the petitioners are seeking quashing of the Charge framed against the petitioners by the Special Court by its order dated 21st April 2007 and the order not being a final order, this petition is maintainable. He submits that framing of Charge order is an interlocutory order, it being a step taken towards

¹ (2014) 5 SCC 364

² (2003) 4 SCC 675

commencement of the trial and not a step of conclusion of the trial and, therefore, the remedy of statutory appeal, under Section 10 of the Special Court Act, would not be available to the petitioners.

9. Learned Senior Advocate for the petitioners further submits that there is no provision in the Code of Criminal Procedure, 1973 or the Special Court Act providing for limitaiton, barring the petitioners from filing a petition seeking quashing of the Charge. He submits that the object of the Special Court, as seen from the Statements of Objects and Reasons, is of speedy trial of offences relating to transactions in securities and disposal of properties attached. But, he further submits that the Special Case, in which first charge-sheet came to be filed by respondent no.1-CBI on 24th February 1998, has not proceeded beyond framing of Charge and the respondent no.1 has failed to expedite the trial. He further submits that in the year 2007, there was a change in the fact situation of this case, whereby a settlement was entered into between CANFINA Services and Citibank NA and the loss caused to CANFINA Services in respect of the security transactions involved here was made good by the Citibank NA and parties agreed that there was no surviving cause of action in respect of the loss caused on account of the transactions involved in the present petition to CANFINA Services. He further submits that in the year 2014, the petitioners came across a clear and unequivocal pronouncement of law by the Supreme Court in the case of *Narendra Lal Jain (supra)*, wherein the Apex Court upheld the exercise of power by High Court under Section 482 of the Code of Criminal Procedure for quashing

pending criminal proceedings against private parties in a case where the civil liabilities of the bank have been settled. He submits that the Supreme Court took a view that on the backdrop of settlement between the parties in respect of civil liabilities, the criminal proceedings substantially based on civil liabilities, if allowed to be continued, would become oppressive and it would amount to travesty of justice.

10. Learned Senior Advocate for the petitioners further submits that the objection taken by respondent no.1-CBI with regard to the delay and laches has to be examined in the light of the facts pointed out by him to this court and which have been briefly stated in the earlier paragraph. He further submits that it is a judicially recognized principle that inordinate delay of decades, as in the present case, prejudices the right of the accused to defend himself or itself properly and it is quite likely that inordinate delay may prove to be a handicap to an accused in presenting his best defence. He further submits that the present criminal case is based upon the transactions of 13th May 1992 and 15th May 1992 and as the criminal proceedings have not proceeded any further after framing of the Charge in the year 2007, the petitioners have suffered the ignominy of facing trial and this has affected personal and professional life of the petitioners. He further submits that no prejudice would be caused to respondent no.1-CBI if the present petition is allowed. He also submits that even on merits of the matter, the petitioners have good case and if the material present on record is carefully examined, it would be seen that no prima facie case is made out against

the petitioners for the offences with which the petitioners are charged. This is yet another good ground, as submitted by learned senior counsel for the petitioners, for quashing of the present criminal proceedings and it is necessary that it is done to do substantive justice and to prevent the abuse of the process of the court. He also submits that this case has an overwhelming element of a civil dispute and on this ground as well, inherent power of this court under Section 482 of the Code of Criminal Procedure for quashing of the criminal proceedings can and must be exercised. Learned Senior Advocate for the petitioners further submits that even though the settlement was only between CANFINA Services and Citibank NA, the settlement has nevertheless resulted in CANFINA Services admitting that it has no surviving cause of action as regards the financial loss incurred by it and even today, CANFINA Services does not wish to proceed against the petitioners, which is evident from non-descript reply filed to this petition by CANFINA Services.

11. Learned Senior Advocate for the petitioners further submits that a wrong picture has been tried to be created about the offences involved in the present petition being a part of a bigger security scam, although the truth is different. He submits that it can be very well seen from the allegations made against the petitioners in the FIR and also from the material present on record that the transactions of 13th May 1992 and 15th May 1992 were all one-off transactions between CANFINA Services and Citibank NA; petitioners and Share Broker – Hiten Dalal (Accused No.7); Share Broker – Hiten Dalal and Citibank NA and;

petitioners and CANFINA Services. He further submits that these were the only four transactions, which were involved here, and they showed that on 13th May 1992, certain units of CANDOUBLE and CANPREMIUM were sold by officers of CANFINA Services to Citibank NA and then on 15th May 1992, certain units of CANDOUBLE and CANPREMIUM were sold by petitioner no.1 to CANFINA Services, after purchasing them on the same day from Share Broker – Hiten Dalal, which the Share Broker – Hiten Dalal had purchased from Citibank NA on the same day and in addition, some shares of TISCO company were also sold by petitioner no.1 to Share Broker – Hiten Dalal on the same day of 15th May 1992. He submits that the material on record would show that all these were separate transactions and for the transaction of the date of *“13th May 1992”*, petitioners had no role to play whatsoever and as regards the transactions of *“15th May 1992”*, the allegation against the petitioners was limited to the petitioners being part of the conspiracy to not have delivered physical units of CANDOUBLE and CANPREMIUM to CANFINA Services. He submits that as regards the transaction of 15th May 1992, CANFINA Services had already acknowledged by its letter dated 15th July 1992 that subsequently, it received physical delivery of these units and that the liability of petitioner no.1 in that regard had stood discharged. He further submits that as regards the transaction of 15th May 1992, relating to selling of certain TISCO shares by petitioner no.1 to Share Broker – Hiten Dalal also, the Custodian appointed under Section 3(2) of the Special Court Act and the appointed Chartered Accountant have already certified the genuineness of the accounts of the petitioners and Share Broker – Hiten Dalal and they have also

certified the genuineness of the accounts of the petitioners in relation to sale of certain units of CANDOUBLE and CANPREMIUM by petitioner no.1 to CANFINA Services and, therefore, no case whatsoever of the petitioners having entered into a criminal conspiracy with other accused persons and having committed offences with which the petitioners have been charged here, is made out and if this is so, the settlement between CANFINA Services and Citibank NA could be taken to be an additional ground for quashing of the criminal proceedings.

12. The objection been taken by learned counsel for respondent no.1-CBI regarding maintainability of this petition filed under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 primarily rests upon three grounds, namely, (i) existence of alternate remedy; (ii) unreasonable delay in filing the petition and; (iii) the case involving economic offences, which have been prima facie committed by the petitioners as a part of bigger scam of what is called as “Securities Scam”, which had surfaced in the year 1992. In support, he has cited several cases, which we would now consider while dealing with the grounds of his objections.

13. In the case of *Nivedita Sharma Vs. Cellular Operators Association of India*¹, the Apex Court observed, reiterating what was held in the case of *L. Chandra Kumar Vs. Union of India*² and *L. Chandra Kumar Vs. Union of India*³, that the power of High Courts to issue directions, orders or writs, including writs in the

1 *AIR 2011 SC 327*

2 *(1997) 3 SCC 261*

3 *(1997) 3 SCC 261*

nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution of India is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation. It further held that it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency or any public authority or order passed by a quasi judicial body or authority and it is another thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course, ignoring the fact that the aggrieved person has an effective alternate remedy. The Supreme Court further held that it is settled law that if a statutory forum is created by law for redressal of any grievance, a writ petition should not be entertained ignoring the statutory dispensation.

14. Thus, it would be clear that even though the jurisdiction of the High Court under Article 226 of the Constitution of India is of wide amplitude and it has power to interfere with the action or the order of the State or instrumentalities or any other authority subject to its territorial jurisdiction, the High Court, in its discretion, may not entertain a petition where there is available an equally alternate efficacious remedy. This position of law, we must say, has held the field since long and it is so even today, as can be seen from many judgments of the Supreme Court, some of which are in the cases of (i) *Titaghur Paper Mills Co.*

*Ltd. and Anr. Vs. State of Orissa and Anr.*¹ (ii) *Sakiri Vasu Vs. State of U.P.*² (iii) *Kanaiyalal Lalchand Sachdev and Ors. Vs. State of Maharashtra and Ors.*³ (iv) *Union of India Vs. T.R. Varma*⁴ (v) *State of Maharashtra Vs. Greatship (India) Ltd.*⁵ (vi) *Magadh Sugar and Energy Ltd. Vs. State of Bihar*⁶ (vii) *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority*⁷. The case of *Assistant Commissioner (CT) LTU, Kakinada and Ors. Vs. Glaxo Smith Kline Consumer Health Care Ltd.*⁸ is also significant, wherein it is observed as follows :-

“11. We may usefully refer to the exposition of this Court in *Titaghur Paper Mills Co. Ltd. and Anr. Vs. State of Orissa and Ors.*⁹, wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of.....

15. In the same paragraph, the Supreme Court further held that;

“..... In the subsequent decision in *Mafatlal Industries Ltd. and Ors. Vs. Union of India and Ors.*¹⁰, this court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The court, however, added a word of caution and expounded that the

1 *AIR 1983 SC 603*

2 *2008 (1) ALJ 752*

3 *2011 AIR SCW 1194*

4 *AIR 1957 SC 882*

5 *AIR OnLine 2022 SC 216*

6 *AIR 2021 SC (Supp) 1459*

7 *AIR OnLine 2023 SC 76*

8 *AIR 2020 SC 2819*

9 *(1983) 2 SCC 433*

10 *(1997) 5 SCC 536*

constitutional court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.”

16. In addition to above, we may refer here to few more cases such as *Cicily Kallarackal Vs. Vehicle Factory*¹, *Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka*², *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Anr.*³; *Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte and Anr.*⁴; and *Shamshad Ahmad and Ors. Vs. Tilak Raj Bajaj (D) by LRs and Ors.*⁵, which indicate that the principles of law discussed earlier are well entrenched.

17. Of course, there are cases wherein High Courts have exercised their power under Article 226 of the Constitution in spite of the fact that alternate remedy was statutorily provided. But, the Apex Court has laid down guiding principles for the High Courts to follow in such cases. The recent leading case in this regard is of *Radha Krishan Industries Vs. State of Himachal Pradesh and Ors*⁶. After

1 *AIR OnLine 2012 SC 321*

2 *AIR OnLine 2019 SC 1652*

3 *AIR 2010 SC 2239*

4 *AIR 1975 SC 1297*

5 *AIR 2008 SC (Supp) 526*

6 *AIR 2021 SC 2114*

referring to the case law on the point, it culls down the principles, on the basis of which a High Court can interfere by invoking its extra-ordinary jurisdiction under Article 226 of the Constitution of India. They are stated in paragraph 27 of the said case, which is reproduced as under :-

“27. The principles of law, which emerge are that :

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*

- (v) *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*
- (vi) *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

18. It would be thus clear that wherever there is an alternate remedy provided in the statute, ordinarily, this court is not to entertain a writ petition under Article 226 of the Constitution of India unless there is a violation of the fundamental right or any principle of natural justice or the impugned order or proceedings is or are wholly without jurisdiction or the vires of a legislation are challenged. In the present case, there is a grievance voiced by the petitioners that their fundamental right to speedy trial has taken a bad hit due to inordinate delay in conclusion of the trial, though there is no objection taken about vires of a legislation or violation of principles of natural justice.

19. Having considered the law on the said point, now, we would have to find out as to whether or not, in this case, there is available equally efficacious alternate remedy and if so, whether or not this case falls in any of the above referred exceptions. According to learned Advocate for the respondent no.1, there is available here an alternate remedy to the petitioners in the nature of appeal under Section 10 of the Special Court Act. He submits that the order framing Charge is not an interlocutory order and, therefore, alternate remedy is available under Section 10 of the Special Court Act. Learned Senior Advocate for the petitioners, however, disagrees. He further submits that the order of framing Charge passed here is an order which is interlocutory and, therefore, the right of appeal conferred upon the petitioners, under Section 10 of the Special Court Act, is not available. He submits that appeal under Section 10 of the Special Court Act can be filed against any judgment, sentence or order, not being an interlocutory order passed by Special Court, before the Supreme Court on facts as well as law and the order being questioned here is an interlocutory order. He further submits that a Division Bench of this court has already taken a view in the case of *ITC Ltd. Vs. Ramesh Nayak and Ors.*¹, after considering the judgments in the case of *The Special Courts Bill, 1978, In re [1979]*², *L. Chandra Kumar Vs. Union of India*³ and *T. Sudhakar Prasad Vs. Government of Andhra Pradesh*⁴ that a writ petition filed under Article 226 and Article 227 of the Constitution of India against order of Special Court is maintainable. Learned counsel for respondent

1 (2009) 150 Comp Cas 134 (Bom)

2 AIR 1979 SC 478

3 (1997) 3 SCC 261

4 (2001) 1 SCC 516

no.1-CBI, however, has tried to distinguish the case of *ITC Ltd. (supra)* from the present case on the ground that the order impugned in that case was an order passed under Section 319 of the Code of Criminal Procedure, which was an interlocutory order, pure and simple, and whereas, the order of framing of Charge is not an interlocutory order, pure and simple, rather it is a final order. He also submits that the petitioners, in addition to seeking relief of quashing of order framing Charge, have also sought further reliefs such as quashing of FIR and quashing of the criminal proceedings, which reliefs are final in nature and, therefore, this writ petition is not maintainable.

20. In order to appreciate the rival arguments, it would be necessary to consider the provisions made in sub-sections (1) and (2) of Section 10 of the Special Court Act. For the sake of convenience, Section 10 is extracted as below :-

“10. Appeal -

- (1) Notwithstanding anything in the Code [or the Code of Civil Procedure, 1908 (5 of 1908), or the Arbitration Act, 1940 (10 of 1940)], an appeal shall lie from any judgment, sentence or order, not being interlocutory order, of the Special Court to the Supreme Court both on facts and on law.*
- (2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, [decree] sentence or order of the Special Court.*
- (3)”*

21. It would be clear from the above referred provisions that an appeal from any judgment, sentence or order, which is not an interlocutory order, passed by the Special Court lies to the Supreme Court, both, on facts and on law and that except as so provided, no appeal or revision would lie to any court from any judgment or decree or sentence or order of the Special Court. So, the question would arise as to whether or not the order framing of Charge is an interlocutory order or a final order or an intermediate order. The question is answered in *ITC Ltd. (supra)*, wherein the Division Bench of this court has taken a view that any order of interlocutory nature made by the Special Court is amenable to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. The said case of *ITC Ltd. (supra)* also takes a view that though the learned Judge presiding over Special Court is a High Court Judge and his status a Judge of the High Court remains as it is, his functionality as a Judge of the Special Court with powers of sessions court under the CrPC bestowed upon him for the purpose of trying cases under the Special Court Act is what makes his interlocutory orders amenable to jurisdiction of High Court under Articles 226 and 227 of the Constitution. This view has attained finality, after Special Leave Petition filed against it was dismissed.

22. All said and done, there is distinction, which we must consider. In the said case of *ITC Ltd. (supra)*, what was under challenge was an order passed under Section 319 of the Code of Criminal Procedure and it was found by the Division Bench to be an interlocutory order. Here the impugned order is of framing of

Charge and, therefore, it would be necessary for this court to examine if an order of framing of Charge can be considered to be of the nature not covered by Section 10 of the Special Court Act or not.

23. The answer to the question can be found in the case of *Sanjay Kumar Rai Vs. State of Uttar Pradesh and Anr.*¹. The facts of this case indicate that the appellant had filed criminal revision petition before the High Court seeking reversal of the order of the Chief Judicial Magistrate rejecting his application for discharge filed under Section 239 of the Cr.P.C. The High Court, relying upon the decision of the Apex Court in the case of *Asian Resurfacing of Road Agency Pvt. Ltd. and Anr. Vs. Central Bureau of Investigation*², held that the order of discharge could be interfered with only in the rarest of rare cases for correcting the patent error of jurisdiction and there being no patent error of jurisdiction, the High Court dismissed the revision petition. The Supreme Court, however, distinguished the case of *Asian Resurfacing of Road Agency Pvt. Ltd. (supra)*, stating that the facts of the said case were different. It pointed out that the issue involved in that case was of bar of revisional jurisdiction under Section 19 of Prevention of Corruption Act, 1988, which was not the issue involved in the case before it. It observed that the *Asian Resurfacing of Road Agency Pvt. Ltd.* itself held that not only Prevention of Corruption Act was a special statute, but it also contained a special bar on exercise of revisional jurisdiction under Section 19.

¹ AIR 2021 SC 2351

² AIR 2018 SC 2039

The Supreme Court then considered the case of *Madhu Limaye Vs. State of Maharashtra*¹ and observed :

“27. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) CrPC or even under Section 482 CrPC, the principle laid down in Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551, still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution, which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.”

24. The Supreme Court thus held that order framing charge or refusing discharge is neither interlocutory nor final in nature and is, therefore, not affected by the bar of Section 397(2) of the Code of Criminal Procedure and further held that the High Court has inherent jurisdiction to prevent abuse of process of court or to secure the ends of justice. It also held that the discretion, however, has to be exercised carefully and judiciously, but a complete hands off approach was not recommended. It further held that court has to interfere in exceptional cases in which there is a likelihood of serious prejudice to the rights of the accused like when the contents of a complaint or the other material

¹ AIR 1978 SC 47

available on record shows that there is a brazen attempt to prosecute an innocent person and in such a case, it further held, it becomes imperative for the court to prevent the abuse of process of court.

25. Before we make our conclusion about the nature of order of framing charge, we think it necessary to briefly refer to an important test laid down in the case of *Amar Nath and Ors. Vs. State of Haryana and Ors.*¹ and *Honnaiah T.H. Vs. State of Karnataka*², for deciding the nature of an order for the purpose of bar of revision petition under Section 397(2) CrPC, though this may now only be academic exercise in view of clear exposition of law clarifying the nature of order framing charge in *Sanjay Kumar Rai (supra)*. *Amar Nath* and *Honnaiah T.H.* test says that an interlocutory order is the one which does not decide or touch upon the important rights or liabilities of the parties, but it would not be so when it substantially affects the right of the accused or decides certain rights of the parties. It is also held that it is well-nigh settled that in deciding whether an order challenged is interlocutory or not as far as Section 397(2) of the CrPC is concerned, the sole test is not whether such an order was passed during the interim stage and the feasible test is whether on upholding of the objections raised by a party, the order would result in culminating the proceedings or not and if it is so, any order passed on such objections would not be merely interlocutory in nature, as envisaged in Section 397(2) of the CrPC. (*See Madhu*

1 1977 AIR 2185

2 AIR OnLine 2022 SC 1261

*Limaye Vs. State of Maharashtra*¹, *V.C. Shukla Vs. State through CBI*² and *Rajendra Kumar Sitaram Pande and Ors. Vs. Uttam and Anr.*³). So, by this test, if objections taken by the accused to order framing charge or refusing his discharge are not upheld, it would be an interlocutory order from the stand point of the accused, but if they are upheld, it would be a final order from the view point of the prosecution or the complainant as that would result in culmination of the proceedings. At the same time, by this test, it can perhaps be said that the order framing charge or order not framing charge and discharging the accused in either case is an order which touches upon the important rights and liabilities of the parties. In the former case, it creates right for the prosecution to prosecute the accused and liability for the accused to face prosecution and in the latter case, there is reversal of these rights and liabilities, and in either case, the rights and liabilities so created are important which substantially affect either of the parties. In the latter case, there is no difficulty as by the said test, it would be a final order for the prosecution or the complainant as it marks culmination of the proceedings for the prosecution or the complainant. But, in former case, the test may create a dilemma for courts as to how to treat the order, for the ultimate result is not of conclusion of proceedings, rather the effect is of continuation of proceedings. The vacillation of courts on this point, however, is now put at end to by the Apex Court in the case of *Sanjay Kumar Rai (supra)* by holding that such an order is neither an interlocutory order nor a final order, about which we have already discussed at length in earlier paragraph. Such being the position of law,

1 *AIR 1978 SC 47*

2 *1980 AIR 962*

3 *Judgment dt. 11-2-1999*

now we do not hesitate to hold that the order framing charge and the Charge framed, which have been impugned in the present case, both, cannot be considered to be of interlocutory nature nor of final nature and it would then mean that they are something which are not covered by the bar of Section 10 of the Special Court Act. So, Section 10 of the Special Court Act would have no application here and as such, we find that no alternate remedy is available to the petitioners.

26. Once it is held that alternate remedy is not available to the petitioners, the petitioners would be within their right to invoke jurisdiction of this court under Article 226 of the Constitution of India for redressal of their grievance arising from what they say to be violation of their fundamental right to speedy trial and also from the nature of trial, if allowed to go on, which they call to be oppressive on account of extinguishment of the entire cause of action, which the complainant - CANFINA Services may have had against the petitioners, and also from their submission that there is no prima facie case made out against them. For these very reasons, we would further say that this petition would also be maintainable under Section 482 of the CrPC.

27. We may add here that we have already seen that power of the High Court under Article 226 of the Constitution of India is wide and discretionery in nature and whatever limitations are there, they are only self-imposed ones, though, ordinarily, this court would not entertain a petition for a writ under Article 226

of the Constitution of India where the petitioner has an alternate remedy which is equally efficacious. It would mean that in a rare case, this court can exercise its power under Article 226 of the Constitution, inspite of availability of alternate remedy, though it can be done only in exceptional circumstances. In this case, apart from absence of equally efficacious alternate remedy, there are also grounds raised, which we have referred to just now, which make us believe that they need consideration by this court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India and also under Section 482 of the CrPC and, therefore, we hold that this petition, as filed under Article 226 of the Constitution of India, read with Section 482 of the CrPC, is maintainable.

28. There is also an objection raised by respondent no.1-CBI that, in this petition, jurisdiction of this court under Article 226 as well as Article 227 of the Constitution of India, both, are clubbed together and this practice has been deprecated by the Supreme Court in the case of *Surya Dev Rai Vs. Ram Chander Rai and Ors.*¹. The case of *Surya Dev Rai (supra)* has been overruled by a Larger Bench of the Apex Court in *Radhey Shyam and Anr. Vs. Chhabi Nath and Ors.*² to the extent mentioned therein. In *Radhey Shyam (supra)*, the Supreme Court has held that the legal proposition laid down in *Surya Dev Rai (supra)* that judicial orders passed by a civil court can be examined and then corrected / reversed by the writ court under Article 226 of the Constitution of India by issuing a writ of

1 *AIR 2003 SC 3044*

2 *2009 AIR SCW 4006*

certiorari, is incorrect and it further held that judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. It also held that jurisdiction under Article 227 is distinct from jurisdiction under Article 226 and a contrary view taken in this regard in *Surya Dev Rai (supra)* has been overruled.

29. So, the law now is that judicial orders passed by civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution. The order framing charge impugned herein is undoubtedly a judicial order. The proceedings under Article 226 of the Constitution, as held in *Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr.*¹, are in exercise of the original jurisdiction of the High Court; while proceedings under Article 227 of the Constitution of India are not original but supervisory and, therefore, in exercise of the original jurisdiction of the High Court under Article 226 of the Constitution of India, this court cannot scrutinize a judicial order for its legality and correctness or otherwise. So, this petition would not be maintainable under Article 227 of the Constitution and we hold so. But, this is a petition which is also filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure. It is also a petition which seeks ultimately reliefs of quashing of the Charge framed and quashing of the criminal proceedings. Such reliefs can be sought by invoking power of this court under Section 482 of the Code of Criminal Procedure read with Article 226 of the Constitution of India, provided there are sufficient legal grounds available to do so. It then follows that

¹ (1986) Supp. SCC 401

though this petition is not maintainable under Article 227 of the Constitution, it is still maintainable under Article 226 of the Constiution, read with Section 482 of the CrPC. We further find that the labelling of this petition in the manner it is made, though not appreciable, would not adversely affect the maintainability of this petition under Article 226 of the Constitution read with Section 482 of CrPC.

30. There is one more objection as to maintainability of this petition taken by respondent no.1-CBI. It is about the unreasonable delay caused and laches committed in filing this petition. We must say that this is not a case where there has occurred a great delay in filing of the petition. There is no dispute about the fact that the charge here was framed in 2007 and this petition has been filed about seven years later, but, the petitioner has given an explanation for the delay of about seven years, which we find to be satisfactory. Learned Senior Advocate for the petitioners has submitted that some time, before filing of this petition, in the year 2014, the petitioners came across a decision of the Apex Court in the case of *Narendra Lal Jain (supra)*, wherein the Supreme Court found that it was a fit case for quashing of the criminal proceedings under Section 482 of the CrPC. It noted that the allegations made against the accused by the bank were similar to the averments made by the bank in it's suit filed against the accused for recovery of amounts claimed to be due from them and found that the bank had already settled amicably it's civil dispute with the accused and that there was no subsisting grievance of the bank in that regard and, therefore, it further found that even if the offence of criminal conspiracy was not compoundable under

Section 320 of the Code of Criminal Procedure, the same would not act as a bar for exercise of power under Section 482 of the Code of Criminal Procedure. It further held that when the bank had amicably settled its civil dispute with the accused and had no subsisting grievance against the accused, the criminal proceedings deserved to be quashed and set aside or otherwise they were likely to become oppressive or might partake of character of lame prosecution. It further held that if any criminal proceeding assumes the character of a lame prosecution or is likely to become oppressive for the accused, it would be a good ground for the accused to invoke the extra-ordinary power of the High Court under Section 482 of the Code of Criminal Procedure. These are the very grounds taken in this petition seeking quashing of the criminal proceedings and as this petition has been filed almost immediately after judgment in the case of *Narendra Lal Jain (supra)* came, we are of the view that there is no such unreasonable delay in filing of this petition as to disqualify the petitioners from invoking extra-ordinary jurisdiction of this court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure.

31. Of course, learned counsel for respondent no.1-CBI would submit that ratio of *Narendra Lal Jain (supra)* does not apply to the facts of the present case as the settlement of dispute in the instant case was not with the petitioners but was with Citibank NA and, therefore, the admission of CANFINA Services that it had no surviving cause of action would have to be construed as confined only to the dispute between it and the Citibank NA and not extending to allegations made

against the petitioners. According to learned Senior Advocate for the petitioners, the argument is devoid of any merit. We would say that argument so made on behalf of respondents is really an argument touching upon the merits of the matter, which we would have to consider on its own merit, and we will do so in later part of this judgment. But, for the purpose of deciding the issue of maintainability of this petition, it would have no bearing on the issue of delay and laches, given the contention of the petitioners that the judgment in the said case is what prompted them to think that their case is similar and so they have come before this court. The argument is, therefore, rejected.

32. There is yet another objection as to the maintainability of this petition anchored in the nature of this case. Respondent no.1-CBI submits that this case involves economic offences of larger magnitude, which drive it out of the judicial review of this court, under Section 482 of the Code, read with Article 226 of the Constitution. This objection basically touches upon the merits of the matter and so will be dealt with by us later on. Suffice it to say it here that this petition, as filed under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973, for the reasons stated earlier, is maintainable and the objection taken by respondent no.1-CBI in this regard is rejected.

33. Now the time is ripe for considering the merits of this case. Much stress has been laid by learned Senior Advocate for the petitioners upon the out of court settlement between CANFINA Services and Citibank NA, thereby settling civil

liability of the Citibank NA towards the CANFINA Services during pendency of appeals before the Supreme Court, arising out of Miscellaneous Petition No.74 of 1995 filed by CANFINA Services against Citibank NA and other respondents named therein, one of whom was petitioner no.1. Learned Senior Advocate for the petitioners submits that in this settlement, Citibank NA had agreed to make good the financial loss caused to CANFINA Services on account of transaction dated 13th May 1992 and this was accepted by CANFINA Services while saying that on account of such settlement, CANFINA Services would not have any surviving cause of action. He submits that the civil appeals before the Apex Court arose out of the Judgment dated 17th January 2001 passed in Miscellaneous Petition No.74 of 1995, whereby the Citibank NA and the remaining respondents were jointly and severally ordered and decreed to pay CANFINA Services a sum of Rs.38,01,13,561=64, with further interest on amount of Rs.22,12,50,000/- @ 18% p.a. from the date of the petition till payment / realization. He further submits that this civil case was substantially based upon the tort of conspiracy entered into between Citibank NA, petitioner no.1 and other respondents to the civil case, whereby Citibank NA, petitioner no.1 and the remaining respondents thereto had acted together to cause financial loss to CANFINA Services and such being the nature of the civil case, the amicable settlement between Citibank NA and CANFINA Services amounted to settlement of criminal liability as well and, therefore, the criminal proceedings against the petitioners could not be continued or otherwise they would become oppressive for the petitioners. He further submits that this is in addition to the fact that CANFINA Services had expressly

admitted that on account of such settlement, it would not have any surviving cause of action. He further submits that all these facts are recorded in the order of the Supreme Court dated 13th November 2007, by which the appeal filed by Citibank NA against CANFINA Services was dismissed as being infructuous and that even the other appeals filed by the remaining respondents were dismissed as infructuous. Reliance is placed upon the case of *ITC Ltd. (supra)*, which has attained finality, after Special Leave Petitions filed against it were dismissed by the Apex Court on 1st March 2013. This is, however, strongly contested by learned counsel for respondent no.1-CBI, who submits that the settlement being only between CANFINA Services and Citibank NA and the petitioners not being party to it, cannot be made use of for exoneration of criminal liability of the petitioners.

34. Arriving at the said amicable settlement between CANFINA Services and Citibank NA; the settlement having been in relation to the judgment and decree of the Special Court delivered in Miscellaneous Petition No.74 of 1995 on 17th January 2001; recording of the fact of settlement by the Supreme Court in its order dated 13th November 2007 and; the Supreme Court dismissing all the appeals arising out of the judgment and decree dated 17th January 2001 as infructuous, are all matters of record. Similarly, the civil case filed by CANFINA Services against Citibank NA, petitioner no.1 and other respondents being primarily based upon the tort of conspiracy entered into between Citibank NA, petitioner no.1 and remaining respondents to the civil case and injury in the nature of financial loss having been thereby caused to CANFINA Services are also

matters of record. So, the question is as to whether the said settlement and also admission of CANFINA Services that on account of the said settlement, it would not have any surviving cause of action, could also be construed as amounting to even settlement of criminal liability of the petitioners and other accused persons by CANFINA Services, thereby rendering the continuation of criminal proceedings against the petitioners as oppressive or turning the criminal proceedings into a lame prosecution of the petitioners ?

35. Upon consideration of the nature of the settlement, nature of the civil liability and all the relevant facts and circumstances of the case, our answer to the above referred question is in the negative and the reasons therefor are being stated in the following paragraphs.

36. As the petitioners have relied upon the case of *Narendra Lal Jain (supra)*, we would first have to consider if the petitioners can rightly rely upon it or not. In our considered opinion, they cannot as the facts of that case were different from facts of this case. In that case, parties to civil case were also the accused in criminal case, which is exactly not the case here. In this case, the liability to make good the monetary loss suffered by CANFINA Services was mutually settled only between CANFINA Services and Citibank NA and it is only Citibank NA, which had admitted its civil liability to compensate CANFINA Services of the financial loss suffered by it and it was accepted by CANFINA Services by way of settlement, which was confirmed by the Apex Court

in its order dated 13th November 2007. Such settlement between two parties, one of which is not even an accused (Citibank NA), can never be construed as having the effect of exonerating the petitioners of their criminal liability by CANFINA Services in the present matter. To this settlement, petitioner no.1, though a respondent in the civil case, was not a party and, therefore, whatever amicable settlement was there in between CANFINA Services and Citibank NA cannot be said to be a settlement between CANFINA Services and the petitioners even for the inter se civil rights and civil liabilities, much less criminal liability of petitioners in criminal law and, therefore, the order dated 13th November 2007, having regard to the provisions made in Section 43 of the Indian Evidence Act, would have no relevance to the facts of the present case. (*See Smt. Rumi Dhar Vs. State of West Bengal and Anr.*¹). Section 43 of the Indian Evidence Act provides that judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgments, orders or decrees is a fact in issue or is relevant under some provisions of this Act. The said order of the Supreme Court is not the one which is covered by Sections 40 or 41 or 42 of the Indian Evidence Act. Its existence, so far as the criminal proceedings are concerned, is not a fact in issue nor is it relevant for the purpose of determination of criminal liability of the petitioners in the present proceedings, especially when the admission given by CANFINA Services that it has no surviving cause of action is not in relation to the petitioners but is in relation to Citibank NA. On the contrary, reaching of an amicable settlement by Citibank NA with CANFINA Services, Citibank NA agreeing to make good the financial loss caused to

¹ AIR 2009 SC 2195

CANFINA Services and CANFINA Services accepting such settlement, amounts to admission of civil liability arising from tort of civil conspiracy by Citibank NA against CANFINA Services under Section 19 of the Indian Evidence Act, rather than exoneration by CANFINA Services of Citibank NA from tort of civil conspiracy involved in the civil case. Any admission by a party of tort of civil conspiracy would have a potential of admitting by it of offence of criminal conspiracy. It is a different matter that Citibank NA, as a legal entity, is not made an accused here. It is also a different matter that ultimately, after having accepted the settlement, CANFINA Services stated that on account of such settlement, it would have no surviving cause of action, but the fact remains that the settlement and the admission would be relevant only as against Citibank NA and not against the remaining respondents. Similarly, withdrawal of the civil case, being Miscellaneous Petition No.74 of 1995, owing to such settlement, would also have no bearing upon the criminal liability of the petitioners. Saying that CANFINA Services had no cause of action and its withdrawal of the civil case resulted in extinguishment of cause of action for CANFINA Services to file criminal complaint against the petitioners, would be like going against the fundamental tenets of criminal jurisprudence. Once a complaint alleging commission of criminal offence is made, criminal law is set in motion as per Section 154 of CrPC and the rest is done by the Investigating Officer as per law. If there is compounding of offence under Section 320 of the CrPC, there is necessarily an admission by the accused of commission of offence by him and it is only by operation of law, the compounding of offence is accepted by the court and the

accused is not sentenced to suffer any punishment. If any quashing of complaint or FIR takes place in a non-compoundable offence, it is for preventing the abuse of process of court or to secure ends of justice and it can be so even upon settlement between the complainant and the accused and not for the reason of settlement between the complainant and some other person or entity, not an accused. In this case, Citibank NA is not an accused and so its settlement with CANFINA Services cannot absolve the petitioners of their criminal liability here. In any case, the settlement of civil liability of Citibank NA towards CANFINA Services was only for the reason of expiation of civil injury caused to CANFINA Services and for extinguishing its right to recover the financial loss caused thereby and it was not for atoning the criminal liability alleged against the petitioners.

37. In the case of *Narendra Lal Jain (supra)*, on which heavy reliance has been placed by the petitioners, the facts, as stated earlier, were different. In that case, the respondents, the officials of the bank and the company, conspiring together, projected inflated figures of creditworthiness of the company and enabled the company to secure more advances and loans from bank than the company was entitled to and thus had caused financial loss to the bank. On account of these wrongs committed by the respondents, bank had registered FIRs against the company officials and several officers of the Bank of Maharashtra and simultaneously, the bank also instituted suit for recovery of amount claimed to be due from the respondents. In the civil proceedings, the respondents were also the

persons who were the accused persons in criminal proceedings. The suit was disposed of in terms of consent decree which was upon receipt of payment by the bank and the payment was so received on account of amicable settlement of civil liability of respondents-accused to pay the amount to bank. There was also no subsisting grievance of the bank in that regard, which was brought to the notice of the Supreme Court. It was under these circumstances that the Apex Court held that even though offence under Section 120B of the IPC was not compoundable, while offence under Section 420 of the IPC was compoundable, the trial of the respondents for offences registered against them, was likely to become oppressive or might partake of the character of lame prosecution and so it found that the settlement arrived at between the parties would be a good ground to invoke extra-ordinary power of High Court under Section 482 of the Code of Criminal Procedure. Such are not the facts of the present case. There is no settlement of civil liability arising from tort of civil conspiracy between petitioners and CANFINA Services. There is no admission given by CANFINA Services regarding extinguishment of its civil cause of action in relation to the petitioners and there is no admission made in that regard in relation to the petitioners. Even in the reply filed by CANFINA Services – the respondent no.3 herein, there is no such admission given by it, although during the course of the arguments, its learned counsel stated that CANFINA Services would have no objection if the petition is allowed. Such statement made during the course of the arguments would not be of much significance unless it is found that CANFINA Services, by amicable settlement of its civil case with Citibank NA, has intended to also impliedly settle

the criminal liability with the petitioners and there is no such intention seen even impliedly on the part of CANFINA Services. Besides, giving of no objection may be indicative of disinterestedness of CANFINA Services in the criminal proceedings, may be for the reason that it has already been compensated for its loss by Citibank NA. But, the lack of interest cannot be construed as equivalent to an admission that petitioners are not criminally liable. Therefore, in our respectful submission, case of *Narendra Lal Jain (supra)* would have no application to the facts of the present case.

38. There is another reason for our conclusion made as above. There is a difference between “civil conspiracy” and “criminal conspiracy”. A “criminal conspiracy”, as defined under Section 120-B of the IPC, is, an agreement between two or more persons to do or cause to be done an illegal act or an act which is not legal by illegal means. In other words, it is an agreement between two or more persons to commit a criminal offence. An agreement to commit a criminal offence between two or more persons itself is a punishable offence under Section 120-B of the IPC. So, the essence of “criminal conspiracy” is an agreement between two or more persons. The concept of “civil conspiracy” is, however, slightly different. It has not only an element of agreement between two or more persons to cause injury to another, but it also requires the conspirators to execute that agreement or do acts in pursuance of the agreement to the damage of the plaintiff. Some times, in civil conspiracy, the conduct and acts of the conspirators bringing about injury to the plaintiff may not by themselves be regarded as a

legal wrong. What is more important in civil conspiracy is the actual damage caused to the plaintiff and that is what completes the cause of action. Essential character of “civil conspiracy” has been described by Lord Macnaghten in *Quinn Vs. Leathem*¹ in following words :

“A conspiracy to injure might give rise to civil liability even though the end were brought about by conduct and acts which by themselves and apart from the element of combination or concerted action could not be regarded as a legal wrong.”

39. At the cost of repetition, we would say that a tort of civil conspiracy would essentially be in the nature of an agreement between two defendants to effect an unlawful purpose which results in actual damage to the plaintiff. So, what is essential in the tort of civil conspiracy is causing of damage by the defendants to the plaintiff irrespective of the motive of self-interest or protection of one’s trade. *[See Moghul Steam Shipping Co. Vs. McGregor (1889) 23 Queens Bench Division 598 (617)].*

40. In a later case of *Crafter Handwoven Harris Twed Vs. Veitch, 1942 AC 435 (488)*, it has been held that damage to the plaintiff, in order to prove tort of civil conspiracy, must be established. However, proving of the damage to the plaintiff is not so material as agreement to commit criminal offence is in the offence of criminal conspiracy punishable under Section 120-B of IPC. In the instant case, the petitioners are facing prosecution primarily for their alleged

¹ [1901] AC 495

involvement in the offence of criminal conspiracy between them and the other accused persons for committing various offences as alleged against them, which offences have been stated by the prosecution to be a part of the larger conspiracy to defraud Indian investors. Here, CANFINA Services has not reached any settlement in respect of any conspiracy, much less criminal conspiracy, alleged against the petitioners. It has only put a quietus to its civil claim for damages proved by it against Citibank NA and other defendants and by acceptance by it of the entire damages from one of the defendants to the civil case, it cannot be said that it is also accepting the fact that with that settlement, even the criminal liability of the petitioners does not survive. On the contrary, Citibank NA, as a company, not having been made an accused in the present criminal proceedings does not encounter any criminal liability in this case and so the settlement made with it in a civil case would not result in exoneration of criminal liability of the accused including the petitioners. Things would have been different if Citibank NA were also made an accused. That is not, however, the case here.

41. Then, we must say it here that in the amicable settlement between CANFINA Services and Citibank NA, accepted by the Apex Court in its order dated 13th November 2007 passed in the aforesaid civil appeals, there is no acknowledgment on the part of the CANFINA Services of the exoneration of the criminal liability of the petitioners. That apart, the offences alleged against the petitioners are of serious nature and this would be an additional ground for us to not accept the settlement as a good ground by itself to quash the criminal

proceedings here. Therefore, amicable settlement between CANFINA Services and Citibank NA cannot be used by the petitioners to seek quashing of the Charge framed against them and also the criminal proceedings here. These very facts were also there in the case of *Gopakumar B. Nair Vs. C.B.I. and Anr.*¹, and, therefore, the Supreme Court refused to confer any benefit of the private settlement upon the accused persons therein. There have been many other cases with similar fact situation where the Apex Court refused to interfere. We would refer to some of them briefly in ensuing paragraph.

42. In the case of *Sushil Suri Vs. C.B.I. and Anr.*², the Apex Court held that merely because the dues of the bank were paid, the appellant therein could not be exonerated from the criminal liability and for this reason, it refused to quash the charge-sheet. In another case of *Central Bureau of Investigation Vs. Hari Singh Ranka and Ors.*³, the Apex Court set aside the order of the High Court quashing criminal proceedings on the ground that larger social interests were in peril. It found that the case against the accused was not so simple as to say that the accused had only borrowed money from the bank and diverted it somewhere else and thereafter paid the amount. The Apex Court opined that the case reflected fiscal impurity and in a way a financial fraud. In these circumstances, the Apex Court found that civil settlement of the controversy would not suffice to wipe off the criminal liability.

1 *AIR 2014 SC (Supp) 1733*

2 *AIR 2011 SC 1713*

3 *AIR 2018 SC (Supp) 2487*

43. This case also involves allegation of commission of serious offences by the petitioners and other accused persons reflecting fiscal impurity and they were in a way a part of larger conspiracy to defraud Indian investors. The present case, unlike the case of *Narendra Lal Jain (Supra)*, is not a simple case. In *Narendra Lal Jain*, the petitioners obtained more advances or loans from the bank than they were entitled to by taking recourse to projection of inflated figures of creditworthiness of the company represented by them. But, here the allegations are that the petitioners had purchased certain units of two securities, namely, CANDOUBLE and CANPREMIUM at a rate lesser than the prevailing market rate on 15th May 1992 and sold these securities to CANFINA Services at the market rate and the petitioners enabled by their such transaction, sharebroker – Hiten Dalal and other accused persons to obtain a greater profit than they would have in normal course made, the beginning of which was made on 13th May 1992, when two officers of the CANFINA Services, M.K. Ashok Kumar (Accused No.1) and S. Mohan (Accused No.2) sold these securities at a much discounted price than the prevailing market rate, thereby triggering further transactions of alleged fraudulent nature in between Citibank NA and Share Broker – Hiten Dalal; petitioners and Share Broker – Hiten Dalal and, finally, the petitioners and CANFINA Services. Although it is submitted by learned Senior Advocate for the petitioners that these were the one-off transactions, the material present on record, when accepted as it is at this stage, however, does not show them to be so, rather the material prima facie indicates that there was a possibility of those transactions being part of a larger conspiracy, wherein Indian investors were

dishonestly made to lose their hard-earned money, which conspiracy later on came to be known as “Securities Scam of 1992-93” or “1992 Indian Stock Market Scam”. In other words, this case, prima facie, does have the element of fiscal impurity and financial fraud and cannot be treated to be something as having overwhelmingly and predominantly civil flavour. Therefore, the ratio of the said case of *Central Bureau of Investigation Vs. Hari Singh Ranka and Ors.*¹ would squarely apply to the facts of the present case and as such, the amicable settlement between CANFINA Services and Citibank NA would not be sufficient to wipe off criminal liability of the petitioners.

44. For all the reasons stated here-in-above, we find no merit in the argument of learned Senior Advocate for the petitioners that amicable settlement reached between CANFINA Services and Citibank NA and the admission given by CANFINA Services about it's having no surviving cause of action, as recorded in the order of the Apex Court dated 13th November 2007 passed in Civil Appeal No.2116 of 2001 and connected other appeals, would also amount to exoneration of the petitioners of their criminal liability in the present proceedings. The argument is, therefore, rejected.

45. It is submitted by learned Senior Advocate for the petitioners that if at all there was any criminal liability of anybody, it was first and foremost of Citibank NA, which had purchased the said securities from CANFINA Services at much discounted rate. He submits that it was on 13th May 1992 that CANFINA Services

¹ AIR 2018 SC (Supp) 2487

sold to Citibank NA 75,00,000 units of CANDOUBLE at an abnormally low price of Rs.16.50 per unit, when the market rate on that day was in the range of Rs.30 to Rs.35. He submits that CANDOUBLE was a listed security on the Bombay Stock Exchange and, therefore, its market rate was available not only on 13th May 1992 but also on 15th May 1992, but this was not so in case of CANPREMIUM, which security not being a listed one, it is only a speculation of respondent no.1-CBI that even this security of CANPREMIUM was purchased by Citibank NA from CANFINA Services at a rate which was much lower than the market rate. He submits that the fact is that nobody is sure as to at what rate units of CANPREMIUM were being traded on 13th May 1992 or 15th May 1992. So, he submits that whatever loss that was actually suffered by CANFINA Services may have been so due to its two officers, who sold these two securities on 13th May 1992 to Citibank NA, but Citibank NA was not made an accused in the present crime and to top it all, CANFINA Services amicably settled its civil case with Citibank NA, absolving it of civil liability completely. He further submits that the petitioners were involved only in the transactions of 15th May 1992 and it is a matter of record that the units of CANDOUBLE and CANPREMIUM sold by them on 15th May 1992 to CANFINA Services were at the market rate of Rs.30/- per unit and Rs.20/- per unit respectively and, therefore, so far as the transaction between petitioners and CANFINA Services was concerned, there was no financial loss caused to CANFINA Services. He further submits that this is thus a case where there is no financial loss caused to CANFINA Services by any acts committed by the petitioners and then if financial loss incurred by CANFINA Services on

account of its transaction with Citibank NA on 13th May 1992 was the beginning of the further transaction of 15th May 1992, the petitioners could still be not held liable for it as, admittedly, Citibank NA has been exonerated of its any liability by CANFINA Services. He further submits that there is also no evidence showing that 2 crore units of CANPREMIUM sold by the petitioners to CANFINA Services on 15th May 1992 were in fact part of the 2.8 crore units purchased by Citibank NA from CANFINA Services on 13th May 1992, which had ultimately landed in the kitty of the petitioners through Share Broker – Hiten Dalal. He also submits that in the civil case initiated by the petitioners, the running accounts of the petitioners with Share Broker – Hiten Dalal, the reflecting entries in respect of the sale of the aforesaid units to CANFINA Services on 15th May 1992 have been duly certified to be correct by the Special Court, the Custodian, the Bond Committee and the Chartered Accountant appointed by the agencies. According to him, such certification of the correctness of the accounts of the petitioners itself is sufficient to hold that there were genuine transactions entered into by the petitioners, which had nothing to do with the criminal conspiracy. He further submits that though the petitioner no.1 was initially notified under Section 3 of the Special Court Act by the Custodian, later on, by the order passed on 21st August 2009 in Miscellaneous Petition No.25 of 2001, the learned Senior Judge of the High Court denotified the petitioners and such denotification of the petitioners would further show the genuineness of the accounts of the petitioners. He also submits that there was no entrustment of any amount to the petitioners and the accounts of the petitioners being clean, the petitioners could not be said

to have had any role in committing any offence of criminal breach of trust and receiving of stolen property.

46. Whatever has been said by the learned Senior Advocate for the petitioners by way of afore-stated argument may be true to a large extent, yet there is one fact which does not appear to be prima facie true. It is about the transaction of 15th May 1992, when the petitioners purchased certain units of CANDOUBLE and CANPREMIUM from Share Broker-Hiten Dalal. The purchase price of these units was Rs.29.75 per unit and Rs.19.75 per units and the market price of these units on that day was Rs.30 and Rs.20 respectively. It is this difference between the purchase price and the market price which shows that there is a case for proceeding further against the petitioners in this crime, which prima facie justifies the framing of Charge against the petitioners, which has been impugned herein. The Charge is based upon the offence of criminal conspiracy, punishable under Section 120-B of the IPC, and the allegation being that the petitioners were also a part of the conspiracy entered into between two officers of CANFINA Services i.e. accused nos.1 and 2, two officers of Citibank NA, Share Broker – Hiten Dalal and other accused persons, it cannot be said at this stage itself that the petitioners had no knowledge of what had transpired between Citibank NA or its officers, two officers of CANFINA Services and the other accused persons on 13th May 1992 and also on 15th May 1992, especially when there is prima facie material showing that the petitioners had purchased the aforestated units of CANDOUBLE and CANPREMIUM at a price which was slightly lower than the

market price on 15th May 1992. Then, there was no immediate delivery of these securities to CANFINA Services and it was after CANFINA Services wrote to the petitioners about non-receipt of physical units of these securities, that the petitioners scampered across the market and saw to it that those units were physically delivered to CANFINA Services. The petitioners have given their explanation about the circumstances in which this lapse occurred, but that is something which relates to defence of the petitioners, which cannot be considered at this stage while exercising extra-ordinary jurisdiction of this court under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure. If there is a certification of correctness of the accounts of the petitioners by Special Court, Custodian and Chartered Accountant appointed by the agencies, that certificate, at this stage, can only be considered for satisfying ourselves about the completion of the transactions by actual delivery of the units of the said securities to CANFINA Services at the rates they were actually sold by the petitioners to CANFINA Services on 15th May 1992 and also about TISCO shares, but that certificate, at this stage, without there being any detailed evidence adduced in the matter, cannot be accepted as also acknowledging innocence of the petitioners in purchasing the units of these two securities on 15th May 1992 at a rate which was lower than the market rate. Similarly, the order of the Special Court dated 21st August 2009 could not be seen as an admission of absence of any criminal liability of the petitioners in the present matter for the reason that while denotifying the petitioner no.1, the Special Court, relying upon the case of

*Minu Mehta Vs. Shawak D. Mehta*¹, held that such denotification would not have any adverse effect on the continuance of the prosecution against the petitioners.

47. There is also an argument made on behalf of the petitioners that the money used by the officers of CANFINA Services to purchase from the petitioners the aforesaid units of CANDDOUBLE and CANPREMIUM securities could never be said to be entrusted to the petitioners and, therefore, no offence punishable under Section 409 of the Code of Criminal Procedure would be prima facie made out. There is further argument that the accounts having been certified by the Custodian and authorized Chartered Accountant appointed by the agencies and the CANFINA Services having acknowledged on 15th July 1992, the discharge of liability of the petitioners towards them, there would not be prima facie case made out against the petitioners for offences relating to forgery and falsification of accounts. There is also an argument that receiving of stolen property punishable under Section 411 of the IPC, is an offence which would be prima facie made out only if there is attributable to the petitioners any dishonest intention and there is no such material being present here. While it is true that the petitioners could not be said to be the accused who were entrusted with any property and it is also true that there is certification of the accounts of the petitioners by the Special Court, Custodian and the Chartered Accountant appointed by the agencies, but, it can also not be ignored that the petitioners are primarily accused of offence of criminal conspiracy punishable under Section 120-B of IPC, which is about an agreement to commit criminal offence or

¹ (1998) 2 SCC 418

offences, which by itself is an independent offence. For proving this offence, what is necessary is the proof of the criminal agreement and not its execution and about criminal conspiracy, we find that there is material present here, as can be gathered from events of 13th May 1992 and 15th May 1992, prima facie showing it's commission. That being so, we are of the view that it would be a matter of defence for the petitioners to establish their case that there was no entrustment of any property to them and that they were nowhere involved in commission of the offences relating to fogery and falsification of accounts. Same would be true even about the offence of dishonestly receiving stolen property punishable under Section 411 of the IPC. Therefore, the case of *Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr.*¹, wherein it is held that when there is no entrustment of property, there is no offence of criminal breach of trust and also the case of *Satish Mehra Vs. State (NCT of Delhi) and Anr.*², wherein it is held that if the allegations do not disclose prima facie case and prosecution of accused would result in abuse of process of court, the proceedings can be quashed at any stage, would have no application to the facts of the present case.

48. For the reasons afore-stated, we find that this is not a case wherein it could be said that even upon taking all the allegations made against the petitioners at their face value and by accepting them as they are, no prima facie case is made out against the petitioners in respect of the charge which has been framed

1 (2019) 11 SCC 706

2 (2012) 13 SCC 614

against them and that would mean that this is not a fit case for quashing and setting aside the criminal proceedings.

49. The conclusion reached above receives further support from the nature of the allegations made against the petitioners and remaining accused persons in the present case. These allegations show that the transactions in question were not predominantly and overwhelmingly of civil flavour and had greater repercussions on the economic system of India and prima faice, they could not be regarded as one-off transactions, rather they being related to a greater conspiracy to cause monetary loss to banks, financial institutions and investors in India, a possibility of their having criminal flavour in true sense cannot be ruled out at this stage.

50. Such being the nature of the present case, we are of the view that cases of *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Ors. Vs. State of Gujarat and Anr.*¹, *Gian Singh Vs. State of Punjab*² and *B.S. Joshi Vs. State of Haryana*³ would have no application to the facts of the present case. This is the additional reason for us to say that no interference with the criminal proceedings by this court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, is warranted. This court also does not see any abuse of the process of court in continuance of the criminal proceedings, nor feels it necessary to make

1 (2017) 9 SCC 641

2 (2012) 10 SCC 303

3 (2003) 4 SCC 675

interference therein to secure ends of justice for the petitioners, and rather is of the opinion that ends of justice would possibly be duly secured, if the trial of the petitioners is taken to its logical end in accordance with law.

51. Of course, there is also an argument that the criminal trial has not proceeded any further after framing of Charge in the year 2007 and this has caused great prejudice to the defence of the petitioners; while, quashing of the criminal proceedings would cause no prejudice to the prosecution. By placing reliance upon the case of *P. Ramachandra Rao Vs. State of Karnataka*¹, it is contended that because of the unreasonable delay in completion of the trial, right of the accused to speedy trial has been infringed. We, however, do not accept the contention and reject it for the reasons which follow this paragraph.

52. As rightly submitted by learned counsel for respondent no.1-CBI, the concept of speedy trial has been well explained by the Constitution Bench of the Supreme Court in the case of *Abdul Rehman Antulay (supra)*, wherein the Apex Court has held that the concept is necessarily relative in nature. It further held that it is neither advisable nor practicable to fix any time limit for trial of offences and much would depend upon several factors such as nature of offence, number of accused, number of witnesses, workload in the particular case, means of communication and several other relevant circumstances. It also held that each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage.

¹ (2002) 4 SCC 578

53. Similarly, in the case of *Kartar Singh Vs. State of Punjab*¹, another Constitution Bench of the Apex Court found that no length of time is per se too long to clear the test of speedy trial principle, nor the accused is under a duty to show the actual prejudice by the delay of disposal of the case. It also held that in such a case, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages which may be suffered by the accused by avoidable delay and thus has to determine whether there is really any deprivation of the accused of his right to speedy trial or not. The relevant observations are reproduced as under:-

“92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors – (1) length of delay, (2) the justification for the delay, (3) the accused’s assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay.”

. The aforesaid proposition of law was reiterated in the case of *P. Ramchandra Rao Vs. State of Karnataka*², which was Seven Judges Bench

¹ (1994) 3 SCC 569

² (2002) 4 SCC 578

decision, with the clarification that the guidelines laid down in *Abdul Rehman Antulay (supra)* are not exhaustive but only illustrative and that they are not intended to operate as hard and fast rules to be applied like a straight jacket formulae. It further held that their applicability would depend on the fact situation of each case.

54. Having regard to the above referred principles of law, we find that this is not a case which could be quashed only upon consideration of what apparently seems to be a long delay in conclusion of the trial. As stated earlier, this case involves transactions, which are alleged to be part of larger conspiracy of defrauding Indian investors and which indicate element of fiscal impurity. Then, there is presently only one Special Court which is now dealing with all these cases, some of which have voluminous evidence. There is also an interim relief staying all further proceedings in the present case, which is Special Case No.2 of 1998, operating since 20th June 2014. All these circumstances would only show that there is no deliberate delay by the prosecution, rather the delay seems to be systemic. But, it is a question to be decided by this court as to whether or not any delay of systemic nature should enure to the benefit of the accused. The answer would have to be given in the context of factor of prejudice to the accused. If there is any prejudice occurred to the accused, the advantage must go to the accused, and if not, the benefit would be withheld. In this case, there does not appear to be possibility of causing of any prejudice to the petitioners, as the evidence to be aduced by the prosecution is predominantly documentary and not

oral. Therefore, if there is any delay, it is more likely to cause prejudice to the prosecution and can possibly even work to the advantage of the petitioners. Therefore, we find that, on the anvil of principles laid down in *P. Ramchandra Rao's case (supra)*, this is not a case of clear infringement of right to speedy trial of the petitioners and, therefore, no advantage of this principle can be granted to the petitioners.

55. In the result, we find that the petition is without any merit. It stands dismissed.

56. At this stage, learned Senior Advocate for the petitioners makes a request for staying the effect and operation of this judgment for a period of at-least six weeks. Though the request is opposed by learned counsel for respondent no.1, we are of the view that there being already granted interim relief by this court during pendency of this petition, the request would have to be granted in the interest of justice and accordingly it is granted. We direct that there shall be stay to the effect and operation of this judgment for a period of six weeks from today and the interim stay to the trial granted by this court earlier shall also continue for a further period of six weeks from today.

(M.M. SATHAYE, J.)

(SUNIL B. SHUKRE, J.)