



Crl.O.P.(MD).Nos.586 and 595 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	11.07.2024
Pronounced On	:	19.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).Nos.586 and 595 of 2024

and

Crl.M.P.(MD).Nos.350, 351, 355 & 356 of 2024

N.S.Gnaneshwaran

... Petitioner/Accused No.3
in Crl.O.P.(MD).No.586 of 2024

N.S.Madanlal

N.S.Krishnakumar

... Petitioners/A6 and A8
in Crl.O.P.(MD).No.595 of 2024

Vs.

1. The Inspector of Police,
SPE CBI ACB,
Chennai.
(Crime No.RC MA1 2005 A 0020)

... 1st Respondent/Complainant

2.The Senior Regional Manager,
Punjab National Bank,
Regional Office,
Trichy -620 014.

... 2nd Respondent/Defacto Complainant
in Both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C., to call for records relating to the impugned proceedings in C.C.No.16 of 2006 on the file of the learned II Additional District Court for



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CBI Cases, Madurai, and quash the same in respect of the petitioners alone.

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For Petitioners	:Mr.Ragavachari, Senior counsel for :Mr.M.Saravanan
For Respondents	:Mr.M.Karunanithi Special Public Prosecutor for CBI for R1 :Mr.S.Chandrasekar for R2

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For Petitioners	:Mr.V.P.Sengottuvel, Senior counsel for :Mr.N.C.Ashok Kumar
For Respondents	:Mr.M.Karunanithi Special Public Prosecutor for CBI for R1 :Mr.S.Chandrasekar for R2

COMMON ORDER

The petitioners are Accused Nos.3, 6 and 8 have filed these petitions to quash the proceedings in C.C.No.16 of 2006 on the file of the II Additional District Court for CBI Cases, Madurai, in respect of the petitioners.

2.The case of the prosecution is that in the year 2002, the petitioners along with other accused colluded with the branch managers of the second respondent



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bank namely L.Jesuraja(A1) and S.Vishwanathan(A2) by opening a current account in the name of M/S.Vinayaga Corporation, Sivakasi, and obtained credit limit to the tune of Rs.10,00,000/- against hypothecation of stock. It is further alleged that A4 and A5 are said to have issued various cheques in favour of the petitioner/A3 in Crl.O.P.(MD).No.586 of 2024 and the petitioners/A6 and A8 in Crl.O.P.(MD).No.595 of 2024 and other accused to their business entities for fraudulently encashing the credit facilities. The petitioners had caused wrongful loss to the second respondent's bank to the tune of Rs.25.89 lakhs as on 27.04.2005 by conspiring with the other accused. Hence, the second respondent gave a complaint. On the basis of the complaint given by the second respondent, the first respondent Police registered a case in Crime No.RC MA1 2005 A 0020 for the offences under Sections 120B r/w 420, 468 r/w 471 of IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. After completion of the investigation, the first respondent filed a final report under Section 173 of Cr.P.C., and the same was taken on file in C.C.No.16 of 2006 by the learned II Additional District Court for CBI Cases, Madurai, dated 18.12.2006. To quash the same, this quash petition has been filed before this Court.



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3.The learned Senior counsel made the following submission:-

3.1.The CBI registered the case against the petitioners and other accused.

After registration of the FIR, they filed three final reports. On the basis of the three final reports, the learned Special Judge took cognizance in C.C.Nos.13 and 16 of 2006 and 151 of 2010. They filed a quash petition and the same was allowed. In the above quash petition, it is specifically pleaded that the bank accepted the OTS proposal made by the main borrower's namely A4 and A5. Once the entire payment was made accepting OTS proposal, the continuation of the criminal proceedings is abuse of process of law. More particularly, in the backdrop of charges in C.C.Nos.13 and 16 of 2006 and 151 of 2010, having been quashed by this Court against co-accused on the ground that OTS proposal was made. He would further submit that on the basis of the Hon'ble Supreme Court judgement in a case reported in **2022 SCC online SC 2078**, the quash petition can be even entertained, after completion of questioning under Section 313 of Cr.P.C.,. They also relied the following judgment of the Hon'ble Supreme Court and seek quashing of the case :-

<i>Sl.No.</i>	<i>Documents</i>
1	Nikhil Merchant Vs CBI (2008) 9 SCC 677 at page 684
2	B.S. Jothi Vs State of Haryana, (2003) 4 SCC 675 : at Page 682
3	Gian Singh Vs State of Punja (2012) 10 SCC 303 at Page 342



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4	Kothari Polymers Ltd., and others Vs SIU (X) /SPE/CBI 2002 SCC online SC 2078
5	CBI Vs Narendra Lal Jain (2014) 5 SCC 364 at Page 368
6	CBI Vs B.B. Agrawal (2019) 15 SCC 522 at Page 524

3.2.The learned Senior Counsel further elaborated that they are not party to the loan transaction allegedly made with the bank officer by producing the forged document. They only received the cheques from the borrower for discharging his liability. Hence, without any adequate material to continue the proceedings for the proof of the criminal conspiracy, they prayed quashing of the FIR.

4.The learned Special Public Prosecutor submitted that the judgement of the Hon'ble Supreme Court relied by the Senior Counsel is not applicable to the facts of the present case. In this case, there is a specific allegation against the petitioners that they are party to the fraudulent transaction and charge also was framed and all the prosecution witnesses were examined and 313 proceedings also completed. After completion of 313 proceedings, they filed recall petition for examining the Investigating Officer in order to prolong the proceedings. At this stage, they filed quash petition and the same is not maintainable. The OTS was agreed between the bank officials and the borrowers/accused subject to the



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condition that criminal proceedings would continue. Apart from that, the same is not a ground to quash on the basis of the Hon'ble Supreme Court judgment.

5.This Court considered the rival submission made on either side and perused the documents and also the precedents.

6.Maintainability of quash petition at advanced stage of trial:

In this case, there is a specific allegation against the petitioners that they were party to the fraudulent transaction and charge also were framed and all the prosecution witnesses were examined and questioning under section 313 Cr.P.C., also was completed. After completion of questioning under section 313 Cr.P.C, they filed recall petition for examining the Investigating Officer. During 313 Cr.P.C., questioning, these petitioners never stated anything about the grounds raised before this Court.At this stage, they have filed this quash petition and the same is not maintainable. Hence the preliminary objection raised by the Special Public Prosecutor not to entertain this quash petition in this case deserves to be accepted and he rightly relied the paragraph No.14 of Hon'ble three judges bench judgment of Supreme Court in the case of ***Amar Chand Agarwalla v. Shanti Bose***, reported in ***1973 4 SCC 10***:



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14. A representation appears to have been made on behalf of the complainant that a large volume of evidence, oral and documentary, has already been adduced and the trial has gone on for a long time and that only two more prosecution witnesses and a court witness remained to be examined. On this basis it was pressed before the High Court by the complainant that the High Court should allow the proceedings to go on and to come to its logical conclusion and that the High Court should not interfere at that stage. The learned Judge, however, considered this representation and held that the two remaining prosecution witnesses should not be allowed to be examined “in the facts and circumstances of the case, as they cannot possibly have any material effect on the merits of the case”. The High Court further held that even the proposed examination of the court witness is not necessary, as it will only prejudice the accused and undo the effect of their cross-examination. On this basis, the representation made on behalf of the complainant was rejected.

7. He also rightly quoted another judgment of the Hon'ble Supreme Court in the case of **A. Ravishankar Prasad**, reported in **(2009) 6 SCC 351** where it has been declined to accept the case of quashment of the C.C. at the advanced



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stage of the case and the relevant paragraph is as follows :-

43. It is significant that the respondents and the other bank officials share the charges under Section 120-B read with Section 420 IPC. Quashing the charges against the respondents would also have very serious repercussions on the pending cases against the other bank officials.

44. In four cases, 92 witnesses have already been examined. The trial of the case was at the advanced stage. At this stage, the High Court has seriously erred in quashing the charges against Respondents 1 and 2. Quashing the proceedings at that stage was clearly an abuse of the process of the court.

Therefore this court inclines to dismiss this petition as not maintainable at the stage of advanced stage of trial.

8. Upon considering the following various judicial pronouncements of the Hon'ble supreme Court reported in **2011 (5) SCC 708** in ***Sushil Suri Vs Central Buerau of Investigation, Gian Singh***, [(2012) 10 SCC 303 ***B.S. Joshi v. State of Haryana*** [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and ***Manoj Sharma v. State*** [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] ***Parbatbhai Aahir v. State of Gujarat*** [***Parbatbhai Aahir v. State of Gujarat***, (2017) 9 SCC 641 ***CBI v. Hari Singh Ranka***, (2019) 16 SCC 687 : ***Arun Singh v. State of U.P.***, (2020) 3 SCC 736 the following principles have to be considered whether



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the submission that once the bank accepted the OTS proposal made by the main borrower namely A4 and A5 and the entire payment was made on the basis of the accepted OTS proposal, continuation of the criminal proceedings will be abuse of process of law:-

8.1. The Hon'ble Three Judges Bench in “*Gopakumar B. Nair Case*” has specifically held that

*“neither **Nikhil Merchant** nor **Gian Singh**” can be understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably be quashed.*

8.2. When the charge of conspiracy is there to commit the offence under the Prevention of Corruption Act, the question of quashing of the case on the basis of the settlement under the OTS is not permissible.

8.3. When there is no approval on the part of the bank to exonerate the accused from the criminal liability, the question of quashing cannot be entertained.



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8.4. In the economic offences like defrauding the funds of Bank by the accused persons using the fabricated documents and manipulation of the records and illegally enriching themselves with the defrauded money and misusing the same amount to unjust enrichment as against the public policy depriving the eligible persons to avail the said benefit, the OTS can not wipe off criminal liability.

8.5. High court has no power to quash the proceedings on the basis of the OTS when prima facie case is made out against the accused to face the charge of forgery, cheating, conspiracy to commit offence under the prevention of corruption Act and the trial was almost completed by the prosecution.

8.6. While entertaining the quash petition on the basis of the OTS, it is also duty of the court to see the possible serious repercussions on the pending cases against the other bank officials. Considering the serious repercussions on the pending trial against the remaining accused, the jurisdiction of the court under section 482 Cr.P.C., can not be entertained to quash the proceedings against the wrong doer merely on the account of settlement of their issues of civil liability.



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9. Applying the above principle, this court now delves into the facts of the present case:-

9.1. There are specific materials available on record to frame the charges against the petitioners. Proper charges were framed. The charges includes the offence under section 120 (b) r/w. 420 of I.P.C., 120 (b) r/w. 468 r/w. 471 of I.P.C. and **13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act 1988**. Therefore in the special circumstances of the present case, the judgment relied upon by the Learned both the Senior counsel in **“Kothari Polymers Ltd., Vs SIU (X)/SPF/CBI”** is not applicable where the Hon'ble Supreme Court in paragraph No.10 clearly observed in the said case that the prosecution of the bank manager did not take place as the CBI was not able to obtain the permission from the competent authority. In this case, sanction was obtained against the officials and proper charges were framed under section 120 (b) r/w. 13 (2) r/w. 13 (1) (d) of the Prevention of Corruption Act 1988.

9.2. In the said judgment the Hon'ble Supreme Court has also doubted the existence of the ingredients of the 420 of I.P.C against the private parties to the offence. In this case, the petitioners cannot plead the offence is not made out and



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they seek quashing only on the ground of the settlement through the OTS. The learned trial judge also was *prima facie* satisfied that there are material to frame the charges of various offences including the prevention of corruption Act. Therefore, this court declines to accept the argument of the learned senior counsel to quash the proceedings on the basis of the judgment of the Hon'ble Supreme Court in ***“Kothari Polymers Ltd., Vs SIU (X)/ SPF/CBI”***. It is well settled that each case depends on its own facts. Modus operandi adopted by the accused in this case and the filing of the charge sheet with array of the officials with offence of prevention of corruption Act is not similar with the case of ***“Kothari Polymers Ltd., Vs SIU (X)/ SPF/CBI”***.

The principle laid down by the supreme court in the judgment of the ***A. Ravishankar Prasad***, (2009) 6 SCC 351 has application in this case and relevant paragraph is as follows:-

43. It is significant that the respondents and the other bank officials share the charges under Section 120-B read with Section 420 IPC. Quashing the charges against the respondents would also have very serious repercussions on the pending cases against the other bank officials.



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9.3. Further in this case the OTS is subject to the rider clause *i.e., “OTS is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the ongoing criminal case/ investigation, if any, being carried out by the CBI/Police and the same shall proceed as law”*. There is no such similarity in the various judgments relied by the learned senior counsel appearing for petitioner. Apart from that it is settled principle that exercise of power under section 482 of Cr.P.C. will always depend on the facts of the each case. The Hon'ble Supreme Court in Gian singh and other judgments clearly issued a note of caution before entertaining the quash petition of the non compoundable offence under section 482 of Cr.P.C. following a settlement between the parties for the reason that the investigating agency and the prosecution agency is not bound by their settlement. In this case charged offences are not only under Section 120 (b) r/w. 420 of I.P.C., there are other serious offences which are not in private nature. The charge of the conspiracy to commit the offence under the prevention of corruption act is also there. There was no approval on the part of the bank as to exoneration of criminal liability of the appellant in view of the above rider clause. Therefore, this case squarely comes under the ratio laid down by the Hon'ble Three Judges bench of the supreme court in **2014 (5) SCC 800**, the Hon'ble Two Judges bench of the



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supreme court in the case of **2011 (5) SCC 708, 2009 (6) SCC 351, 2019 (16) SCC 687** and **2020 (3) SCC 736**.

10. Apart from that in this case all witnesses are examined and the case was originally posted for the argument and subsequently recall petition was filed and the same was allowed and the case was posted for the further cross examination of the witnesses. The sum and substance is almost trial is in advanced stage and in the said circumstances in view of the specific charges framed with imputation of element of fraud and the preparation of the false documents and the conspiracy to commit offence under the prevention of Corruption Act, this court agrees with learned special public prosecutor for CBI that the quash petition cannot entertained .

11. Hence, considering the over all circumstances of the present case this Court is not inclined to entertain the quash petition on behalf of the petitioners, merely on the basis of the settlement under OTS scheme.

12. Accordingly, this criminal original petitions are dismissed. The learned trial judge is directed to complete the trial within a period of two months from



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the date of receipt of a copy of this order. Consequently, connected Criminal

Miscellaneous Petitions are closed.

19.11.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The learned II Additional District Court
for CBI Cases,
Madurai.
- 2.The Inspector of Police,
SPE CBI ACB,
Chennai.
- 3.The Senior Regional Manager,
Punjab National Bank,
Regional Office,
Trichy -620 014.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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