



2024:DHC:9865



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 04.12.2024

+ **W.P.(CRL) 596/2023, CRL.M.A. 5489/2023, CRL.M.A. 7035/2023, CRL.M.A. 8350/2023 and CRL.M.A. 10182/2023**

GARDENIA INDIA LIMITED

.....Petitioner

Through: Mr.Mohit Mathur, Sr. Advocate with
Mr.Amitabh Narendra, Mr.Mritunjay
K. Singh, Mr.Sahas Garg, Mr.Mayank
Sharma, Mr.Harsh Gautam,
Mr.Deepal Goel, Mr.Sanit Singh and
Mr.Vignesh Ramanathan, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION AND
ANR

.....Respondents

Through: Mr.Atul Guleria, SPP for CBI with
Mr.Aryan Rakesh and Mr.Pankaj
Kumar, Advocates

AND

+ **W.P.(CRL) 2169/2023 and CRL.M.A. 20207/2023**

GARDENIA INDIA LIMITED AND ORS.

.....Petitioners

Through: Mr.Mohit Mathur, Sr. Advocate with
Mr.Amitabh Narendra, Mr.Mritunjay
K. Singh, Mr.Sahas Garg, Mr.Mayank
Sharma, Mr.Harsh Gautam,
Mr.Deepal Goel, Mr.Sanit Singh and
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Versus

CENTRAL BUREAU OF INVESTIGATION & ORS.Respondents



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Through: Mr.Atul Guleria, SPP for CBI with
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Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been filed under Articles 226 and 227 of the Constitution of India on behalf of the petitioners praying for quashing of FIR in RC No. 'RC2232023A0003' dated 21.02.2023 registered under Sections 420/120B IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 at P.S. Anti-Corruption (AC-V), New Delhi.

2. Briefly stated, petitioner Nos. 1, 4 and 5 are the companies incorporated under the Companies Act, 1956. Petitioner No. 2 and 3 are the Ex-Director/Guarantors of the petitioner No.1 company. Petitioner No.1 availed certain project specific term loan facilities from the respondent No. 2 bank 2013 onwards for developing real estate projects. However, since the construction could not be completed on time, the accounts of the petitioner No.1 were declared Non-performing Assets ('NPAs').

Respondent No.2 initiated proceedings under the SARFAESI Act and filed OA No. 596 of 2016 before the Debt Recovery Tribunal (DRT) for recovery of Rs.84,27,80.863/- and also lodged a criminal complaint against the petitioners with respondent No.1 Agency.

3. Learned Senior Counsel for the petitioner submits that the impugned FIR has been registered on 21.02.2023 in contravention of the orders dated 14.10.2022 and 18.10.2022 passed by this court in W.P(C) No. 11599 of 2022 titled M/s Gardenia India Ltd. vs. Reserve Bank of India & Ors.



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wherein the petitioner had challenged declaration of its account as fraud. Vide aforesaid orders, the petitioner No.1 was granted interim protection whereby the Court had restrained the respondent No.1/ respondent No.2 from taking any action against the petitioners. He has raised questions about the conduct of respondent No.1 by contending that despite being well aware of interim protection being granted to petitioners they proceeded in the registration of the FIR. To buttress this contention, reliance has been placed on their letter dated 29.12.2022 seeking clarifications from respondent No.2 whether to proceed further with its complaint dated 23.08.2022 to which the Bank vide reply dated 11.01.2023 had requested CBI to await the final outcome of the Writ Petition. He submits that despite this clear indication from the respondent No.2 bank, respondent No.1 proceeded with the registration of the FIR. It is further submitted that even thereafter, when this Court vide judgment dated 17.04.2023 in W.P. (C) No. 11599/2022 had already set aside the order classifying the petitioners' bank accounts as 'fraud.', respondent No.2 for reasons known best to them decided to keep the criminal proceedings pending.

4. It is next contended that even the Forensic Audit of the loan accounts of petitioner No.1 company was also conducted by a firm hired by the respondent No.2. In the said audit, no incriminating findings or opinion was recorded against the petitioner No. 1. In fact, it is submitted that the audit report explicitly records that no fraud was found in the transactions of petitioner No. 1.

5. It is further submitted that the petitioners and the respondent No.2 have finally arrived at a settlement and no purpose would be served by the continuation of the proceedings arising out of the impugned FIR. To buttress



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this contention, it is submitted that the petitioners have entered into a One-Time Settlement (OTS) with the Bank which was also approved by the Competent Authority vide communication dated 28.06.2023. It is stated that petitioner No. 1 has deposited the entire settlement amount of Rs.67.20 crores with respondent No.2 within the stipulated time. Consequently, respondent No.2 has issued a settlement certificate dated 06.12.2023 stating that the entire loan account had been fully settled and that it had no further grievance against the petitioners.

Lastly, it is stated that invocation of provisions of PC Act by respondent No.1 is unjustified as there is no allegation of offence under the provisions of Prevention of Corruption Act (*PC Act*), given that the complaint explicitly states that no adverse involvement of any bank official was identified during the internal investigation or the forensic audit.

6. *Per contra*, Learned SPP for CBI submits that considering the complaint received by the CBI itself discloses commission of a cognizable offence, the CBI has well within its rights to register the impugned FIR. He further submits that merely because the petitioner has chosen to challenge the civil process to dispute the declaration of its account as 'fraud' cannot be allowed to obstruct the progress of a criminal complaint. The committee thereafter again declared the account as fraud. He further submits that offences with respect to Prevention of Corruption Act, 1988, ought not to be treated at par with offences arising out of inter-personal disputes as they are offences against the society and the State. Therefore, it is contended that merely because the respondent no. 2 has settled the dispute by receiving back the outstanding loan amount, the FIR cannot be quashed and an offer of settlement should not become the basis of any interference in the



investigation of respondent No.1. In this regard, reliance has been placed upon the decision of the Supreme Court in Gian Singh v. State of Punjab & Anr. reported as **(2012) 10 SCC 303**, Gopakumar.B.Nayar v. CBI reported as **(2014) 5 SCC 800** and State of Maharashtra v. Vikram Anantrai Doshi reported as **(2014) 15 SCC 29**.

Additionally, it is submitted that investigation so far has revealed involvement of bank officials/public servants in unlawful disbursement of funds from the bank, which funds were subsequently misused by the Petitioner Company. During investigation, role of certain bank officials has been investigated and though approval under Section 17-A of the Prevention of Corruption Act, 1988 against two bank officials has been declined by the competent authority, the same is pending against other officials.

7. During the course of arguments, learned counsel for the respondent No. 2, on instructions, submitted that nothing remains due from the petitioners. He also confirms the factum of an OTS having been entered into by the parties, all accounts having been settled and states that a 'Settlement Certificate' has also been issued by the bank. He further submits that the recovery certificate was withdrawn and an affidavit to the aforesaid effect was also filed in the proceedings initiated before DRT.

8. In Rejoinder, learned Senior counsel for the petitioner contends that the reliance by respondent No.1 on the decision rendered in Vikram Anantrai Doshi (Supra) is misplaced for in the said case, there was no forensic audit giving clean chit. The declaration of petitioner's account as fraud by the committee is in teeth of the forensic audit report prepared by Chartered Accountant firm hired by itself.

9. In the present case, admittedly, the borrower/petitioners and the



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lender/Respondent No.2 bank have arrived at a settlement. The entire liability has been settled and all dues have been cleared by the petitioners. As such, respondent no.2/bank has already issued a settlement certificate dated 06.12.2023. The recovery suits have been formally withdrawn and the affidavits have been filed to confirm that Respondent No.2/bank has no outstanding dues against the petitioners. Respondent No.1 has, however, decided to continue investigation in the impugned FIR despite the settlement between the parties.

When this Court had granted interim protection to the petitioners, the respondent No.1 vide letter dated 29.12.2022 specifically asked respondent No.2 bank whether the agency should proceed with the criminal complaint lodged by the respondent No.2. The Bank vide letter dated 11.01.2023 had requested the Respondent No. 1 to await the final outcome of the writ petition. Proceeding to ignore the response of the Bank, respondent No.1 registered the impugned FIR on 21.02.2023.

Another thing to be kept in mind is the respondent No.2 bank appointed Mukesh Raj & Co to perform forensic audit of the petitioner No.1 company. The Forensic Audit report records that no fraud has been found in the transactions of petitioner No.1 company.

Concededly, respondent No. 2 has also declined to grant sanction against its two officials as per the mandate of Section 17-A, as the investigation so far has not revealed any involvement of bank officials or public servants in the unlawful disbursement of funds from the bank.

10. It is now settled position of law that criminal cases having an overwhelmingly and predominately civil flavour, especially those arising out of commercial transactions ought to be quashed when the parties have



resolved their entire dispute by themselves. What is to be seen is whether such quashing would meet the ends of justice or would prevent the abuse of process of law. The Court considering quashing also has to examine whether the possibility of conviction is remote and bleak and whether continuation of criminal proceedings would put accused to great oppression, prejudice and injustice.

In a case such as the present one, where the FIR arises out of a dispute concerning loan transactions availed by borrower accused and lender bank, and the bank and accused arrive at an amicable settlement with the bank duly receiving the settlement amount, the character of the dispute is primarily civil in nature. Moreover, the settlement also means that the possibility of conviction in such cases is bleak and continuance of proceedings would amount to great oppression and prejudice.

11. The power of High Court under Section 482 Cr.P.C. to quash proceedings in matters wherein non-compoundable offences are involved is no longer res integra. The Supreme Court in B.S. Joshi v. State of Haryana¹ observed that Section 320 Cr.P.C. does not limit or control the powers vested in High Court under Section 482 Cr.P.C., and the High Court is empowered to quash criminal proceedings/FIR, even if non-compoundable offences are involved.

12. Similar views were taken by the Supreme Court in Nikhil Merchant (Supra), Manoj Sharma v. State & Ors.² and Shiji @ Pappu & Ors. v. Radhika & Anr.³ In Shiji (Supra), it was observed that: -

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¹ (2003) 4 SCC 675

² (2008) 16 SCC 1

³ (2011) 10 SCC 705



17. It is manifest that simply because an offence is not compoundable under Section 320 IPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 Cr.P.C. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of an offence by the parties before the trial court or in appeal on one hand and the exercise of power by the High Court to quash the prosecution under Section 482 Cr.P.C. on the other. While a Court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offences based on a settlement arrived at between the parties in cases where the offences are non-compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 Cr.P.C. are not for that purpose controlled by Section 320 Cr.P.C.

18. Having said so, we must hasten to add that the plenitude of the power under Section 482 Cr.P.C. by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider



the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.
xxx”

13. It was also held in Sanjay Bhandari v. CBI⁴ and Gian Singh (supra) that criminal proceedings arising from civil, commercial, or financial disputes may be quashed where the compromise between parties renders the possibility of conviction remote and continuation of the case would cause undue prejudice to the accused.

14. Similarly, the Supreme Court of India in CBI, ACB, Mumbai v. Narendra Lal Jain reported as **(2014) 5 SCC 364** has reiterated:

“14. In the present case, having regard to 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 had thought it fit to invoke its power under Section 482 CrPC. We do not see how such exercise of power can be faulted or held to be erroneous. Section 482 of the Code inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available under Section 482 CrPC it must be remembered that continuance of a criminal proceeding 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 CrPC.”

15. Recently, the Supreme Court in Parbatbhai Aahir @ Prabatbhai v. The State of Gujarat⁵ reported as, observed that criminal cases involving offences which arise from commercial, financial, mercantile, partnership or

⁴ **2015 (10) AD (Delhi)**

⁵ (2017) 9 SCC 641



similar transactions may, in appropriate circumstances, be quashed where the parties have resolved the matter.

16. A gainful reference in this regard may be made to the recent decision of the Supreme Court in Tarina Sen v. Union of India⁸ wherein noting the One Time Settlement entered into between the borrowers and the Bank, the criminal proceedings initiated against the appellants under Sections 120-B, 420, 468, 471 IPC & Sections 13(2) read with 13(1) (d) of the PC Act, 1988 were quashed. The relevant extracts of which are reproduced hereinunder:

11. The facts in the present case are not in dispute. It is not disputed that the matter has been compromised between the borrowers and the Bank. It has also not been in dispute that, upon payment of the amount under the OTS, the loan account of the borrower has been closed.

12. Therefore, the only question would be, as to whether the continuation of the criminal proceedings against the present appellants would be justified or not.

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15. Relying on the earlier judgments of this Court, we have held that in the matters arising out of commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute, the High Court should exercise its powers under Section 482 CrPC for giving an end to the criminal proceedings. We have held that the possibility of conviction in such cases is remote and bleak and as such, the continuation of the criminal proceedings would put the accused to great oppression and prejudice.

17. On similar lines is another decision of the Supreme Court in

⁸ 2024 SCC OnLine SC 2696



K.Bharthi Devi and Anr v. State of Telangana and Anr.⁶ wherein the Court noted that:-

“34. It has been held that there are certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or a family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, the High Court would be justified in quashing the criminal proceedings, even if the offences have not been made compoundable.

Thus, in view of the above facts that the parties have resolved their dispute and bearing in mind that no allegations of fraud sustain, no useful purpose will be served in continuing with the proceedings.

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44. The facts in the present case are similar to the facts in the case of Sadhu Ram Singla and others (supra) wherein a dispute between the borrower and the Bank was settled. In the present case also, undisputedly, the FIR and the chargesheet are pertaining to the dispute concerning the loan transaction availed by the accused persons on one hand and the Bank on the other hand. Admittedly, the Bank and the accused persons have settled the matter. Apart from the earlier payment received by the Bank either through Equated Monthly Instalments (EMIs) or sale of the mortgaged properties, the borrowers have paid an amount of Rs.3,80,00,000/- under OTS. After receipt of the amount under OTS, the Bank had also decided to close the loan account. The dispute involved predominantly had overtures of a civil dispute.

45. Apart from that, it is further to be noted that in view of the settlement between the parties in the proceedings before the DRT, the possibility of conviction is remote and bleak. In our view, continuation of the criminal proceedings would put the accused to great oppression and prejudice.”

18. Pertinently, the decisions relied upon by learned Special Public

⁶ (2024) 10 SCC 384



Prosecutor on behalf of the respondent No.1/CBI are distinguishable as they are primarily concerned with settlement sought to be effected in cases where there are allegations of bank frauds. In those cases, there were specific allegations of forgery and fraud against the accused persons. However, as previously noted, the allegations of fraud against the petitioners are negated in terms of the forensic audit which clearly states that though there may have been instances of non-compliance with sanction terms or guidelines, however, no fraud was found in the transactions spanning over two years before and after the accounts being declared as NPAs. Moreover, the decisions by the Supreme Court in Tarina Sen (Supra) and K. Bharthi Devi (Supra) were rendered in context of bank-borrower disputes wherein taking note of the factum of settlement and issuance of no dues certificate, the criminal proceedings were quashed.

19. Keeping in mind the factum of the one-time settlement between the parties, factum of no fraud being detected in the audit and in light of the principles established in the aforementioned decisions, the present petition is allowed and the FIR in RC No.2232023A003 and all consequential proceedings emanating therefrom, are hereby quashed.

At this stage, learned counsel for the petitioner, on instructions, submits that the petitioner is willing to voluntarily contribute a sum of Rs.30 lacs and to this effect, an affidavit has also been placed on record. Note is taken of the said affidavit. Considering that the prayers are allowed, it is directed that out of the aforesaid volunteered cost:

i) Rs. 15 lacs is to be deposited by the petitioner with 'Avlamban Fund Scheme 2024', a scheme formulated to provide financial aid to the acid attack victims (Account No. 43599660056 at State Bank of India, Tis Hazari



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Branch, Delhi with IFSC SBIN0000726 & MICR Code 110002126),

ii) Rs.10 lacs is to be deposited with the Delhi State Legal Services Authority (Account No.18580110053263, UCO Bank, Branch Rouse Avenue, IFSC: UCBA0003364). The amount so deposited shall be utilized by the Delhi State Legal Services Authority for providing counselling/psychological support to POCSO victims requiring such assistance,

iii) Rs. 2.5 lacs is to be deposited with Delhi High Court Bar Association Sports Club (A/c No.15530110006412) and

iv) Rs 2.5 lacs is to be deposited with the Delhi High Court Staff Welfare Fund.

20. Let the aforesaid amounts be deposited as directed within 6 weeks from passing of the order and proof of deposit be submitted with the I.O.

21. Accordingly, W.P.(CRL) 2169/2023 is disposed of in the above terms. Resultantly, W.P.(CRL) 596/2023 seeking stay on the complaint proceedings initiated before respondent No.1 and directions to initiate no coercive measures, would not survive following the quashing of RC No.2232023A003 and is disposed of as infructuous.

22. The pending applications in both the petitions are also disposed of as infructuous.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 04, 2024

ga/na