WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2022
PRONOUNCED ON : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26367 of 2022 and
Crl.M.P.No.16255 of 2022

Eventus Integrted Management Pvt. Ltd.,
Aarti Chambers, 2nd Floor,
No.189, Anna Salai,
Chennai,
(REP BY: Mr.Suresh Pillai
Managing Director). ... Petitioner

Vs.

1.State,
Inspector of Police,
Central Bureau of Investigation,
Special Crime Branch,
III Floor, Rajaji Branch, Besant Nagar,
Chennai- 600 090.
(Ref: Cr.No.RC.4(S)/2012/CBI/SCB/Chn).

2.N.Janardhana Rao,
General Manager/Zonal Manager,
Indian Bank, Zonal Office,
Chennai North, No.55, Ethiraj Salai,
Chennai- 600 008. ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No.4066 of 2015 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai, quash the proceedings as against the petitioner herein.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Petitioner : Mr.R.John Sathyan, Senior Counsel for Mr.G.Mani Prabhu

For Respondents : Mr.K.Srinivasan, Special Public Prosecutor for CBI Cases

*****

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4066 of 2015 (Old C.C.No.42 of 2013), on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai.

2.Initially, the case proceeded against four persons viz., A1-M/s.Eventus Integrted Management Private Limited (Hereinafter referred to as 'Company' for sake of convenience) representing by its Managing Director (A2); A2 and A3 (Husband and Wife), the Managing Director and Director of the Company, A4, the then Branch Manager of the Indian Bank, George Town Branch, Chennai and one A.L.Nagarathinam, the then Credit Monitoring Officer, Indian Bank, MGT Branch, Chennai. Since the competent authority declined to accord sanction for prosecution to prosecute A.L.Nagarathinam (shown in the Column No.2

https://www.mhc.tn.gov.in/judis

WEB COPY

in the charge sheet), he was not sent for trial. Hence, charge sheet filed by the 1st respondent against A1 to A4 and the same was taken on file as C.C.No.42 of 2013 by the learned XI Additional City Civil & Sessions Judge cum Special Judge for CBI Cases, Chennai. During trial, A4 filed Quash Petition before this Court in Crl.O.P.No.8851 of 2014 (***T.R.Narayanan Versus State rep. by the Inspector of Police, Central Bureau of Investigation SCB, Chennai reported in 2015 SCC OnLine Mad 8329***) and this Court by order, dated 23.09.2015 quashed the proceedings against him. Since the case against A4, a public servant was quashed by this Court and as such no public servant in C.C.No.42 of 2013, the case was transferred to the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai and renumbered as C.C.No.4066 of 2015. During trial, final arguments heard and written submissions received from both sides and thereafter, the trial Court altered charges. After alteration of charges, the Company (A1) filed a petition under Section 217 Cr.P.C., to recall witnesses and cross examine them and the same was allowed. Accordingly, the witnesses are being recalled and cross examined by the defence side. At this stage, the present Criminal Original Petition has been filed.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.Gist of the case is as follows:-

(i)A case in RC.4/S/2012/CBI/SCB/Chennai was registered by the 1st respondent on 30.04.2012, based on the complaint, dated 28.04.2012 preferred by the 2nd respondent, the then General Manager/Zonal Manager, Indian Bank, Zonal Office, Chennai. The brief facts of the case is that the Company (A1) represented by its Managing Director (A2) and Director (A3) were sanctioned with a limit of Rs.250 lakhs under Over Draft (Hereinafter referred to as 'OD' for sake of convenience) facilities against Book Debts on 28.10.2006 by Indian Bank, erstwhile Circle Office, Chennai (Presently Zonal Office, Chennai North) against Hypothecation of Book Debts and the personal guarantee of above said Board of Directors and the Corporate Guarantee of M/s.Fountain Head Communications Private Limited. During the year 2010, the Branch Manager, Indian Bank, George Town Branch observed that the turnover was not in tune with the limits sanctioned. The Company (A1) did not keep its promise to regularize the over dues and the account became NPA on 30.06.2010. The Board of Directors of the Company (A1) cheated Indian bank by submitting fudged balance sheets and bogus statements of Book Debts and the Bank is exposed to a loss of

https://www.mhc.tn.gov.in/judis

WEB COPY

Rs.236.98/- lakhs on account of their acts.

(ii)The 1st respondent conducted thorough investigation and after completion of the same, filed charge sheet under Section 173 Cr.P.C against A1 to A4 for offence under Sections 120-B r/w 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as 'Act') before the learned XI Additional City Civil & Sessions Judge cum Special Judge for CBI Cases, Chennai. The investigation conducted by CBI officials clearly established that A1 to A3 entered into criminal conspiracy with A4, the then Branch Manager, Indian Bank, George Town Branch, Chennai and in pursuance of the criminal conspiracy, they submitted fabricated glossy printed/inflated/unsigned balance sheets for the years 2004-2005, 2005-2006, 2006-07, 2007-08 & 2008-09 by showing inflated figures in the balance sheets. In furtherance of the criminal conspiracy, A4 while working as a public servant, abused his official position by showing undue favour without verifying the genuineness of the documents which were submitted by A2 and forwarded the loan proposal for sanction and

https://www.mhc.tn.gov.in/judis

WEB COPY

thereby, caused a wrongful loss to the tune of Rs.236.98 lakhs to Indian Bank and corresponding wrongful gain to themselves.

4.Though this Criminal Original Petition has been filed to quash the proceedings against the Company (A1) alone, the learned Senior Counsel made submissions for A2 and A3, who are none other than Managing Director and Director of the Company (A1) proceeded in view of their office and not in their individual capacity standing on the same footing as of A1. Hence, A2 and A3 are entitled for the same relief sought by the learned Senior Counsel for the petitioner Company.

5.The submissions of the learned Senior Counsel appearing for the petitioner Company is as follows:-

(i)Learned Senior Counsel appearing for the petitioner Company submitted that M/s.Eventus Integrated Management Private Limited (A1) was incorporated as Company as per Certificate of Incorporation, dated 06.03.2003 issued by the Assistant Registrar of Companies, Chennai, Tamil Nadu. The Directors of the Company are A2 and A3 and the entire shareholding of the Company is held by M/s.Fountain Head

https://www.mhc.tn.gov.in/judis

WEB COPY

Communications Private Limited where these two Directors are shareholders with 50% each. The Company's line of activities are Events Management, Sales Promotion, Direct Marketing, Seminars, Visual Merchandising and Channel Management Services for the clients. The Company was sanctioned with limit of Rs.250 lakhs under OD against Book Debts and a limit of Rs.15 lakhs under the Guarantee by the erstwhile Circle Office Chennai (presently, Zonal Office, Chennai North) on 28.10.2016. The facility was sanctioned against hypothecation of book debts, the personal guarantee of Directors/A2 & A3 and the corporate guarantee of M/s.Fountain Head Communication Private Limited. The guarantee limit was however not availed by the Company. The OD against Book debts facility was subsequently renewed on 03.11.2007 and 28.03.2009. During the year 2010, the Branch Manager, MGT Branch, Indian Bank observed that the turnover in the account was not in tune with the limits sanctioned and as per declaration in the balance sheet. Further, the Company had not kept up its promise of regularizing the overdues/repayments and finally, the account turned out to be a Non Performing Asset as on 30.06.2010. Thereafter, on perusal of the records, the Branch Manager observed that the limits were

https://www.mhc.tn.gov.in/judis

WEB COPY

sanctioned/renewed based on the glossy printed balance sheets. When she tried to obtain the signed copies of the balance sheets from the respective audit firms, she could obtain the balance sheets for the year 2007-08 and 2008-09, but could not get the signed copies of balance sheets for 2004-05 and 2005-06. On comparison of printed balance sheets for 2007-08 and 2008-09 with that of the copies of balance sheets now obtained from the auditor for 2008 and 2009, it was observed that there have been variants especially with regard to the book debts figures, which is the primary security for the facility sanctioned. Thereafter, the bank conducted investigation on 27.09.2010 and found the variances. Since the account had become NPA with effect from 30.06.2010 for recovery, application for Debt Recovery Tribunal-II, Chennai in O.A.No.61 of 2011 was filed against the Company/Directors/guarantors on 11.03.2011.

(ii)Learned Senior Counsel further submitted that as per guidelines of Reserved Bank of India, a complaint was lodged with CBI officials/1st respondent, who registered a case in RC.4/S/2012/CBI/SCB/Chennai for offence under Sections 120-B r/w 420, 468, 471 IPC and Section 13(2)

WEB COPY

r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The entire case proceeds on a wrong premise that based on the genuineness of printed balance sheet as on 31.03.2005 to 31.03.2006, the loan was sanctioned initially by the Circle Office on 28.10.2006. The same could not be verified by the Investigators of the Bank as well as CBI officials, since Mr.Angelo Carvalho, Auditor who prepared the balance sheet expired by then. The other Auditors namely B.Panneerselvam (PW16) of M/s.Panneer & Company and G.Vasudevan (PW17) of M/s.Raman Associates admit that the balance sheets for the years 2007-08 and 2008-09 were prepared by them and not aware about the glossy printed inflated unsigned balance sheets for the above period. This glossy printed inflated unsigned balance sheets for the above said period is only an anticipated working sheet prepared on the projection of business. Based on the projected business and anticipated profits on the debts as a guarantor, the same is prepared. This glossy printed inflated unsigned balance sheets are not authenticated by either the Director of the Company or its Auditors. The bank officials processed OD facility with the business transaction which is reflected in the bank statement of accounts and on assessment of the projected business and anticipated

https://www.mhc.tn.gov.in/judis

WEB COPY

income, hence, to ease out the financial crunch faced by the Company, OD facility was granted. Prior to granting of OD facility, this glossy printed unsigned balance sheet was used for assessment by the bank officials which was forwarded to the Zonal Office and thereafter to the higher officials, who independently on examining and studying the Company's business prospects, granted OD facility and thereby, the Company was doing business successfully and repaying its commitment to the bank without default till 2010.

(iii)Learned Senior Counsel further submitted that in the year 2010, due to recession in the market, the Company business faced difficulty and its projections went hay ware, for this reason, unable to make the payments to the bank as per the terms and conditions. It is not in dispute that the Company's profile and the business was studied by the bank officials. The details of the Company's clients, who are reputed corporate business entities, were examined and found to be true, hence, there was no false declaration or false projection made. He further submitted that the OD facility was renewed twice i.e., in 2007 and 2009 and until June 2010, the Company repaying the principal amount and

https://www.mhc.tn.gov.in/judis

WEB COPY

interest on the OD facility promptly and the bank earned income of Rs.1.19 Crores of interest accrued from the facility. Thereafter, the Company account was declared NPA and proceedings were initiated for recovery of loan before the Debt Recovery Tribunal-II, Chennai in O.A.No.61 of 2011 and finally, the dues were paid by one time settlement in the year 2018. The bank also issued no due certificate, filed a memo of full satisfaction before the tribunal and hence, the proceedings before DRT closed.

(iv)He further submitted that the bank primarily proceeded on the glossy printed unsigned balance sheets and the figures in 'Sundry Debtors column-book debts' which did not match the audited balance sheet filed later. Only after the Company's account became NPA in the year 2010 and two years thereafter, on 28.04.2012, the bank lodged the complaint. The bank officials examined during trial, admits that there was no dishonest intention on the part of the borrower and also confirmed that unsigned printed balance sheets are provisional balance sheet based on estimates which is normal in the business. It is also admitted by the bank officials that the renewal were not based on the

https://www.mhc.tn.gov.in/judis

WEB COPY

unsigned printed balance sheets and that is based on the stock audit conducted by the bank and monthly debtor statement. Almost all bank officials confirmed the same, there is no case of any preparation of false documents with false particulars and thereby the offence of forgery and cheating does not arise. Later, the account was classified as NPA and recovery proceedings initiated and one time settlement reached, due settled to the satisfaction of the bank. Hence, there is no question of cheating. In view of the Chief Manager's admission that there is no defects in processing the loan application by the bank officials and the General Manager approved the loan after due verification, following the banking procedure, hence, sanction for prosecution refused to the bank official A.L.Nagarathinam, as against the other bank official who was similarly placed case against him quashed by this Court. Hence, no conspiracy even to be remotely inferred. In the trial evidence of 20 witnesses recorded and 49 documents marked on the side of the defence one witness examined and 4 defence exhibits marked. Thereafter, arguments heard on both sides, posted for judgment. At this stage, charges were altered causing prejudice to the accused, hence, the witnesses were allowed to be recalled. Form the above, it is clear there is

https://www.mhc.tn.gov.in/judis

WEB COPY

no offence of any conspiracy, forgery or cheating. Hence, the continuance of proceedings will amount to abuse of process.

(v)Further referring to the evidence recorded, he submitted that PW1, the General Manager of the Bank, who is the loan sanctioning authority admitted that he made reference only to 2004-05 and 2005-06 balance sheets and with regard to balance sheets of the other years, it was not considered. For renewal of OD facility, PW4, the Chief Manager (Credit) admitted that the proposal for OD facility (Ex.P3) is the proposal for renewal of OD facility passed the scrutiny of the Chief Manager (Credit). He further admitted that the Company clients are Airtel car rally, general (pillsburry), UTI Bank, Funskool, ITC classmate, Eastern masala, fairever, google, Sify Madras cements, Zauri furniture and Lancor properties. It is a known fact that all these companies are reputed corporate entities doing sound business. The witnesses admits that the provisional balance sheet prepared based on the previous year performance and anticipated business, but audited balance sheets are prepared based on the actual figures. He further confirmed that the provisional balance sheet and audited balance sheet are two different

https://www.mhc.tn.gov.in/judis

WEB COPY

balance sheets, the provisional balance sheet is prepared on provisional figures and may not be certified by the statutory auditors whereas the audited balance sheet is based on the actual figures, certified by the statutory auditors. He admits that the office account is a running account and he certified the account to be good and robust.

(vi)The learned Senior Counsel referring to PW6 submitted that PW6, the Deputy General Manager of the Indian Bank admits that the sanctioned tickets is with the condition that the Drawing Power will be worked out based on the debts upto 120 days which will be excluded for the purpose of Drawing power calculation. He further admits that OD renewal limit was accorded as per the note put up to him by the bank officials wherein it is mentioned that eligible working capital limit based on the projected turnover. He confirmed that the sanction (Ex.P19) is based on the sundry debtors in the stock audit (Ex.P31). The bank officials admits that during the year 2010, there was recession in the market and for that reason, the Company was unable to collect outstanding dues from his customers and branches in various places were forced to be closed. Thus, the non payment for OD availed was due to

https://www.mhc.tn.gov.in/judis

WEB COPY

recession in the market and not for any other reason and there is no question of any diversion of funds or creation of shell company, there is no withdrawal of amount and misappropriation by the petitioner company.

(vii)He further submitted that the bank transaction of the Company and its OD facility were processed and dealt by 12 officers from the Circle Office/Zonal Office at the level of Manager, Chief Manager, Deputy General Manager. All these officials cited as witnesses and they have admitted that the petitioner Company OD facility was properly collected from the year 2006-10 and only during the year 2010, due to recession, the loan amount could not repaid immediately. They admit that now, the loan repaid by way of one time settlement in O.A.No.61 of 2022 filed before the DRT-II, Chennai. The one time settlement arrived was at Rs.1.75 Crores and the same was received towards full and final claim of the bank for the loan amount of the Company. Further, the bank officials gave no due certificate to the Company, which is recorded as full satisfaction, memo filed to terminate O.A.No.61 of 2022 by the Chief

https://www.mhc.tn.gov.in/judis

WEB COPY

Manager of the Indian Bank. Recording the memo, the proceedings against the Company and its Directors in DRT now been terminated.

(viii)The learned Senior Counsel referring to PW5 submitted that PW5, the Chief Manager of the Indian Bank admits that renewal of loan account is based on the past performance of the Company. He further admits that OD facility is based upon the hypothecation of the book debts. He also gives the profile and its clientele of the Company. PW20, the Investigating Officer admitted that ongoing business of the company suffered loss due to recession in the market despite having reputed companies as its clientele. PW20 reaffirms that the bank officials during investigation confirmed the same. PW19-Nagarathinam, PW18-Nathan, LW19-Atul Mathur gave details of the reputed clientele of the Company. PW20 confirmed that there is no diversion of funds in any manner. PW15, the bank official who conducted earlier internal inspection, observed that there is no unexplained material or discrepancy in the records and in the statement of accounts of the Company. PW8, General Manager admits that 'to my knowledge there was no bad intention either on the part of the bank staff or on the part of the company to cheat the

https://www.mhc.tn.gov.in/judis

WEB COPY

bank and it was due to business loss, the company failed to repay the loan and hence, none of the staff can be held responsible for the same'. PW10 admitted that the unsigned document does not have any entry, it is only a proposal and projection. PW12, Assistant General Manager, Anti Fraud Cell in his evidence admitted that there are 12 bank officials who have dealt with the bank loan amount and none of them pointed out any deficiency. He clarified that during investigation, P.K.Divakar, Charted Accountant was examined by the CBI Officials.

(ix)Learned Senior Counsel submitted that the Investigating Officer has not let-in any evidence or shown any material to show that there was any preparation of false document with false particulars and using the same, there was any diversion of funds. In unequal terms, all these witnesses evidence is to the effect that the OD loan account became NPA due to recession in the market, there is no diversion of loan amount repaid to the full satisfaction of the bank. In view of the same, the DRT proceedings in O.A.No.61 of 2011 now stands terminated. Added ot it, the proceedings against two of the bank officials of which case against one being dropped for not according sanction for prosecution and other

https://www.mhc.tn.gov.in/judis

WEB COPY

being quashed by this Court, the question of conspiracy does not arise. The loan was granted in the year 2006 and the loan amount was repaid upto the month of June 2010. Hence, there is no question of cheating at the time of inspection. He further submitted that atmost, it can be said that it was breach of contract and not an offence of cheating.

(x)In support of his contention, the learned Senior Counsel relied on the following decisions:

1.“***Uma Shankar Gopalika Versus State of Bihar and another*** reported in ***(2005) 10 SCC 336***”, for the preposition that every breach of contract would not give rise to an offence of cheating unless there was any deception played at the very inception.

2.“***State of Maharashtra Versus Vikram Anantrai Doshi and others*** reported in ***(2014) 15 SCC 29***”, wherein “***Nikil Merchant Versus CBI reported in (2008) 9 SCC 677***” case distinguished and held that only in case of diversion of funds, the criminality could be attached.

3.“***Central Bureau of Investigation Versus Maninder Singh*** reported in ***(2016) 1 SCC 389***”, wherein ***Nikil Merchant*** Case has been reiterated.

https://www.mhc.tn.gov.in/judis

WEB COPY

4.“***T.R.Narayanan Versus State rep. by the Inspector of Police, Central Bureau of Investigation SCB, Chennai*** reported in ***2015 SCC OnLine Mad 8329***”, wherein the case against the co-accused/A4 in the present case, is quashed on the ground of rejection of sanction in respect of the A.L.Nagarathinam, bank official who carried out similar nature of work.

5.“***Central Bureau of Investigation, ACB, Mumbai Versus Narendra Lal Jain and others*** reported in ***(2014) 5 SCC 364***” for the preposition that the liability of the borrower to pay the amount to the bank is already settled and the accused therein were charged under Section 120-B r/w 420 of IPC and considering the fact that the liability to make good the monetary loss suffered by the bank had been mutually settled between the parties and the accused had accepted the liability in this regard, the High Court invoking the power under Section 482 Cr.P.C., quashed and found no fault for the same. It is further observed that in the event of continuance of criminal proceedings which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power under Section 482 Cr.P.C.

https://www.mhc.tn.gov.in/judis

WEB COPY

6.“***Central Bureau of Investigation Vesus Sadhu Ram Singla and others*** reported in ***(2017) 5 SCC 350***”, for the preposition that once the compromise had been arrived at between the complainant and the accused, the continuance of criminal proceedings would be an abuse of process of Court and exercise in futility.

7.For the preposition that inordinately delay in registration of FIR and conclusion of trial would amount to infringement of Article 21 of the Constitution of India for right to speedy trial, the learned Senior Counsel relied on the decision of this Court and the Hon'ble Apex Court in the cases of “***Bishwanath Prasad Singh Versus State of Bihar*** reported in ***1994 Supp(3) SCC 97*** and ***Vakil Prasad Singh Versus State of Bihar*** reported in ***(2009) 3 SCC 355***”.

8.“***M/s.Kothari Polymers Ltd & Ors., Versus SIU(X)/SPE/CBI in Criminal Appeal No.239/2015***”, wherein the Hon'ble Apex Court had held that after recording the statement of the accused under Section 313 Cr.P.C., when the petitioner's therein had settled the dues of the bank and obtained no due certificate from the bank had filed the Quash

https://www.mhc.tn.gov.in/judis

WEB COPY

Application. The High Court predicated that the charge being the economic offence, had dismissed the quash application earlier. During the pendency of the proceedings before the Hon'ble Apex Court, the settlement had been arrived and thereafter, finding that the petitioners are from one family and there can be no conspiracy between the family members and further, the competent authority had refused permission to CBI to prosecute the bank officials and considering the hazardous stocks, the CBI conducted investigation and thereafter, the time consumed both during investigation and trial have been considered and the Hon'ble Apex Court invoking Chapter XXI-A accepted the 'plea bargaining' and had imposed cost and allowed the appeal.

6.Assailing the above points and referring various decisions, the learned Senior Counsel prayed for quashing of the proceedings against all the accused.

7.Learned Special Public Prosecutor appearing for the respondents filed counter, typed set and made his submissions that in this case, on the complaint of the 2nd respondent, a case in

https://www.mhc.tn.gov.in/judis

WEB COPY

RC.4/S/2012/CBI/SCB/Chennai was registered for offence under Sections 120-B r/w 420, 468, 471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The case is that the Company had availed OD facilities with a limit of Rs.250 lakhs against book debts on 28.10.2006 by Indian Bank, erstwhile Circle, Chennai against hypothecation of book debts and the personal guarantee of the Board of Directors and the Corporate Guarantee of M/s.Fountain Head Communications Private Limited. During the year 2010, the account became NPA and thereafter, on verification of documents, it was found that the turnover was not done with the limits sanctioned. A2 and A3 being the Directors of A1 company submitted bogus statement of book debts and the bank is exposed to the loss of Rs.236.98 lakhs. The 1st respondent/CBI officials conducted thorough investigation and filed charge sheet against four persons viz., A1 is M/s.Eventus Integrted Management Private Limited (Hereinafter referred to as 'Company' for sake of convenience) represented by its Managing Director (A2); A2 and A3 (Husband and Wife) are the Managing Director and Director of the Company; A4, the then Branch Manager of the Indian Bank, George Town Branch, Chennai. During trial, A4 filed Quash Petition before this

https://www.mhc.tn.gov.in/judis

WEB COPY

Court in Crl.O.P.No.8851 of 2014 (***T.R.Narayanan Versus State rep. by the Inspector of Police, Central Bureau of Investigation SCB, Chennai*** reported in ***2015 SCC OnLine Mad 8329***) and this Court by order, dated 23.09.2015 quashed the proceedings against him. Since there was no public servant in C.C.No.42 of 2013, the case was transferred to the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai and renumbered as C.C.No.4066 of 2015. During trial, final arguments heard and written submissions filed by both sides on 26.04.2022, later, the trial Court altered the charges on 05.05.2022. After alteration of charges, the petitioner (A1) filed a petition under Section 217 Cr.P.C., to recall witnesses and to cross examine them and the same was allowed and accordingly, the witnesses are being recalled and cross examined by the defence. In the meanwhile, this Quash Petition has been filed.

8.He further submitted that mere repayment of loan would not absolve the criminality as per the dictum laid down by the Hon'ble Apex Court in the case of "***Central Bureau of Investigation Versus Maninder Singh*** reported in ***(2016) 1 SCC 389*** and ***State of Maharashtra Versus Vikram Anantraj Doshi*** reported in ***(2014) 15 SCC 29***". Further, the

https://www.mhc.tn.gov.in/judis

WEB COPY

Company while submitting application for grant of loan facility, had produced glossy printed unsigned balance sheet by showing inflated figures to get more loan from Indian Bank and the same were not signed by the Directors of the firm or the Auditors. On comparing the balance sheets for the period from 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 with audited balance sheet and found differences in the financial positions as per following details:-

Financial Status as on 31.03.2008:-

A/c Head	*Glossy Printed & Unsigned*	*Typed & Signed*
Reserves & Surplus as on 31.03.2008	40571592	10278999
Sundry Debtors	199544540	14822289
Net Current Assets	742566751	42070714
Income From Operation	32546155	25346155
Expenditure	29093978	21893978

Financial Status as on 31.03.2009:-

A/C Head	*Glossy Printed & Unsigned*	*Typed & Signed*
Reserves & Surplus as on 31.03.2008	41289105	10996511

https://www.mhc.tn.gov.in/judis

WEB COPY

<u>Variations observed in comparison of the balance sheet revealed as under:-</u>

Data of	*For the year ended*	*As per printed B/Sheet already submitted by the company*	*Signed Balance Sheet obtained later*
Sundry Debtors	March 2007	858.03	202.22
	March 2008	1995.44	148.22
	March 2009	764.8	192.93
Sales (Income from operations)	March 2007	395.55	162.44
	March 2008	325.46	253.46
	March 2009	207.66	207.66

9.Further, PW12 in his evidence stated that on comparing the typed balance sheet with glossy, printed unsigned balance sheet as on 31.03.2008, Rs.1.48 Crores has been increased to Rs.19.95 Crores. Similarly as on 31.03.2009, sundry debtors of Rs.1.09 Crores is inflated to Rs.7.64 Crores in the printed balance sheets. This inflation has been projected to get more loan from the bank as the facility sanctioned to the Company was OD against book debts. Thus, if the sundry debtors on the higher side, the quantum of loan would be higher. PW13, P.K.Divakar in his evidence admitted that Ex.P30 prepared by him and he also confirmed the statement made therein which shows that inflated figures

https://www.mhc.tn.gov.in/judis

WEB COPY

of the sundry debtors. Now, the trial is at the penultimate stage. At this stage, this petition not to be entertained. The accused are facing charges including the offence of conspiracy. The decisions referred by the learned Senior Counsel is only for offence under Section 420 IPC. Hence, he prayed for dismissal of this Criminal Original Petition.

10.In support of his submissions, the learned Special Public Prosecutor relied on the following decisions:-

(i)"***P.Dharmaraj Versus Shanmugam & Ors., in Criminal Appeal No.1514 of 2022***" for the preposition that in the matter of quashing the criminal proceedings on the basis of the settlement reached between the parties to be seen when the offences are capable of having an impact not merely on the complainant and the accused but also on others.

(ii)"***State of Tamil Nadu Versus R.Vasanthi Stanley and another*** reported in ***(2016) 1 SCC 376***" for the preposition that the case is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system.

https://www.mhc.tn.gov.in/judis

WEB COPY

(iii)"***Gian Singh Versus State of Punjab and another*** reported in ***(2012) 10 SCC 303***" wherein the Hon'ble Apex Court observed that in cases where the power to quash the criminal proceedings or complaint or FIR to be exercised and further observed that the settlement between the victim and the offender would depend upon the facts and circumstances of the each case and no category can be prescribed. It is also observed that before exercise of power, the High Court must have due regard to the nature and gravity of the crime. Any compromise between the victim and the offender in relation to the offences under special statutes like servants while working in that capacity etc., cannot provide for any basis for quashing criminal proceedings involving such offences.

(iv)"***CBI New Delhi Versus B.B.Agarwal and others etc.,*** reported in ***AIR 2019 SC 1045***" for the preposition that on resettlement of accounts, the parties obtained the consent decree from DRT and paid the entire sum, therefore, there is no live issue, which now survives. The High Court then examined the question as to whether the issue of criminality is involved so as to allow the Trial Court to continue on its merits.

https://www.mhc.tn.gov.in/judis

WEB COPY

(v)"***G.Pitchaimani Versus State rep. by the Inspector of Police, Central Bureau of Investigation, ACB, Sastri Bhavan, Chennai***" for the preposition that no documents were signed by the accused and further taking queue from the decision of "***CBI Versus Narendra Lal Jain*** reported in ***(2014) 2 Supreme Court Cases (Crl.) 579***" and finding that there is no forgery involved and only the offence under Section 420 IPC had quashed the proceedings.

11.The learned Special Public Prosecutor finally submitted that quashing of cases to be considered on the case to case basis and it is to be seen whether the offence had affected before at large. In this case, other than the offence under Sections 120-B r/w 420 of IPC, the accused are facing charges of forgery under Sections 468 and 471 of IPC, which are not compoundable by settling in bank. Hence, he prayed for dismissal of this Quash Petition.

12.This Court considered the rival submissions and perused the materials available on record.

https://www.mhc.tn.gov.in/judis

WEB COPY

13.In this case, 12 officials from Indian Bank, George Town Branch, Chennai were examined during trial. PW1 is the complainant, who preferred the complaint based on the inspection reports submitted by PW10 & PW12 (Exs.P28 & P29). The bank inspecting officials observation is that the Company was sanctioned with a credit limit of Rs.250 lakhs under OD against Book Debts and a limit of Rs.15 lakhs under the guarantee by the erstwhile Circle Office Chennai on 28.10.2006. The complaint primarily proceeds with the Auditors balance sheet for the year 2006 and thereafter, it had been renewed based on the estimated receivable submitted by the Company. PW14 is the Statutory Auditor of the bank, who also scrutinized the account. In the balance sheets and from the estimated glossy printed account, there is vast variance in respect of sundry debtors. As per the balance sheet, the sundry debtors was Rs.2,02,21,963/- and Rs.1,48,22,289/- against figures furnished by the Company in their glossy balance sheet is Rs.8,58,03,819/- and Rs.19,95,44,450/- respectively. The sanction and renewal is based on the estimation. The transaction was not found in the limited sanctions for 2006-07 and 2007-08. The bank officials confirmed that PW8, the Chief Manager initially accorded loan sanction.

https://www.mhc.tn.gov.in/judis

WEB COPY

The unsigned documents namely glossy balance sheet does not have any entity and it is only a proposal based on the estimated receivables and projected business. It is also admitted that the Chief Manager has discretionary power in sanction of loans. The Inspecting bank officials have met the Auditors, enquired them with regard to the unsigned glossy balance sheet and the signed statement of the audited balance sheet. It is confirmed that for the first time, during October 2006, the OD facility was granted and the Company did not avail guarantee limit given to them. Further, hypothecation of stocks and Book Debts were considered. Added to it, it is seen that one Mr.Atul Mathur, Director of the Company was examined and he explained the reason and gave details of glossy printed unsigned balance sheet.

14.In this case, the Auditor Mr.Angelo Carvalho who submitted the unsigned glossy balance sheet, is no more. Hence, its reason could not be ascertained. The Auditors PW13, PW15, PW16, PW17 admit that they have prepared the statement and signed the balance sheets based on verification of account and stocks of the company. The bank officials of the Indian Bank, Geroge Town Branch, Chennai relied on the glossy

https://www.mhc.tn.gov.in/judis

WEB COPY

printed balance sheet considering the book debts without insisting the signed balance sheet, recommended for OD facility and granted the same and later, renewed the facility. It is not in dispute from the year 2006-10, the OD lone availed were repaid regularly without any default. PW14, the Statutory Auditor conducted the stock audit and submitted a report (Ex.P8). PW2 was posted to the Branch in the year 2011 and what transpired prior to 2011, she is not privy to the same, most of the documents marked through her, except for marking the documents she may not be competent to speak about its content.

15.PW9, the Branch Manager confirmed that it was A.L.Nagarathinam, the loan officer and one T.R.Narayanan, the Branch Manager of Indian Bank, George Town Branch, Chennai, who were serving in the branch for five years, processed the sanction of OD facility and submitted to the Zonal Office. This witness served in the loan section during the period 2008. Admittedly, in this case, the sanction was denied by the competent authority to prosecute A.L.Nagarathinam. As regards T.R.Narayanan, who was initially arrayed as A4, the case against him was quashed by this Court in Crl.O.P.No.8851 of 2014.

WEB COPY

Thus, now the case is proceeding against A1 Company and its Directors/A2 and A3, who are husband and wife. In view of no proceedings against the bank officials, the question of conspiracy does not arise. The Hon'ble Apex Court view is on the same line as seen from the decision in the case of "***M/s.Kothari Polymers Ltd & Ors., Versus SIU(X)/SPE/CBI in Criminal Appeal No.239/2015***".

16.PW4 and PW5, the Senior Managers confirmed proposal received from the branch and placed before the Chief Manager for fresh sanction and renewal. In this case, the Chief Manager (Credit) had recommended the loan in favour of the Company. The renewal note marked as Exs.P3 & P4. He further confirmed that it was T.R.Narayanan who sent his report (Ex.P3), against whom, the sanction for prosecution was denied after getting clarification from various departments as well from the branch. He further confirmed that the Company as on 2006 was having rating of AA and further confirmed that the Company had clients of reputed companies such as Airtel car rally, Pillsbury, General Mils, UTI Bank, MRF, Funskool, ITC classmate, Google, Samsung, HDFT Bank, Axis Bank, Colgate-Pulmolive, Eastern masala, Fairever, Madras

https://www.mhc.tn.gov.in/judis

WEB COPY

cements, Zauri furniture, Lancor properties and other reputed companies. He further confirmed that the glossy unsigned balance sheet and audited balance sheet are two different balance sheets. The provisional balance sheets are prepared on provisional figures and may not be certified by the statutory auditors whereas the audited balance sheet is based on the actual figures and certified by the auditors. Thus, it is seen that the signature in the glossy printed unsigned balance sheets are not required, but the entire case proceeds that without signature, the glossy printed unsigned balance sheet has been submitted, based on which, the OD facility availed, which amounts to submission of forged documents, is not proper. Added to it, it is admitted that 12 of the bank officials, who dealt with sanction of OD facility, were enquired with regard to processing of OD facility based on the glossy balance sheet at various levels and they were taken as witnesses and no criminal prosecution against them, which fact is admitted by PW12, Assistant General Manager, Fraud Cell of the Bank and the Investigating Officer PW20.

17.PW6, the Deputy General Manager confirmed that 'the renewal limit was agreed as per note wherein it is mentioned that the eligible

https://www.mhc.tn.gov.in/judis

WEB COPY

working capital limit based on the projected turnover. Further, he confirmed that OD sanction is based on the sundry debtors found in the stock audit. The stock audit has been conducted by the stock Auditors of the bank PW14. PW7, the Chief Manager, Credit Department admits that since the Company account has become NPA and as per the RBI Master circular, the complaint given and FIR registered. He further confirmed the profile of the Company and its clientele are reputed concerns in the business. PW8 confirms that during the year 2008, due to scam of Lehmann Brothers, there was a big market downfall in the industry. He gives a positive evidence in favour of the Company confirming that for sanction of OD at bank level or any one from the petitioner Company had no intention of any cheating and the account became NPA due to business loss. Neither the bank officials nor the Company are responsible for the same.

18.PW11, the Deputy General Manager in the Circle Officer confirmed that the Company was sanctioned OD against book debts of Rs.250 lakhs and bank guarantee of Rs.15 lakhs and a note was put up in favour of the Company and this witness sanctioned the proposal. Adding

https://www.mhc.tn.gov.in/judis

WEB COPY

to it, the limits are only against the book debts, the account to be monitored every month as per Ex.P20. Further, he states that as per the Government guidelines investment in fixed assets upto ten Crores is treated as SME. On his note, the General Manager instructed to verify the CIBIL and to find out whether guarantee of M/s.Fountain Head Communication Private Limited will be available. Further, in the note, the Book Debts are of the first class customers like Colgate, Palmolive, UTI Bank, HDFC Bank etc. The loan was sanctioned in the year 2006 and repaid regularly up to the year 2010.

19.PW13 confirmed that Exs.P12 & P13, the profit and loss account for the year 31.03.2007 prepared by him, wherein the Sundry debts secured loan, net revenue and net profit are provided. Further, in Ex.P16, there is inflated revenue. He admitted that he has signed printed Ex.P12 where his name is printed. PW15 another Auditor confirmed that he verified the outstanding in the name of the Company customers and found to be correct and given Ex.P13 report. He further clarifies that he had not come across any discrepancies which are unexplainable. Further, he had not identified any bad or doubtful debts as on 30.01.2009. PW16

https://www.mhc.tn.gov.in/judis

WEB COPY

another Auditor had prepared the debtors statement and issued Exs.P32 to P35. He confirmed about the genuineness of the debtors to the Company and he had been engaged by the Company from 2006 to 2009. The Sundry debt confirmed the outstanding which are receivable by the company. PW17 is the Auditor, who had prepared the financial statements (Exs.P36 to P38). He confirms about the business activities, receivables from the Company and from his customers, all the customers are first class customers. Thus, the Auditors analysed and verified the Company accounts in detail and prepared the financial statements. PW13 is the Auditor of the bank and he was entrusted with stock audit. PW14 conducted stock audit and issued Ex.P8 report. The stock audit was conducted on 27.04.2007 and confirms there is nothing to show stocks not available.

20.PW3, PW18, PW19 and DW1 are the Manager Administration, General Manager Finance and Account, Assistant of Financial Head Integrated Financial Private Limited and Branch head Mumbai, who have stated about modules of M/s.Eventus Integrated Private Limited, M/s.Fountain Head Communications Private Limited and Brand Idea

https://www.mhc.tn.gov.in/judis

WEB COPY

Consultancy Private Limited and all are of same management. Further, they confirmed that there was no diversion of funds only due to poor market economic condition, the account of the Company turned NPA and there was general recession in the market during the relevant point of time and now, the company has settled its dues by way of one time settlement to the bank and marked the document Ex.D1 confirming clearing of its dues.

21.The evidence of the bank officials, Auditors and the employees of the Company confirmed that there is no diversion of funds in any manner and the Company could not repay the loan amount due to general recession and non receivable of the amounts from its clientele. Hence, huge debts occurred and the financial cycle of the company got stuck. The revenue projection went hay ware due to overall market condition, for which, the Company has no control. Thereafter, due to effective business and financial management, the Company was able to reduce its losses closing the branches in various cities, pruning its expenditures, reacting to the market conditions, some of the assets liquidated and approached the bank for one time settlement and finally, repaid the entire

https://www.mhc.tn.gov.in/judis

WEB COPY

amount and all issues settled with the bank to their satisfaction and no recovery proceedings pending. The document in support of the settlement is marked and produced in this case. The investigating officer admits no prosecution against one A.L.Nagarathinam, Senior Manager and T.R.Narayanan, Chief Manager. For A.L.Nagarathinam, the sanction for prosecution was denied, as against T.R.Narayanan, the case was quashed by this Court. In this case, no public servant or any bank officials are accused. Further, the Investigating Officer feigns ignorance with regard to the Lehmann Brothers Scandal, one of the largest private sector business entity which lead to crash in the financial market. The bank officials confirmed the collapse of the petitioners business, was due to collapse in the financial market. The bank officials confirm that the Company customers are all first class business entities. Further, it is not in dispute that the business of the petitioners was running smoothly from 2006 to 2010 and the account turned NPA during June 2010. The witnesses confirms that the Company account turned into NPA only because of recession in the market and no amount from the OD account diverted for any other purpose. It is confirmed that the Auditors gave statement that the records of the Company with debtors ledger/statement

https://www.mhc.tn.gov.in/judis

WEB COPY

on comparison and verification found no material discrepancy. PW8, the General Manager of the Bank confirms that "to my knowledge there was no bad intention either on the part of the bank staff or on the part of the Company to cheat the bank, only due to business loss, the Company failed to repay the loan, hence, none of the staff can be held responsible". Further, the General Manager confirmed that no undue favour shown while granting OD facility. The bank officials confirmed that the submission of unsigned glossy statement is an accepted practise which is the projection of business. The projection is subjected to market/business conditions.

22.Further, it is not in dispute that the General Manager Credit has got discretionary power, who granted OD facility on the recommendations of the Branch, Zonal Office and all other concerns. In this case, OD facility was granted in the year 2006 till 2010 it was repaid without any deviation. In the year 2010, due to general recession the account turned NPA and later, DRT proceedings initiated for recovery of loan amount, one time settlement arrived and the amount now paid and the same confirmed by the bank officials and documents Exs.D1 to D4

https://www.mhc.tn.gov.in/judis

WEB COPY

confirms there is no due and all dues paid to the satisfaction of the Bank. The DRT proceedings withdrawn by the bank.

23.From the statement of the bank officials and the Auditors, it is seen that there is no forgery committed and no forged documents produced for the purpose of cheating the bank and there is no question of any conspiracy and the conspiracy projected, snapped. In this case, it is admitted that the loan is from 2006-2010, the loan amount paid and the loan renewed periodically. In such circumstances, there is no false representation at the inception and the question of cheating does not arise.

24.The various citations of the Apex Court referred by the learned Senior Counsel for the petitioner Company, more particularly, in the case of "***CBI Versus Narendra Lal Jain*** reported in ***(2014) 2 Supreme Court Cases (Crl.) 579***" it had held that it would be appropriate that the proceedings are quashed, but depending upon the attendant facts. Whether the continuation of criminal proceeding after a compromise has been arrived between the complainant/bank and the accused will amount

https://www.mhc.tn.gov.in/judis

WEB COPY

to abuse of process of Court and the continuation of trial may end in a decision which may be of no consequence to any of the parties. Recently, in the case of "***M/s.Kothari Polymers Ltd & Ors., Versus SIU(X)/SPE/CBI in Criminal Appeal No.239 of 2015***" the petitioners therein had availed loan from SBI Industrial Estate Branch, Gwalior and SBI, Gauhati Branch for the same property. Further, the trial proceeded and the prosecution evidence completed and when the case was at the stage of recording the statement of the accused under Section 313 Cr.P.C., the Hon'ble Apex Court considering the fact that the offence charged being the economic one, it has to be seen whether it has a serious impact on the society and that there can be no element of conspiracy under Section 120-B of IPC within the family members, had quashed the proceedings. In ***M/s.Kothari Polymers*** case, the competent authority did not give permission to CBI to prosecute the bank officers. Further, by adopting principles of 'plea bargaining' by imposing cost, the Hon'ble Apex Court quashed the proceedings. In the present case, the FIR filed in the year 2014 and the case is pending for almost a decade, the Bank has been settled to its satisfaction. The present case is almost similar to the case of ***M/s.Kothari Polymers Ltd*** (cited above). In view of the

https://www.mhc.tn.gov.in/judis

WEB COPY

settlement arrived with the bank, and the dues of the bank paid back to their satisfaction, there is no reason or purpose to continue with the prosecution.

25.In ***M/s.Kothari Polymers*** case, the Hon'ble Apex Court quashed the proceedings finding that the dispute is predominantly civil in nature, especially where a settlement is arrived at after the alleged commission of offence, observed the Courts may be liberal in accepting the settlement and quashing the criminal proceedings. Further, the Hon'ble Apex Court directed to pay both the prosecuting agency for the time and money spent and the system for having wasted judicial time and for not meeting their financial liability at the threshold by availing of the principles of 'plea bargaining' which have been incorporated in the Cr.P.C. under Chapter XXI-A (Sections 265A to 265L). Further observed that '*if we may say so, at this stage really, we are seeking to accept the plea of bargaining rather than anything else*'.

26.The observations and guidelines of the Hon'ble Apex Court in the case of "***State of Madhya Pradesh Versus Laxmi Narayana and***

https://www.mhc.tn.gov.in/judis

WEB COPY

others reported in ***(2019) 5 SCC 688***" is that the power conferred under Section 482 Cr.P.C., to quash the criminal proceedings can be exercised even in non compoundable offence under Section 320 Cr.P.C., when the case has overwhelmingly and predominantly with civil character, particularly those arising out of commercial transaction or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves.

27.Taking cue and following the guidelines of ***M/s.Kothari Polymers*** case and finding this case is of similar in nature, this Court is of the view that real justice can be done by quashing the proceedings in C.C.No.4066 of 2015, on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai against the petitioner Company and other accused namely A2 and A3 with following conditions:-

1.The accused to pay a sum of Rs.7,00,000/- (Rupees seven lakhs only) to the 1st respondent/CBI, SCB, Chennai.

2.The accused to pay a sum of Rs.7,00,000/- (Rupees seven lakhs only) to the Legal Services Authority, High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.The petitioner to pay a sum of Rs.7,00,000/- (Rupees seven lakhs) to the credit of Madras Advocate Cooperative Society Limited, Madras in Account No.484022647, Indian Bank, Madras High Court Branch, Madras. It is made clear that this amount to be utilized for the purpose of crediting salary to the staffs both permanent and part time, namely, the Cashier/Clerk, Head Cook, Cooks, Suppliers and Cleaners, who are on the rolls of the Society/canteen. The deposited amount of Rs.7,00,000/- to be disbursed proportionally. The canteen staffs hail from ordinary background and, are surviving on this income and they could not be paid during COVID-19 pandemic due to closure of canteen. In any event, they are not the cause for denial of income, it was due to COVID-19 pandemic. Hence, the payments to be made without any delay and without citing any procedural wrangles. This payment is purely on humanitarian consideration. The Special Officer and officials of the Cooperative Department to act with alacrity and ensure the payment without any further delay, preferably, within a period of three weeks from the date of deposit.

https://www.mhc.tn.gov.in/judis

WEB COPY

4.The accused to make the above payments (Condition Nos.1 to 3) within a period of three weeks, from the date of receipt of a copy of this Order.

28.In the result, this Criminal Original Petition is allowed quashing the proceedings against all accused in C.C.No.4066 of 2015, on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai. Consequently, the connected Miscellaneous Petition is closed.

29.Post the matter under the caption 'For Reporting Compliance' on 07.06.2023.

28.04.2023

Neutral Citation: Yes/No
Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

vv2

To

1.The Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai

https://www.mhc.tn.gov.in/judis

WEB COPY

M.NIRMAL KUMAR, J.

vv2

2.The Inspector of Police,
Central Bureau of Investigation,
Special Crime Branch,
III Floor, Rajaji Branch, Besant Nagar,
Chennai- 600 090.

3.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
Crl.O.P.No.26367 of 2022

28.04.2023

https://www.mhc.tn.gov.in/judis