IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3854-2022 (O& M)
Date of decision:11.04.2023

Venus Goyal and anr. .... Petitioners

V/s

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Avnish Mittal, Advocate,
with Ms. Ishika Jain, Advocate,
for the petitioners.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. Akshay Jain,Advocate,
for respondent No.2-Bank.

*****

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.243 dated 13.12.2012 (Annexure P-3) under Sections 420, 120-B IPC registered at Police Station Gobindgarh Mandi, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom.

2. The brief facts as emanating from the pleadings are that petitioners No.1 and 2, namely, Venus Goyal and Sourabh Goyal were both directors of M/s Chandigarh Casting Private Limited. They availed a cash credit facility to the tune of Rs.6.25 Crores from the respondent No.2/complainant Bank in the year, 2008. For the said loan facility, the

petitioners alongwith the other properties also mortgaged some land belonging to Smt. Vanita Goyal, their mother, to the Bank.

3. On account of the recession in the market, a letter dated 15.10.2011 (Annexure P-1) was submitted to the Bank making a request to reduce the credit limited from Rs.6.25 Crores to Rs. 4.75 Crores and for a release of the property. Since the same was not done, Smt. Vanita Goyal, who was not the director of the company, sold the property in dispute measuring 02 Biswa and 18 Biswasi (which had been mortgaged with the Bank) to one Pawan Kumar Joshi and Jyoti Joshi vide two registered sale deeds dated 19.10.2011. Consequent upon the sale, an amount of Rs.38 lacs was deposited in the account of the respondent No.2/complainant Bank (hereinafter known as 'the respondent No.2') on 03.10.2011 and 20.10.2011.

4. Meanwhile, the proceedings under the SARFAESI Act were also initiated and symbolic possession of the property was taken on 26.10.2012.

5. Thereafter, a communication dated 03.11.2012 (Annexure P-2) was sent by the petitioners to the respondentNo.2 to settle the account for Rs.6.50 Crores by permitting the sale of the properties mortgaged with the Bank. However, no response was received by the petitioners and no attempt was made by the Bank to settle the dispute.

6. Meanwhile, a complaint dated 05.07.2012 which had been made by the respondent No.2-Bank to the investigating agency fructified in the instant FIR No.243 dated 13.12.2012 under Sections 420, 120-B IPC Police Station Gobindgarh Mandi, District Fatehgarh Sahib (Annexure P-3). The allegations in the FIR were that the property in question had been mortgaged by Mrs. Vanita Goyal with the Bank for availing a cash credit

limit. However, despite the fact that the property had been mortgaged by way of a collateral security, Vanita Goyal had unlawfully and dishonestly and by fraudulent means disposed of the said valuable security/mortgaged property and had misappropriated the sale proceeds of the same. Legal action was sought against Mrs. Vanita Goyal.

During the course of the enquiry, the petitioners were also nominated as accused.

7. Subsequent thereto, Vanita Goyal entered into a compromise with the purchasers of the property in dispute and got cancelled the sale deeds. Rupees 40 lacs was returned to the purchasers of the said property in terms of the compromise deed dated 10.04.2013 (Annexure P-4).

8. Meanwhile, a report under Section 173(2) Cr.P.C. was presented against the petitioners and their co-accused/Vanita Goyal on 17.09.2015 and charges were framed on 15.07.2017.

9. After the cancellation of the sale deeds, the property was handed over to the respondent No.2-Bank, which after taking physical possession of the same, got it auctioned. Copies of the letters dated 17.06.2016 referring to the taking over of the physical possession and issuance of a sale certificate in favour of the auction purchaser are annexed as Annexure P-5 and P-6 to the present petition.

10. Thereafter, a settlement was arrived at between the petitioners' company on the one hand and the respondent No.2-Bank on the other. A copy of the acceptance letter dated 31.08.2017 and the No Due Certificate dated 04.12.2017 are annexed as Annexures P-7 and P-8.

11. Subsequent thereto, the instant petition came to be filed.

12. The primary ground raised in the present petition is that the petitioners had no intention to cheat the respondent No.2-Bank. They had

been making serious attempts to effect a settlement with the Bank but to no avail. However, now that the dispute stood settled and a No Due Certificate had been issued in favour of the petitioners, no useful purpose would be served by allowing the proceedings in the present FIR to continue. In addition, it is pleaded in the petition that so far as the petitioners are concerned, no specific role has been attributed to them and merely because the property was sold by their mother for the loan availed by the company of which the petitioners were directors would not make them vicariously liable for the act of their mother even with the aid of Section 120-B IPC.

13. The respondentNo.2-Bank had filed its reply dated 31.10.2022 by way of affidavit of Sanjiv Kumar, Branch Manager, State Bank of India, Branch Mandi Gobindgarh, Tehsil Amloh, District Fatehgarh Sahib. While referring to the Master Circular (Annexure R-4/1) and Standard Operating Procedure on Detection and Reporting of Fraud (Annexure R-4/2), it is stated that once a mortgaged property had been sold during the subsistence of the mortgage, then the said transaction is classified as a fraud and consequently, the FIR in question was rightly been registered. Even though, a settlement had been arrived at in terms of the policy floated by the Bank followed by No Due Certificate since economic offences affected societal interest as public money was involved, the FIR (Annexure P-3) and the subsequent proceedings arising therefrom could not be quashed solely on the ground of a settlement having been effected or a payment having been made under the One Time Settlement (OTS Scheme). Reference is made to the judgments in ***"Central Bureau of Investigation versus Hari Singh Ranka and others (2019) 16 SCC 687, Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others versus State of Gujarat and another (2017) 9 SCC 641, Central Bureau of Investigation versus Maninder***

Singh, (2016) 1 SCC 389 and State of Maharashtra Through Central Bureau of Investigation versus Vikram Anantrai Doshi and others (2014) 15 SCC 29".

14. The contention of the respondent NO.1-State, on the other hand, is that the petitioners No.1 and 2 and their mother, Vanita Goyal, had committed the offence in question as the land which had been mortgaged as a collateral security had been sold during the subsistence of the mortgage and therefore, quite clearly an offence was made out. Even otherwise, the report under Section 173(2) Cr.P.C. stood submitted and charges had been framed on 15.07.2017. Since the case was now at the stage of recording of prosecution evidence, the petitioners were entitled to raise all the grounds as raised in this petition before the Trial Court at the appropriate stage and no ground for quashing of the FIR in question and subsequent proceedings arising therefrom was made out.

15. The learned counsel for the petitioners contends that a bare perusal of the complaint and the enquiry report which has culminated in the FIR and the subsequent report under Section 173(2) Cr.P.C. would show that so far as the petitioners are concerned, absolutely no role whatsoever in the commission of the offence has been attributed to them. Taking the prosecution case to be correct, the land in question belonged to their mother-Vanita Goyal, who had mortgaged it in favour of the Bank against which M/s Chandigarh Casting Private Limited, of which the petitioners were the directors, had obtained a cash credit facility. Though, Mrs. Vanita Goyal had sold the land, the petitioners would not be held liable for the same even though they might have been beneficiaries of the said sale as the proceeds of the sale were to be used to satisfy the cash credit facility availed by the petitioners' company. He contends that right from the very outset, the

intention of the petitioners was not to cheat the Bank in any manner. In fact, they had been repeatedly writing to the respondent No.2-Bank to effect some sort of a settlement but to no avail. However, subsequent to the registration of the FIR, the sale deeds executed by their mother had got cancelled. The property had been handed over to the Bank which thereafter auctioned it. Pursuant thereto, the petitioners' company had also entered into a One Time Settlement with the Bank and a No Due Certificate in that regard has been issued. He, thus, contends that even on the basis of the admitted facts of the present case, the proceedings qua the petitioners ought to be quashed, moreso, when their mother, main accused-Vanita Goyal had since expired on 12.10.2019. Reliance is placed on the judgments of the Hon'ble Supreme Court in the cases of ***'Ramesh Chandra Gupta versus State of U.P. and ors. (Criminal Appeal No(s). 2060 of 2022 arising out of SLP (Crl.) No (s).39 of 2022 decided on 28.11.2022 and M/s Thermax Ltd. and others versus K.M. Johny and others, 2011(4) RCR (Criminal) 409'.***

16. The learned counsel for the respondent No.2-Bank while referring to the reply dated 31.10.2022 contends that merely because a settlement has been arrived at between the parties as per which, the amount stands paid to the Bank does not take away the fact that the offence in question had been committed. In fact, as per the Master Circular (Annexure R-4/1) and Standard Operating Procedure on Detection and Reporting of Fraud (Annexure R-4/2), an offence was clearly made out once a mortgaged property had been sold by the mortgager. He, however, does not dispute the fact that so far as the petitioners are concerned, no specific role has been attributed to them either in the original complaint, the FIR or the report under Section173(2) Cr.P.C. He, however, reiterates the fact that since they

were the beneficiaries of the sale of the property, they were also liable in terms of Section 120-BIPC.

17. The learned counsel for the State, on the other hand, has reiterated the contents of the reply contending that once the report under Section 173(2) Cr.P.C. stands submitted, charges stand framed and some prosecution witnesses had been examined, the question of quashing of the FIR and the subsequent proceedings arising therefrom does not arise.

18. I have heard the learned counsel for the parties.

19. Before proceeding further, it would be relevant to refer to the judgments of the Hon'ble Supreme Court passed in the cases of ***'Ramesh Chandra Gupta versus State of U.P. and ors. (Criminal Appeal No(s). 2060 of 2022 arising out of SLP (Crl.) No (s).39 of 2022 decided on 28.11.2022 and M/s Thermax Ltd. and others versus K.M. Johny and others, 2011(4) RCR (Criminal) 409'.***

In ***Ramesh Chandra Gupta versus State of U.P. and ors. (Criminal Appeal No(s). 2060 of 2022 arising out of SLP (Crl.) No (s).39 of 2022 decided on 28.11.2022,*** the Hon'ble Supreme Court held as under

> *"15. This Court has an occasion to consider the ambit and scope of the power of the High Court under section 482 CrPC, 1973 for quashing of criminal proceedings in Vineet Kumar and Others v. State of Uttar Pradesh and Another (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
>
> > *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under section 482 CrPC, 1973 vested in the High Court. section 482 CrPC, 1973 saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*

23. This Court time and again has examined the scope of jurisdiction of the High Court under section 482 CrPC, 1973 and laid down several principles which govern the exercise of jurisdiction of the High Court under section 482 CrPC, 1973. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

`7. .. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under section 482 CrPC, 1973 is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the

Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under section 482 CrPC, 1973 to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

`102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under section 482 CrPC, 1973 and quashed the criminal proceedings."

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under section 482 CrPC, 1973 are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana and Others v. Bhajan Lal and Others 1992 Supp. (1) 335 as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others 2021 SCC OnLine SC 315.

18. The present case is fully covered by categories (1) and (3), as enumerated in State of Haryana and Others v. Bhajan Lal and Others (supra). A bare perusal of the complaint on the basis of which FIR came to be registered at the instance of the de-facto complainant/second respondent does not disclose any act of the present appellants or their participation in the commission of crime. They are neither concerned with the registered sale deed dated 4th May, 1977 nor the later sale deed executed in favour of the de-facto complainant by Shravan Kumar Gupta dated 22nd December, 2018, nor in possession of the subject property nor are parties to the civil proceedings and it is not the case of the complainant that either the appellants have played any active/passive role either in scribing the document or are facilitators or witness to the document in reference to which the complaint has been made for cheating and committing forgery or have played any role in delivery of possession of the subject property in question.

19. What it appears is that the de-facto complainant has implicated the present appellants being members of the family to put pressure for obtaining possession of the subject property and to settle the civil dis-

pute which is pending between Vinod Kumar Gupta, Shravan Kumar Gupta and the de-facto complainant in Original Suit No.91 of 2015".

In ***M/s Thermax Ltd. and others versus K.M. Johny and others, 2011(4) RCR (Criminal) 409,*** it was held as under:-

> *"13. In Anil Mahajan v. Bhor Industries Ltd. & Anr., 2006(4) RCR (Criminal) 834 : 2006(3) Apex Criminal 579 : (2005)10 SCC 228, again, a three-Judge Bench of this Court considered the issuance of process by a Magistrate for an offence under Sections 415, 418 and 420 Indian Penal Code. This Court also analysed the difference between breach of contract and cheating. The appellant therein was the accused in a complaint filed against him by the respondent-Company for offence under Sections 415, 418 and 420 Indian Penal Code. Based on the averments in the complaint, the Magistrate, by order dated 25.06.2001, issued the process against the accused. The order of the Magistrate notices that the complainant has filed the documents on record in which the accused promised to pay the amount but has not paid with the intent to deceive the complainant and, therefore, the complainant has made out a case to issue process against the accused under Sections 415, 418 and 420 Indian Penal Code. The said order of the Magistrate was challenged before the Court of Sessions. The learned Additional Sessions Judge, Pune by order dated 19.10.2001, set aside the order of the Magistrate issuing process. The order of the learned Additional Sessions Judge was set aside by the High Court. This Court, in paragraphs 8 & 9 of the judgment, observed as under:*
>
> > *"8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay......."*

"9. In Alpic Finance Ltd. v. P. Sadasivan, (2001)3 SCC 513, this Court was considering a case where the complainant had alleged that the accused was not regular in making payment and committed default in payment of instalments and the bank had dishonoured certain cheques issued by him. Further allegation of the complainant was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976)3 SCC 736, wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused, and the circumstances under which the process issued by the Magistrate could be quashed, the contours of the powers of the High Court under Section 482 Criminal Procedure Code were laid down and it was held : (SCC p. 520, paras 10-11)

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 Indian Penal Code and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe

that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. We are told that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration."

(Emphasis supplied)

By applying the above principles, this Court examined the complaint and concluded that it is clear from its substance that present is a simple case of civil disputes between the parties. This Court further held that the requisite averments so as to make out a case of cheating are absolutely absent. It further held that the principles laid down in Alpic Finance Ltd.'s case (supra) were rightly applied by the learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied and on due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant. After holding so, this Court set aside the impugned judgment of the High Court and restored that of the Additional Sessions Judge.

14. In S.K. Alagh v. State of Uttar Pradesh & Ors., 2008(2) RCR (Criminal) 79 : 2008(2) Recent Apex Judgments (R.A.J.) 97 : (2008)5 SCC 662, this Court considered the ingredients of Sections 405 and 406 Indian Penal Code - Criminal breach of trust and vicarious liability. In the said decision, after finding that the complaint petition did not disclose necessary ingredients of criminal breach of trust as mentioned in Section 405 Indian Penal Code and also pointing out the ingredients of offence under Section 406 Indian Penal Code, interfered with the order passed by the High Court.

15. In Maharashtra State Electricity Distribution Company Limited & Anr. v. Datar Switchgear Limited & Ors., 2010(4) RCR (Criminal) 848 : 2010(6) Recent Apex Judgments (R.A.J.) 291 : (2010)10 SCC 479, after perusal of the complaint, allegations therein, role of the directors mentioned therein and applicability of Section 34 Indian Penal Code, this Court in paragraph 35 concluded as under :

> *"35. It is manifest that common intention refers to a prior concert or meeting of minds, and though it is not necessary that the existence of a distinct previous plan must be proved, as such common intention may develop on the spur of the moment, yet the meeting of minds must be prior to the commission of offence suggesting the existence of a prearranged plan. Therefore, in order to attract Section 34 Indian Penal Code, the complaint must, prima facie, reflect a common prior concert or planning amongst all the accused."*

After saying so, verifying the complaint, this Court concluded that the complaint does not indicate the existence of any prearranged plan whereby Appellant No. 2 had, in collusion with the other accused decided to fabricate the document in question and adduce it in evidence before the Arbitral Tribunal. This Court further concluded that there is not even a whisper in the complaint indicating any participation of Appellant No. 2 in the acts constituting the offence, and that being the case, concluded that Section 34 Indian Penal Code is not attracted. After saying so, allowed the appeal in relation to Appellant No. 2 and quashed the order of the Magistrate taking cognizance against appellant No. 2 in Complaint No. 476 of 2004.

16. The principles enunciated from the above-quoted decisions clearly show that for proceedings under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 Indian Penal Code. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

XXXXX XXXXXX XXXXXX

20. Though Respondent No. 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No. 1-Company, who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegation with regard to their role.

21. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 Indian Penal Code, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company".

20. As regards the contention raised by the learned counsel for the petitioners that once a settlement had been arrived at between the parties, proceedings emanating out of FIR No. 243 dated 13.12.2012 (Annexure P-3) under Sections 420, 120-B IPC, Police Station Gobindgarh Mandi, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom were liable to be quashed, a perusal of the judgments in "***Central Bureau of Investigation versus Hari Singh Ranka (supra), Parbatbhai Aahir alias***

Parbatbhai Bhimsinhbhai Karmur (supra), Central Bureau of Investigation versus Maninder Singh (supra) and State of Maharashtra Through Central Bureau of Investigation (supra) would show that the criminal proceedings cannot be quashed on the basis of a settlement with the Bank as the Courts are to guard the collective interest of the society. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private individuals. Therefore, repayment of money fraudulently obtained from the Banks and the subsequent issuance of a No Due Certificate would not be enough to quash the proceedings.

In the instant case, during the subsistence of the mortgage agreement, the property in question was sold. Therefore, clearly, an offence is certainly made out as against Vanita Goyal and the subsequent settlement does not in any way take away the ingredients of the offence.

21. However, it may also be borne in mind that the property which had been sold was mortgaged by the owner-Vanita Goyal, the mother of the petitioners. So far as the complaint, enquiry report, FIR in question and the report under Section 173(2) Cr.P.C. are concerned, no specific allegation whatsoever has been levelled against the petitioners. At best, it could be alleged that they being the beneficiaries of the sale of the property could be said to be liable. However, that by itself would not create an offence in the absence of any substantive evidence of a conspiracy being hatched between their mother-Vanita Goyal (now deceased) and them. Therefore, at least, qua the petitioners, firstly, the FIR in question does not disclose any offence and secondly, the evidence collected in support of the said FIR does not disclose the commission of any offence as against the petitioners.

22. I am conscious of the fact that 02 prosecution witnesses out of the 20 cited in the list of witnesses already stand examined. However, as has been fairly conceded by the counsel for the respondents, only 02 formal witnesses have been examined till date. Therefore, in the facts and circumstances enumerated hereinabove, even if all the prosecution witnesses had deposed, absolutely no other substantive evidence would be available against the petitioners.

23. Thus, I find considerable merit in the present petition and therefore, the FIR No. 243 dated 13.12.2012 (Annexure P-3) under Sections 420, 120-B IPC registered at Police Station Gobindgarh Mandi, District Fatehgarh Sahib and all the subsequent proceedings arising therefrom including the report under Section 173(2) Cr.P.C. and the order framing charges stand quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

April 11, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No