

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.4798 OF 2022****WITH****WRIT PETITION NO.4805 OF 2022****WITH****WRIT PETITION NO.4800 OF 2022****WITH****WRIT PETITION NO.4802 OF 2022**

Krishnkant Shriram Gadekar

.. Petitioner

Versus

Ratnagiri District And Central Co-
Operative Bank Ltd And Anr

.. Respondent

WITH**WRIT PETITION NO.4799 OF 2022****WITH****WRIT PETITION NO.4801 OF 2022****WITH****WRIT PETITION NO.4803 OF 2022****WITH****WRIT PETITION NO.4804 OF 2022**

Uday Bhikaji Sawant

.. Petitioner

Versus

Ratnagiri District And Central Co-
Operative Bank Ltd And Anr

.. Respondents

...

Mr.Rajesh Kachre i/b Pratik Rahade, for the Petitioners.

Mr.Suhas Deokar for respondent no.1.

Mr. S.V. Gavand, APP for the State.

CORAM: NITIN W. SAMBRE, &**R.N. LADDHA, JJ.****DATED : 10th OCTOBER, 2024**

P.C:-

1 Against the petitioners in all four complaint cases were initiated, alleging misappropriation, criminal breach of trust, fraud, falsification of account and furnishing false information. In these all four prosecutions, which were arriving out of complaint cases, the petitioners in all these petitions were convicted for respective offences. Against the conviction, the appeals are informed to be pending consideration before the Sessions Court.

2 The status of the petitioners, which prompted them to face the prosecution was their employer-employee relationship with the respondent no.1 complainant a Co-operative Bank.

3 The total amount of misappropriation alleged in all the four cases was to the tune of Rs. 6,33,254/-.

4 Apart from the criminal prosecution, the petitioner employees faced proceedings before the Co-operative Court through a dispute under Section 91 of the Maharashtra Co-operative Societies Act, at the behest of respondent employer for recovery of amount misappropriated.

5 The said dispute preferred by the respondent employer was dismissed. An appeal carried by the respondent employer against the same was also dismissed by the Co-operative Appellate Court. As such the issue of recovery against the petitioners was unable to be taken to its logical end.

6 It is brought to our notice that total amount recovered as against the defalcation /misappropriation of Rs.6,33,254/- is 29,10,000/- as principal amount carried interest. The entire principal

amount, which is the subject matter of the aforesaid offence is already informed to have been recovered as could be noticed from paragraph no.12 of the Consent affidavit.

7 The interest component of 18.66 lakhs is written off by the respondent no.1 bank in its books of account, inspite of which we are informed by the counsel for respondent bank that the said institution is in profit.

8 In this factual background, petitioners in all these Writ Petitions are seeking quashing of criminal prosecution by consent of respondent complainant. The learned counsel for the petitioners would invite our attention to the law laid down by the Apex Court in the matter of *Ram Gopal and anr vs. State of Madhya Pradesh (2022) CRI.L.J. 2801*. According to him, the attempt on the part of the appellant to invoke provisions of Section 320 of Cr.P.C before the Appellate Court was unsuccessful. Even if the petitioners are convicted, still it is open for them to approach before this Court seeking quashing of the offence under Section 482 of the Cr.P.C, which saves inherent jurisdiction. The learned counsel would invite our attention to the observations made in the aforesaid judgment, particularly in paragraph nos. 11, 12, 13, 15, and paragraph nos. 18 and 19 which reads thus:-

“11. True it is that offences which are 'non- compoundable' cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of 'compound- able' offences which have been consciously kept out as non-compoundable. Nevertheless, the limited

jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are non-compoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.

13. It appears to us that criminal proceedings involving nonheinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in *Narinder Singh and Ors. v. State of Punjab and Ors*³. and *Laxmi Narayan (Supra)*.

15. Given these settled parameters, the order of the high Court of Madhya Pradesh culminating into Criminal Appeal No.1489 of 2012, to the extent it holds that the High Court does not have power to compound a non-compoundable offence, is in ignorance of its inherent powers under Section 482 Cr.P.C. and is, thus,

unsustainable. However, the judgment and order dated 9 January, 2009 of the High Court of Karnataka, giving rise to Criminal Appeal No.1488 of 2012 cannot be faulted with on this count for the reason that the parties did not bring any compromise/settlement to the notice of the High Court.

18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.

19. We thus sum-up and hold that as op- posed to Section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences 'compound- able' within the statutory framework, the extraordinary power enjoined upon a High Court under Section 482 Cr.P.C. or vested in this Court under Article 142 of the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, we reiterate that such powers of wide amplitude ought to be exercised carefully in the context of quashing criminal proceedings, bearing in mind: (i) Nature and effect of the offence on the conscious of the society; (ii) Seriousness of the injury, if any; (iii) Voluntary nature of compromise between the accused and the victim; and (iv) Conduct of the accused persons, prior to and after the occurrence of the purported offence and/or other relevant considerations.”

9 In the backdrop of above authoritative pronouncement, the learned counsel for the petitioners submit that the remedy for quashing of the criminal prosecution under Section 482 of Cr.P.C, though the petitioners are convicted, is available. In the above referred factual matrix, it is vehemently urged that the petitioners are entitled for the relief of quashing as no fruitful purpose will be served in case if the conviction of the petitioners is continued. According to

him, the very object of providing the remedy of quashing post conviction as clarified by the aforesaid authority of Apex Court sufficiently speaks of the petitioners right to claim quashing before this Court. Specific reliance is placed on paragraph no.13, of the aforesaid judgment, which reads thus:-

“13. It appears to us that criminal proceedings involving nonheinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction. Handing out punishment is not the sole form of delivering justice. Societal method of applying laws evenly is always subject to lawful exceptions. It goes without saying, that the cases where compromise is struck post conviction, the High Court ought to exercise such discretion with rectitude, keeping in view the circumstances surrounding the incident, the fashion in which the compromise has been arrived at, and with due regard to the nature and seriousness of the offence, besides the conduct of the accused, before and after the incidence. The touchstone for exercising the extraordinary power under Section 482 Cr.P.C. would be to secure the ends of justice. There can be no hard and fast line constricting the power of the High Court to do substantial justice. A restrictive construction of inherent powers under Section 482 Cr.P.C. may lead to rigid or specious justice, which in the given facts and circumstances of a case, may rather lead to grave injustice. On the other hand, in cases where heinous offences have been proved against perpetrators, no such benefit ought to be extended, as cautiously observed by this Court in Narinder Singh and Ors. v. State of Punjab and Ors³. and Laxmi Narayan (Supra).”

10 While consenting the above submission, the learned counsel appearing for the original complainant/respondent submits that a resolution by the Bank extending consent for quashing is already placed on record as reflected in paragraph no.12 of the Consent affidavit which reads thus:-

“12) I say that, the managing committee of the Respondent No. 1 in its meeting dated 11/08/2022 have resolved that the actual amount of misappropriation is Rs. 47,76,000/- and the same has been shifted to the defalcation account as per the accounting practice and standard. As of today the amount of Rs. 29,10,000/- was received in

the said defalcation account and only the remaining amount of Rs.18,66,000/- towards the interests is due in the said defalcation account. Therefore the managing committee is of the opinion that the said due amount has no bearing on the profit and loss of the bank and therefore it was resolved that the same is required to be write off. Hereto annexed and marked as Exhibit R - 4 is the copy of minutes of meeting of managing committee dated 11/08/2022.”

11 It is further claimed that since the Bank is in profit, and has already taken decision to write off Rs.18.66 lakhs of amount of interest, the Bank has decided to extend the consent for quashing in the light of resolution. According to learned counsel for respondent, the aforesaid steps are taken by the Bank keeping in mind the recovery of the principal amount, which was effected from the borrower and also failure of the Bank in the proceedings for recovery from the Petitioners of the alleged misappropriated amount.

12 Our attention is also invited to the consent recorded by this Court of the authorized person on behalf of the Bank on the last date of hearing i.e. 2/08/2023, thereby extending consent for quashing of the criminal prosecution.

13 We have considered the aforesaid submissions.

14 No doubt the present petitioners in all these writ petitions were convicted for respective offences and their appeals against verdict of convictions are pending adjudication before the Sessions Court.

15 The respondent no.1 Bank not only before the Court below i.e. Sessions Court extended the consent for compounding but also before this Court through resolution of the Board of Director has extended consent for quashing. The said request for compounding

was turned down by the Sessions Court as the offence were non-compoundable.

16 The nature of offence alleged against the petitioners is that of misappropriation of the amount of the Bank, which the Bank was holding on behalf of its shareholders in trust. The petitioners were the employees of the Bank.

17 This Court is required to be sensitive to the fact that an attempt on the part of the Bank to recover the amount misappropriated from the petitioners was unsuccessful as the Bank was unable to demonstrate/establish through cogent evidence its claim for recovery. Even the appeal before the Co-operative Appellate Court has suffered dismissal. In such an eventuality when there comes the field to be regulated in backdrop of civil and criminal prosecution, it is settled position of law that the findings recorded in the civil proceedings shall prevail i.e. the verdict delivered by Co-operative Court in this case.

18 Apart from above, we are required to be sensitive to the recovery of principal amount and the decision of the Bank to write off the amount of interest of 18.66 lakhs. The Bank is already informed to be running in profit and in such an eventuality, it cannot be said that the interest of the deposit holders or that of shareholders is at stake or compromised.

19 It will not be out of place to mention that the petitioners-accused have face the prosecution for last 24 years and as such have already suffered hardship to which the Court is equally required to be sensitive.

20 In this background, having regard to the law laid down by the Apex Court in the matter of *Ram Gopal and anr vs. State of Madhya Pradesh* (supra) we are of the view that a case for quashing by consent is made out. In that view of the matter, we pass the following order:

21 All these Petitions stood allowed in terms of prayer clause (a).

22 The sequel of above, the prosecution against the petitioners stood quashed and set aside as per the prayer clause in all these Writ Petitions.

23 Each of the petitioner undertakes to deposit an amount of Rs.25,000 in each of the petition i.e. Rs. 1,00,000/- by each petitioner with the respondent Bank i.e. total amount of Rs. 2,00,000/-within period of four weeks from today towards the cost.

24 The compliance of the amount of cost deposited be brought to the notice of this Court, failing which the proceedings in all these Writ Petitions shall stand revived without further reference to the Court.

(R.N. LADDHA)

(NITIN W. SAMBRE,J)