In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

<u>WPA No. 3876 of 2024</u>

M/s. Rajeswari Iron and Steel Company Private Limited and others
Vs.
Indian Bank and others

For the petitioners	:	Ms. Noelle Banerjee, Mr. Dipak Dey, Mr. Dipanjan Dey, Mr. Aniket Ojha, Ms. Sucheta Mitra
For the respondent nos. 1 to 3	:	Mr. S. Pal. Choudhuri, Ms. S. Paul
Hearing concluded on	:	16.04.2024
Judgment on	:	22.04.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1 is a company which took loan from the respondent no. 1-Bank. The petitioner no. 2 is the Director and the petitioner nos. 3 to 5 are guarantors in respect of the aforesaid loan. In the present writ petition, the petitioners seek to quash a First Information Report (FIR) registered against the petitioners by the Central Bureau of Investigation (CBI) on a complaint lodged by the respondent-Bank on allegations of criminal conspiracy, forgery, cheating, criminal breach of trust and criminal misconduct.

2. Learned counsel for the petitioners argues that subsequent to the default, the petitioners were declared as Willful Defaulters by the

Willful Defaulters Identification Committee, which was affirmed by the Review Committee under the governing Master Circular for Wilful Defaulters of the Reserve Bank of India (RBI).

3. However, subsequently, the petitioners gave an offer of restructuring of the loan and ultimately entered into a One Time Settlement (OTS) with the Bank. Upon paying up in terms of the OTS, a No-Dues Certificate was issued by the Bank. Thus, it is argued that in view of full and final settlement of the loan amount, the complaint which was the premise of the FIR lost its force and no effective purpose would be served in continuing with the FIR and the consequent investigation by the CBI. It is argued that the petitioner no. 4 is aged about 65 years and the petitioners are being harassed unnecessarily by the CBI in the name of investigation.

4. Learned counsel contends that since the loan itself has been settled fully, the FIR ought to be quashed.

5. In support of her contentions, learned counsel for the petitioners cites *B.S. Joshi and others V. State of Haryana and another*, reported at *(2003) 4 SCC 675*, *Nikhil Merchant V. Central Bureau of Investigation and another*, reported at *(2008) 9 SCC 677* and *Manoj Sharma V. State and others*, reported at *(2008) 16 SCC 1*. All the said judgments were delivered by Two-Judge Benches of the Supreme Court.

6. Lastly, learned counsel cites a Three-Judge (Full Bench) decision of the Supreme Court where *B.S. Joshi*'s proposition was upheld, the case being *Gian Singh V. State of Punjab and another*, reported at *(2012) 10 SCC 303*.

7. Despite service, none appeared for the CBI at the time of arguments.

8. The respondent nos. 1 to 3 submit that the petitioners have fully repaid the loan in terms of the OTS and the Bank has issued a No-Dues Certificate.

9. The issue which arises for consideration is how far the petitioners are entitled to quashing of the FIR in view of the loan being settled in terms of the OTS.

10. The primary questions which fall for consideration are:

i) Whether the dispute (though commercial) is personal in nature and

ii) Whether the petitioners were altogether absolved of the offences by virtue of the compromise arrived at with the Bank and thus cannot be convicted, rendering the continuance of the investigation futile.

11. In order to adjudicate such issues, the propositions laid down in the cited judgments are required to be considered.

12. The jurisprudence governing the field has been in a state of flux. *B.S. Joshi*'s case is the first landmark judgment on the issue, where the Supreme Court held that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 of the Code of Criminal Procedure would not be a bar to the exercise of the power of quashing. Section 320, it is to be noted, speaks about compounding of offences. The premise of consideration was whether even if the offences alleged against a person are non-compoundable in nature and fall outside the ambit of Section 320 of the Code of

Criminal Procedure, the court has the power under Article 226 to quash the FIR if the cause of action of the complaint loses force. The Supreme Court held in the affirmative, observing that such power can be exercised under Article 226 of the Constitution of India by High Courts if, to secure the ends of justice, such quashing becomes necessary. However, the Supreme Court put in a caveat by observing that it is, however, a different matter depending upon the facts and circumstances of each case, whether to exercise or not such a power.

13. A Division Bench of the Supreme Court, following *B.S. Joshi*'s case, reiterated such power of the High Court under Article 226 in *Manoj Sharma*'s case. Although both the learned Judges concurred on the conclusion that the High Court has such power, there was a difference of opinion on certain aspects between the constituent Judges. Altamas Kabir, J. observed that the allegations against the appellant therein were in respect of forging documents and cheating. However, His Lordship was of the opinion that the dispute was of a private nature and remained one of a personal nature. Once the complainant decided not to pursue the matter further, it was held that the High Court could have taken a more pragmatic view of the matter. In the facts of the case, it was observed by Justice Kabir that continuing with the criminal proceedings would be an exercise in futility and quashed the criminal proceedings.

14. On the other hand, Justice Markandey Katju took into consideration the fact that Section 320 of the Code of Criminal Procedure has clearly stated which offences are compoundable and which are not and as such, the High Court or even the Supreme Court would not ordinarily be justified in doing something indirectly which could not be done directly. It was held by Justice Katju that it ordinarily would not be a legitimate exercise of judicial power under Article 226 of the Constitution or under Section 482 of the Code of Criminal Procedure to direct doing something which the Criminal Procedure Code has expressly prohibited, taking into consideration Section 320(9) which expressly states that no offence shall be compounded except as provided by that Section.

15. Thus, His Lordship observed that while in the said case the criminal proceedings deserved to be quashed, the question may have to be decided in some subsequent decision or decisions (preferably by a larger Bench) as to which non-compoundable cases can be quashed under Section 482 of the Criminal Procedure Code or Article 226 of the Constitution of India on the basis that the parties have entered into a compromise. Justice Katju further observed that learned counsel for the respondents therein had rightly expressed his concern that the decision in *B.S. Joshi*'s case should not be understood to have meant that Judges can quash any kind of criminal case merely because there has been a compromise between the parties. After all, a crime is an offence against society and not merely against a private individual. Hence, we find that there no final and conclusive *ratio decidendi* emanates from the said decision as to whether quashing of FIR is a necessary corollary of every case where compromise had been arrived at between the parties.

16. In *Nikhil Merchant*'s case, the same Two-Judge Bench as in *Manoj Sharma*'s case observed that the dispute involved therein had overtones of a civil dispute with certain criminal facets. It was observed that the disputes between the company and the Bank had been set at rest on the basis of the compromise arrived at by them in the said case. A question was posed by the court as to whether the power which independently lies with the Supreme Court to quash the criminal proceedings pursuant to the compromise arrived at should at all be exercised. On an overall view of the matter, keeping in view the compromise arrived at between the company and the Bank and also Clause 11 of the Consent Terms filed in the suit by the Bank, the court was satisfied that it was a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings since the continuance of the same after the compromise would be a futile exercise. It is to be noted that the Supreme Court was considering "the power which independently lies with the Supreme Court" and not the powers of the High Courts under Article 226 of the Constitution.

17. The law evolved further. A Full Bench of the Supreme Court, in *Gian Singh (supra)* took up a reference doubting *B.S. Joshi*'s case in *Nikhil Merchant (supra)* and *Manoj Sharma (supra).* While doing so, the Three-Judge Bench observed that in what cases power to quash the criminal proceedings or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity and offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute, since such offences are not private in nature and have a serious impact on society. Similarly, any compromise with regard to offences under special statutes like the Prevention of Corruption Act was also put in the same bracket.

18. But the criminal cases having overwhelmingly and predominantly civil flavour, it was held, stand on a different footing. The Supreme Court included in such class of cases, generally, offences arising from commercial, financial, mercantile and civil transactions. In such category of cases, it was held that the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or such continuation would tantamount to abuse of process of law despite settlement and compromise and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end.

19. Thus, certain yardsticks emerge for quashing of cases even if the offences arise out of commercial or financial transactions as in the present case.

20. First, it is to be seen whether the offence is personal or private in nature or the same has an impact on society at large or was covered by special statutes.

21. Another consideration is whether the continuance of the proceedings would be futile in view of the compromise, as it would difficult to obtain a conviction in view of the complainant having arrived at a settlement with the offender.

22. In such context, let us consider the facts and circumstances of the instant case.

23. As opposed to a mere personal or private dispute, the instant case has acquired a public character inasmuch as the petitioners have been declared to be Willful Defaulters under the Master Circular on Wilful Defaulters dated July 1, 2015 issued by the Reserve Bank of India (RBI).

24. The purpose of the said Master Circular, as per its own preamble, is to put in place a system to disseminate credit information pertaining to willful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them.

25. Under Clause 4.2(ii) of the Master Circular, criminal action is to be taken by banks/financial institutions. The said clause provides that the Banks are to seriously and promptly consider initiating penal action against willful defaulters wherever considered necessary, based on the facts and circumstances of each case. Such penal provisions are to be used effectively and determinedly but after careful consideration and due caution.

26. Hence, discretion has been left to the concerned Banks to carefully consider the facts and circumstance of the case and only then to initiate criminal action under the Master Circular. Thus, it may well be that in the facts and circumstances of a particular case, despite a person/unit having been declared to be willful defaulter, no criminal action is initiated by the Bank, considering the lack of gravity of the crime. However, in the present case, the Bank, upon such careful consideration, decided to lodge a complaint with the CBI, keeping in view the amount of the defalcation, leading to the impugned FIR. Hence, the matter traverses beyond the confines of a private dispute and acquires a public character in view of the declaration of willful defaulter and subsequent lodging of complaint by the Bank, for the purpose of dissemination of information on a public platform to ensure that further Bank finance is not made available to the petitioners/ wilful defaulters. Hence, the private and personal element stressed on by the Supreme Court both in *Manoj Sharma (supra)* and *Nikhil Merchant (supra)* is not applicable to the instant case.

27. The next consideration is the gravity of the offences. The FIR alleges criminal conspiracy, forgery, cheating, criminal breach of trust and criminal misconduct. The complaint of the Bank which led to the registration of the FIR mentions that the accused persons had executed loan documents and had mortgaged forged sale-deeds/property papers to get loan facilities from the Bank. The internal enquiry of the Bank corroborated such allegations. The Bank alleges that the Voter ID presented to the Branch was tampered/fake and that the petitioners had submitted forged sale-deeds/property papers, impersonating the original property owner one Mr. Pravash Kumar Mukherjee. All the accused as per the Bank were acting hand-in-glove to usurp public money. The nature of such complaints, thus, elevates the offences much beyond a personal issue and takes the same to public law realm. The nature and gravity of the alleged offences, coupled with the fact that the petitioners have been declared to be willful defaulters, signify larger ramifications than private disputes of a civil nature.

28. The next test is whether the continuation with the investigation would be futile, since the petitioners cannot be convicted as the parties have reached a settlement. Let us not consider closely the terms of the settlement between the petitioners and the Bank.

29. In the compromise settlement dated September 14, 2023 (Annexure P-20 at page 118 of the writ petition), it is mentioned that the Bank issued the compromise settlement on the basis of the OTS proposal of the petitioners. In Clause 3 of the settlement, the Bank approved the OTS in respect of recovery of Bank's dues (civil liability only) and mentioned that there is no settlement in respect of any criminal liability which on date established/under trial in any court/found in future will continue against the borrower/guarantor/others. Clause 5 of the same also excludes ongoing judicial recovery proceedings from the settlement. Hence, in no uncertain terms, the compromise settlement itself excluded criminal liability from the purview of the settlement.

30. The RBI issued a Framework for Compromise Settlement and Technical Write-Offs on June 8, 2023. In Clause 13 thereof, Regulated Entities (REs) have been permitted to undertake compromise settlements or technical write-offs in respect of the accounts categorized as willful defaulters or fraud *without prejudice to the criminal proceeding underway against such debtors*.

31. Thus, the compromise settlement entered into by respondent no. 1-Bank, read in the context of the RBI framework, indicate unerringly towards the criminal liability having been excluded from the purview of the compromise. The Bank, in its complaint, cites a report furnished on investigation carried out by the then Chief Manager of the Bank which castigates the petitioners squarely on the offences. As an icing on the cake, even the No-Dues Certificate dated September 30, 2023 issued by the Bank, on which the petitioners heavily rely, mentions that the payments are received by the Bank towards full and final settlement of the outstanding dues *in civil liability* of the subject-borrowal account. Again, in the last paragraph of the same No-Dues Certificate, it is reiterated that the no-dues in the subject-account is *restricted to civil liability only*. Hence, the petitioners were never absolved of the criminal liability even from the perspective of the Bank/complainant. The offences alleged against the petitioners are not effaced at all even in terms of the compromise arrived at between the parties.

32. Thus, on an overall scrutiny, it is evident that the petitioners have never been absolved of the criminal liability for the offences alleged against them, which are of a serious nature, particularly in view of the Willful Defaulter declaration against them, as opposed to a personal or private dispute. Since the Bank itself did not release the petitioners from the criminal allegations, it cannot be said that conviction would be difficult merely by the virtue of the compromise.

33. Hence, the proposition laid down in the cited judgments does not help the petitioners inasmuch as the present case, in its facts and circumstances, is not at all a fit case where the criminal proceedings should be quashed, deeming the same to be an abuse of the process of court or a futile exercise.

34. Hence, the petitioners fail to justify quashing of the FIR registered against the petitioners, as sought in the present writ petition.

35. Accordingly, the present challenge fails.

36. Thus, WPA No. 3876 of 2024 is dismissed on contest without, however, any order as to costs.

37. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)