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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 5808/2022 & CRL.M.A. 22838/2022**

RAHUL SINGH

.....Petitioner

Through: Mr. Sonal Alagh, Mr. Gaurav Mitra,
Mr. Aviral Kapoor, Mr. Jigyasa
Parganiha and Mr. Rishabh Kapoor,
Advocates.

versus

BANK OF BARODA

.....Respondent

Through: Ms. Praveena Gautam, Ms. Akanksha
Tyagi, Mr. Pawan Shukla and Ms.
Kanika Kalyan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of Complaint Case No.1994/2021, filed by the Respondent herein against the Petitioner herein for offences under Section 138 NI Act. The Petitioner has also prayed for setting aside the Order dated 28.08.2021, passed by the learned Metropolitan Magistrate, by which the learned Metropolitan Magistrate has taken cognizance of the offence and summoning the Petitioner herein; and the Order dated 18.01.2022, passed by the learned Metropolitan Magistrate, issuing summons to the Petitioner herein.

2. Shorn of unnecessary details, the facts leading to the present Petition are as under:

a) It is stated that the Petitioner herein purchased a residential



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property bearing flat no. 3B-200, Tower No. 2nd, admeasuring 2441 sq. ft., Gold View Apartment, Big Sky Tower, Sector I, Pocket D, Shushant Golf City, Lucknow, UP – 226010 (*hereinafter referred to as 'the Property in question'*), which was developed by one Tulsiani Constructions & Developers Limited (*hereinafter referred to as 'the Builder'*). It is stated that for purchasing the property in question, the Petitioner herein availed a loan of Rs. 95,00,000/- from the Respondent Bank at the interest of 9.9% per annum. The loan was to be repaid in 300 equal monthly installments of Rs. 85,658/- each. It is stated that the property in question was mortgaged to secure the aforementioned loan. It is stated that the Petitioner herein in discharge of the liability had given a post-dated cheque bearing No.000076, drawn on HDFC Bank, Gurgaon, to the Respondent herein/Bank.

- b) Material on record indicates that a tripartite agreement (*hereinafter referred to as 'the TPA'*) was entered into between the Petitioner herein, the Respondent herein/Bank and the Builder on 29.09.2015. Relevant clauses of the said Agreement reads as under:

“4. That in the event of the Builder cancelling the said booking for any default committed by the Borrower(s) or the project is shelved by the Builder or for any other reason whatsoever, the Owner and Builder shall pay the entire amount received from Borrower(s) in their ration to the BOB.

5. That in the event of failure of the Builder to complete the project, the Builder shall pay the entire money so



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received by it from the Borrower(s) to the BOB.

6. That the Builder shall note in its records the charge and lien of BOB over the said flat. The Builder shall not transfer the said fiat to any other person without the prior written consent of the BOB.

17. That it is further made clear and understood by all the parties that the non completion of the project or the happening of any event shall not affect the obligations of the Borrower's) to repay the loan availed from the BoB,

18. That the said flat is free from all encumbrances, charges, lions, attachments, trusts, prior agreements, whatsoever or howsoever. The party at first part and second part will not do any act or deed which will affect the security of the flats/ or charge created in favour of BOB In any manner whatsoever.

19. That there is no order of attachment by the Income Tax Authorities or any other authority under any law for the time being in force nor any notice of acquisition or requisition has been received in respect of the said property;

20. That this Agreement shall not affect in any manner whatsoever the duties and obligations of the Borrower(s) and the terms and conditions agreed to by the Borrower(s) in the Loan Agreement and other documents executed in favour of BOB shall remain binding upon the Borrower(s).

21. That in case of acquisition, forfeiture/resumption of the said property, the BOB shall be entitled to get the compensation settled in respect of the said flat and to appear and not before the Collector/Revenue Officer/Estate Officer or any other concerned



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authorities, to sign any form, to give any statement, affidavit, application on Borrower's behalf, to receive the compensation in its own name and on the Borrower's behalf, to file appeal in any court for the enhancement of the compensation amount, to get the compensation amount enhanced and to receive the same.” (emphasis supplied)

- c) It is stated that in 2019, since the project was not going through, the Builder approached the Petitioner herein to buy back the property at the price on which it was sold. It is stated that the Petitioner herein accepted the proposal of the Builder and further it was agreed between the Petitioner and the Builder that the Petitioner would stop making payments of the pending instalments to the Respondent/Bank and the Builder would repay the pending loan amount.
- d) It is stated that the Petitioner herein defaulted in making the payment and the loan account of the Petitioner herein was declared as NPA.
- e) It is stated that when the Respondent herein/Bank deposited the cheque, being Cheque No.000076, dated 08.09.2020, drawn on HDFC Bank, given by the Petitioner herein in discharge of the liability, the said cheque was dishonoured with remarks “insufficient funds” on 11.09.2020.
- f) It is stated that a requisite notice under Section 138 of the NI Act was sent by the Respondent/Bank to the Petitioner herein asking the Petitioner to repay the amount within 15 days of the receipt of the said notice.
- g) It is stated that when the amount was not paid by the Petitioner



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herein within the stipulated time, a complaint, being CC No.1994/2021, was filed by the Respondent herein against the Petitioner stating that the Petitioner had taken a loan from the Bank and as on 15.02.2021, a sum of Rs.1,16,65,782/- is due and payable by the Petitioner.

- h) Material on record also discloses that the Builder contacted the Respondent/Bank and offered to pay Rs.1,01,00,000/- to the Respondent/Bank as a One Time Settlement. It is stated that the Bank wrote a letter dated 18.09.2021 to the Petitioner herein asking the Petitioner as to why the Bank should not accept the offer of the Builder.
- i) It is stated that the Petitioner herein vide e-mail dated 27.09.2021 responded to the letter sent by the Bank stating that the Petitioner is agreeable to the release of the property in question in favour of the Builder subject to the condition that all the claims of the Bank against the Petitioner be withdrawn and the Loan account of the Petitioner be deemed as closed.
- j) Summons was issued by the learned Metropolitan Magistrate on 18.01.2022. Vide Order dated 28.08.2021, cognizance was taken and summoning Order was issued by the learned Metropolitan Magistrate.
- k) These Orders have been challenged by the Petitioner in the present Petition.

3. Petitioner has approached this Court primarily contending that since the Petitioner has already accepted the offer of the Bank to release the property in question in favour of the Builder and the Builder is ready to



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repay the outstanding amount of loan to the Bank, the complaint cannot sustain. Reliance has been placed by the Petitioner on the Judgment of the Apex Court in Gimpex Private Limited v. Manoj Goel, (2022) 11 SCC 705, to contend that once a settlement has been entered into then the complaint under Section 138 of the NI Act cannot survive.

4. Notice in the present Petition was issued on 09.11.2022. Reply has been filed by the Respondent/Bank.

5. In the reply it is stated that the Petitioner has not disclosed about the TPA entered into between the Petitioner herein, the Builder and the Respondent herein, in the present Petition. It is stated that the Petitioner has violated the TPA by entering into an agreement with the Builder. It is further stated that before accepting the offer of the Bank, the Petitioner has not disclosed that the Petitioner has already released his rights qua the property in question in favour of the Builder. It is, therefore, stated that the Complaint and the proceedings emanating therefrom cannot be quashed.

6. Heard the learned Counsels for the parties and perused the material on record.

7. It is stated by the learned Counsel for the Petitioner that once the Builder has entered into a One Time Settlement with the Bank and the Bank has informed the Petitioner regarding the OTS and has asked the Petitioner as to whether the Petitioner is ready to release his rights qua the property in question and when the Petitioner has given his consent for the same, then it cannot be said that there is any debt due and payable by the Petitioner. He further states that in any even a settlement has been entered into between the parties and, therefore, the Complaint cannot survive. He places reliance on the Judgment of the Apex Court in Gimpex Private Limited v. Manoj Goel,



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(2022) 11 SCC 705, to contend that once a settlement has been entered into between the parties then the complaint under Section 138 of the NI Act cannot survive.

8. *Per contra*, learned Counsel for the Respondent/Bank states that the Petitioner could not have entered into an agreement with the Builder without taking permission from the Bank as the same is in violation of the TPA. He states that no settlement has been arrived at between the Bank and the Builder and the OTS amount has not been received by the Bank and, therefore, the liability of the Petitioner to the Bank still continues.

9. The facts of the case are that the Petitioner herein purchased a property in a project developed by the Builder and a Tripartite Agreement was entered into between the Petitioner herein, the Bank and the Builder. The Builder has given an OTS proposal to the Bank and there is no material to show that the OTS has been acted upon. The Bank has written a letter to the Petitioner asking him as to whether the Bank can accept the OTS proposal of the Builder or not and as to whether the Petitioner is prepared to release his claim over the property in question. At this juncture, it is pertinent to reproduce the letter sent by the Bank to the Petitioner and the reply given by the Petitioner to the Bank. Letter dated 18.09.2021 sent from the Bank to the Petitioner herein reads as under:

"Sir/Madam

Our Hari Nagar Branch sanctioned you a housing loan on 28.09.2015 for Rs 95 Lacs to purchase below mentioned scheduled property and loan was to be paid in 300 Equal monthly Instalments. But, due to non servicing of loan, your account slipped to NPA on 15.01.2018. We have issued several reminders and legal notices in the last more than 3 years to regularize your account. We also issued demand notice u/s 13(2)



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of SARFAESI Act 2002 on 04.02.2021 demanding you to pay all the bank dues within 60 days, but you have not yet responded any of our letter and miserably failed to pay the bank dues. We have also filed a suit for recovery before Hon'ble DRT II Delhi for Rs. 10796730 as on 14.11.2019 along with future interest, cost, charges and expenses and the said case is pending adjudication.

Now, your builder M/s Tulsiani Construction and Developers Ltd has approached our bank to pay Rs. 101 lacs within a months' time i.e. by September end, as One Time Settlement. Thus, kindly consider it as notice why we should not accept the offered amount by the builder and release the flats in his favour. If we do not receive any communication from your side within 2 days from the receipt of this letter/notice. It shall be presumed that you are no longer interested in acquiring back the flats to repaying bank dues and bank shall proceed by releasing that flat to the builder on his offer of Rs 101 Lacs. Schedule of Property: Equitable mortgage through TPA of residential flat No- Primary Security Equitable Mortgage through TPA of residents flat no.- Unit 3B/200 Tower 02, Golf View Apartment Big Sky Tower Sector- 1, Pocket D, Sushant Golf City, Lucknow, UP- 226010. Yours Faithfully(Chief Manager/Authorized Officer) "

Letter dated 27.09.2021 sent by the Petitioner to the Bank reads as under:

"Attention: Chief Manager/Authorized Representative

Ref: Response to your letter dated September 18, 2021 bearing reference no. BOB/ROSARB/2020-21/1809

Dear Sir

1. This is in reference to my account no. 533706000000444;



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2. At the very outset all your averments in your letter dated September 18, 2021 are denied;

3. Without going into the merits of your letter dated September 18, 2021, in the interest of protecting all parties interest, we are agreeable to the release of Unit No. 3B/200, Tower 2, Golf View Apartment, Big Sky Tower, Sector -1, Pocket D, Sushant Gold City, Lucknow -226010 in favour of the builder, namely Tulsiani Construction and Developers Limited, subject to the following:

(a) Release by the bank of all claims against me;

(b) The abovementioned account number being deemed closed; and

(c) Withdrawal of all actions against me, including any actions under relevant SARFAESI suits or recovery suits.

4. Please note that subject to your compliance of Para 3, we are agreeable that the builder under Para 3 pays 101 Lakhs to the bank and the bank releases the flat in the builder's name.

Warm Regards"

10. A perusal of the abovementioned letters shows that the OTS offer given by the Builder to the Bank has not been accepted or acted upon by the Bank and no agreement has been entered into between the Bank and the Petitioner herein. In the absence of any concrete proof of any agreement having been entered into between the Petitioner and the Bank, the contention of the Petitioner that the complaint should be quashed on the ground that the parties have entered into a settlement, cannot be accepted. In any event,



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when the Bank is denying that any kind of settlement has been entered into, it would be a matter of trial wherein the Petitioner has to prove that a settlement has been entered into between the parties and thereby there is no due payable by the Petitioner to the Bank and, therefore, the complaint under Section 138 of the NI Act must be quashed.

11. In several Judgments the Apex Court has held that quashing of a Complaint should be an exception and rarity rather than an ordinary rule. The inherent jurisdiction of the High Court is exercised only to prevent the abuse of the process of law or otherwise to secure justice. Way back in 1960 the Apex Court in R.P. Kapur v. State of Punjab, **1960 SCC OnLine SC 21**, has laid down the principle for quashing any criminal proceedings. Relevant portion of the said Judgment reads as under:

"6. Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561-A of the Code. The said section 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. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice.



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Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal



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evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide : In Re : Shripad G. Chandavarkar [AIR 1928 Bom 184] , Jagat Chandra Mozumdar v. Queen Empress [(1899) ILR 26 Cal 786] , Shanker Singh (Dr) v. State of Punjab [(1954) 56 Punjab LR 54] , Nripendra Bhusan Ray v. Gobind Bandhu Majumdar [AIR 1924 Cal 1018] and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar [ILR 47 Mad 722] ."

12. The said Judgment has been followed by the Apex Court in Gorige Pentaiah v. State of A.P., (2008) 12 SCC 531, wherein the Apex Court has observed as under:

"12. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for



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the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court; and*
- (iii) to otherwise secure the ends of justice.*

Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

Discussion of decided cases

14. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;*
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence*



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adduced clearly or manifestly fails to prove the charge."

13. Similar views have been taken by the Apex Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 and Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692.

14. Applying the law laid by the Apex Court to the facts of the present case, it can be seen that the material on record does not establish any concrete acceptance of the proposal of the Builder by the Bank. There is also nothing on record to show that the Bank has approved the counter offer given by the Petitioner in its letter dated 27.09.2021 which has been quoted above. The Judgment of Gimpex Private Limited (supra) will not apply in this case as the bank has not accepted the proposal of the builder and the Petitioner has only given a conditional acceptance of the offer of the bank. The complaint, therefore, cannot be quashed at this juncture.

15. In view of the above, this Court is not inclined to quash the complaint at this juncture. It is always open for the Petitioner to substantiate that the agreements have been entered into between the Petitioner and the Bank by leading evidence during trial to show that the Petitioner has discharged his liability and that the Builder has taken over the liability of the Petitioner.

16. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

OCTOBER 08, 2024

Rahul