IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.11671, 11677, 12862 & 12867 of 2025 and
Crl.M.P.Nos.7780, 7783, 8510 & 8514 of 2025

1.M.P.Balaji Prakasam ... Petitioner/A4 in Crl.O.P.No.11671 of 2025

2.M/s.Galazy Amaze Kingdom Ltd.,
Represented by A1 Palanichamy (Died),
A2 viz., Parameswari & A3 viz., M.P.Padmavathy Devi,
No.33, Balaji Nagar,
Ambattur Estate,
Chennai-600 053. ... Petitioner/A5 in Crl.O.P.No.11677 of 2025

3.P.Parameswari ... Petitioner/A2 in Crl.O.P.No.12862 of 2025

4.M.P.Padmavathy Devi ... Petitioner/A3 in Crl.O.P.No.12867 of 2025

Vs.

State By:
Superintendent of Police,
CBI/EOW,
Rajaji Bhavan, III Floor,
Besant Nagar,
Chennai-600 098. ... Respondents in all petitions

COMMON PRAYER: Criminal Original Petitions are filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to call for the records and quash the proceedings in C.C.No.66 of 2016 on the file of the learned Principal Sessions Judge, Chennai as against the petitioners/A4, A5, A2 & A3.

For Petitioners	:	Mr.A.Nagarajan in all petitions
For Respondent	:	Mr.B.Mohan, Special Public Prosecutor for CBI Cases in all petitions.

COMMON ORDER

All these Criminal Original Petitions have been filed by the petitioners/A4, A5, A2 & A3 to quash the proceedings in C.C.No.66 of 2016 pending on the file of the Principal Sessions Court, Chennai.

2.Originally the charge sheet was filed before the learned Additional Chief Metropolitan Magistrate, Egmore, taken on file as C.C.No.15214 of 2008 and later transferred to the file of the Principal Sessions Judge, Chennai and renumbered as C.C.No.66 of 2016 since the Enforcement

Directorate, Chennai filed a complaint against A4 herein, Proprietor of M/s.Gain-N-Nature Food Products.

3.Since all these petitions arise out of C.C.No.66 of 2016, the same are taken up for consideration and disposed by way of common order. For convenience and clarity, the petitioners are referred to as accused, as per their rank, in the charge sheet.

4.The case of the prosecution is as follows:

(i)A1/Palanichamy is the father of A3 & A4 and husband of A2. A5 is M/s.Galaxy Amaze Kingdom Limited, Ambattur Chennai represented by A1 to A3 (In short "GALAXY") and A6 is one P.G.Selvaraj.

(ii)A1 was managing GALAXY, in which, his wife/A2 and daughter/A3 are Directors. His son/A4 was Proprietor of M/s.Gain-N-Nature Food Products (In short "GAIN"). During the month of May 2004, GAIN approached United Bank of India, Regional Office, Chennai for various credit facilities such as Term Loan of Rs.1.30 Crore, Cash Credit of

Rs.2 Crore, Bills Discounting of Rs.0.50 Crore and Inland LC of Rs.0.50 Crores and the same were sanctioned by the United Bank of India, Regional Office, Chennai.

(iii)A current account in the name of GALAXY was opened as the company stood as Guarantor to the borrower firm GAIN. A1 and A2 offered their properties as collateral securities along with required documents for creation of equitable mortgage. The investigation revealed that GAIN is a Proprietorship firm of A4 running factory at No.33, Balaji Nagar Estate, Ambattur, Chennai and they were manufacturing Nutritional Food Supplement under the brand name of “Nutrivate”. The entire marketing was done by GALAXY.

(iv)A1 to A6 entered into criminal conspiracy at Chennai and other places to cheat the United Bank of India by creating forged and fake documents in the name of fictitious firms, fraudulently and dishonestly, availed credit facilities in the name of GAIN. Further, false invoices, delivery challan etc., purported to have been given by M/s.K.K.Tools, M/s.Srinivasa & Company, M/s.As Pee Jay Enterprises non-existing firm for which A6 claimed himself as Proprietor. The bank facility amount was deposited in the firm's account subsequently withdrawn by A6 in pursuance of criminal conspiracy without any genuine business. Further, by submitting false invoices, delivery challan in the name of M/s.Premier Machine Tools, for which, A6 was Proprietor, the amounts were diverted. By March, 2006, the accounts turned Bad. But the one time bill discounting limit of Rs.197.63 lakhs was availed in the name of GALAXY for discounting 66 supply bills worth of Rs.263.50 lakhs drawn on M/s.Srinivasa & Company, Chennai and M/s.Ratna Enterprises, Bangalore.

(v)GALAXY got these false bills discounted under Bill Discounting Limit with United Bank of India, T.Nagar, Chennai. The proceeds out of the false discounted bills were utilized for the adjustment of overdue outstanding of the principal borrower GAIN. On the due date, all 66 discounted bills were returned unpaid due to its false nature. Thus, both the accounts of GAIN and GALAXY declared NPA. Thereafter, the Bank conducted internal investigation, unearthed fraud and forgery committed by the accused and lodged a complaint to the respondent. The respondent registered FIR on 27.12.2007, filed charge sheet on 29.08.2008 against A1 to A6 for offence under Sections 120-B r/w 420, 467, 468, 471 IPC. So far 33 witnesses examined and 409 exhibits marked. In this case, the prime accused A1/Palanichamy, Managing Director of GALAXY passed way on 19.10.2015.

4.The submissions of learned counsel for the petitioners are as follows:

(i)The learned counsel for the petitioners submitted that the entire reading of the complaint and final report as well as evidence given by PW1 to PW33 if taken as a whole uncontroverted would go to show that no offence said to have committed by the petitioners. He further submitted that there is no conspiracy between the petitioners who are all from one family except A6 and no bank official accused of any offence in this case. The petitioners obtained all sanctions from the officers of the bank and availed the loan facilities. Since the business predication failed and the business faced unforeseen circumstances, the entire financial cycle got chocked. At the time of availing loan facilities, property security was furnished and mortgage of property favouring the bank created, hence the loans were all secured with properties. Since the accounts became NPA, the bank filed recovery proceedings before the Debt Recovery Tribunal in O.A.Nos.129 & 130 of 2008. While the proceedings were pending before the Debt Recovery Tribunal, the petitioner approached the bank for One Time Settlement, the liabilities of GALAXY and GAIN and properties of the family members of father, mother, son and sister are taken over by M/s.ASREC India Private Limited by way of Assignment Agreement, dated 02.04.2009. Pending civil proceedings on 29.05.2018, again the petitioners approached M/s.ASREC India Private Limited and offered One Time Settlement proposal of Rs.4.65 Crore and to show their bonafide, paid Rs.50 lakhs on that day. M/s.ASREC India Private Limited accepted and issued sanction letter on 22.06.2018. The entire agreed amount of Rs.4.65 Crore was settled by six installments commencing from 29.05.2018 to 17.10.2018 and M/s.ASREC India Private Limited issued No Due Certificate dated 20.11.2018 and there is no outstanding due for the bank and there is no wrongful loss to the bank.

(ii)He further submitted that during the year 2004 to 2006, the credit facilities sanctioned to GAIN for Rs.286.16 lakhs and GALAXY for Rs.184.27 lakhs declared NPA. Prior to declaring the accounts as NPA, a sum of Rs.94,32,006/- paid by way of part principal and interest and a sum of Rs.4.65 Crore by One Time Settlement. Adding up to the earlier payment, in total GALAXY and GAIN paid Rs.5,59,32,006/- for the borrowed amount of Rs.470.55 lakhs. Thus, United Bank of India has no subsisting grievance or claim with regard to civil liability and there is no monetary loss suffered by the Bank and the settlement is mutual and acceptable.

(iii)He further submitted that after the final report was filed before this Court, A1/Palanichamy who was carrying out the entire business of GALAXY and GAIN and who was the person in charge of day to day affairs of all financial dealings and business activities, passed away on 19.10.2015 and charge against him got abated. The petitioners, who are family members, are only name lenders, nothing more. A2 being the wife, she had to abide by her husband/A1 and had nothing to do with the business, she was a house wife and she also gave her properties in mortgage. A3/daughter was studying college, completed her Degree of Bachelor of Bank Management in April, 2003, thereafter Degree of Master of Science in Information Technology during April, 2005, she was only a student attending the college and University. What was the business transactions and what was its activities is not known to her and it was completely at the hands of her father/A1. Likewise A4 completed his Bachelor Degree of Business Administration April 2002 and PG Diploma in Marketing Management in Loyolo Institute of Vocational Education and he was in the brim of his youth and had only gone by his father and nothing more.

(iv)He further submitted that initially the complaint was against the petitioners and bank officials under the Prevention of Corruption, but later none of the bank officials arrayed as accused and the charges of Prevention of Corruption Act dropped confirming that the entire bank procedures and banking process rightly followed and there is no conspiracy, collusion or false representation by the petitioners. Now, the entire loan dues settled, hence there is no monetary loss. In this case, though forgery is one of the offence, there is no concrete material to prove any forgery committed at the instance of the petitioners. Further, the prosecution had not proved that the machineries and other materials supplied under the bills not available.

(v)He further submitted that non payment of any part of loan facility provided by the bank would not *ipso facto* give rise to a criminal charge. A3 in this case earlier filed a quash application in Crl.O.P.No.11650 of 2019 and later, it was withdrawn with a direction that A3 can very well raise all the points in her defence. The learned counsel for the petitioners fairly submitted that as regards A4, the Enforcement Directorate lodged a complaint which is pending trial before the learned Principal Sessions Judge, Chennai. With regard to A2, wife of A1, except for signing in the account opening form and in some documents of the bank, no overtact is attributed and no witness spoken against her. With regard to A3, LW36/PW32 one Janakiraman projected against A3, he refers to Exs.P218 to P231, invoices of GALAXY and he does not state anything about A3. His evidence is that he signed all the invoices and negotiated with the bank.

It is further to be seen that on the due date, the invoices and goods were returned. This is the only stray incident which is projected against A3 who just completed her college at that time. A5 is a GALAXY Company which was managed by A1 till his death. The petitioners after passing of A1, had taken strenuous efforts and settled all dues to the Bank.

(vi)In support of his submissions, the learned counsel for the petitioners relied on the following decisions for the point that the Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is *prima facie* constituted, such offence is a compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating.

- *Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591.*
- *B.S.Joshi and others v. State of Haryana and another reported in (2003) 4 SCC 675.*

- *Nikhil Merchant v. Central Bureau of Investigation and another reported in (2008) 9 SCC 677.*
- *Manoj Sharma v. State and others reported in (2008) 16 SCC 1.*
- *Jayrajsinh Digvijaysinh Rana v. State of Gujarat and another reported in (2012) 12 SCC 401.*
- *Gian Singh v. State of Punjab and another reported in (2012) 10 SCC 303.*
- *Central Bureau of Investigation, ACB, Mumbai v. Narendra Lal Jain and others reported in (2014) 5 SCC 364.*
- *Narinder Singh and others v. State of Punjab and another reported in (2014) 6 SCC 466.*
- *Gold Quest International Private Limited v. State of Tamil Nadu and others reported in (2014) 15 SCC 235.*
- *Central Bureau of Investigation v. Sadhu Ram Singla and others reported in (2017) 5 SCC 350.*
- *Satishchandra Ratanlal Shah v. State of Gujarat and another reported in (2019) 9 SCC 148.*
- *Central Bureau of Investigation, New Delhi v. B.B.Agarwal and others reported in (2019) 15 SCC 522.*
- *Kothari Polymers Ltd., and others v. SIU(X)/SPE/CBI reported in 2022 SCC OnLine SC 2078.*
- *Tarina Sen v. Union of India and another reported in 2024 SCC OnLine SC 2969.*

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- *K.Bharathi Devi and another v. State of Telangana and another reported in (2024) 10 SCC 384.*
- *Suresh C.Singal and Ors., v. The State of Gujarat and Ors., reported in MANU/SC/0491/2025.*

(vii)Referring to ***Nikhil Merchant's*** case (cited supra), the learned counsel submitted that even if the offence involved are not compoundable in nature, considering the facts and circumstances, based on the compromise, the case can be compounded. Referring to ***B.S.Joshi's*** case (cited supra), the learned counsel submitted that though the forgery was not included one of the compoundable offences, but the Apex Court had held that in view of the compromise arrived between the Company and the Bank, technicality should not be allowed to stand in the way of quashing the criminal proceedings. This aspect is followed in the case of ***Manoj Sharma's*** case (cited supra).

(viii)The Hon'ble Apex Court in ***Gian Singh's*** case (cited supra) had referred to ***B.S.Joshi's*** case (cited supra), ***Nikhil Merchant's*** case (cited supra) and ***Manoj Sharma's*** case (cited supra) and also referred to all previous cases and finally held that the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i)to secure the ends of justice or (ii)to prevent abuse of the process of any Court. Further, it had held that before exercise of such power, the High Court must have due regard to the nature and gravity of the crime and also held that the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

(ix)The learned counsel further submitted that the petitioners are wife, daughter and son, and it is A1 who was the man behind the entire business and reason for the petitioners now standing in the present situation and he passed away on 19.10.2015. In view of the above, there is no criminality on the surveying accused, hence there is no justification to allow prosecution to continue against the petitioners. This view is reiterated by the Hon'ble Apex Court in ***B.B.Agarwal's*** case (cited supra) wherein it had held that looking into the facts and documents of the above case, it is clear that no criminality issue is found involved not withstanding the settlement of the case between the petitioners and the bank.

(x)In ***Kothari Polymer's*** case (cited supra), at the stage of 313 Cr.P.C, finding that the bank has given no due certificate; due amount paid to the bank; further the sanction for bank manager denied and only the private persons were facing trial, the Hon'ble Apex Court allowed the case to be quashed even at that stage but with a cost. In ***Kothari Polymer's*** case, the case was pending for more than 18 years. Following the same, the Hon'ble Apex Court in ***Tarina Sen's*** case (cited supra), had quashed the proceedings of the Directors who are the wives of other Directors despite the Executive Directors their husbands died finding that as per OTS the loan amount was paid and loan account has been closed and the compromise has been arrived between the borrower and the bank and hence, continuation of the criminal proceedings would not be justifiable.

(xi)Following the same, the Hon'ble Apex Court in ***K.Bharathi Devi's*** case (cited supra) had held that A3 and A4 who are wives of A2 and A1 and Directors of the Company had got into the entanglement because of their matrimonial status. The business loan availed by their husband have become NPA, criminal prosecution initiated, charge sheet filed, and filed a quash application, the Hon'ble Apex Court finding that One Time Settlement arrived, issue had been resolved between the Bank and the Borrower and further the petitioners are only female members of the family and being the wife of the Executive Director, the Hon'ble Apex Court quashed the proceedings referring to the earlier judgment of the Hon'ble Apex Court.

(xii)The Hon'ble Apex Court in ***Suresh C.Singal's case*** (cited supra) in a similar circumstances, finding that the loan has been repaid, had approved quashing of the case even in case of non compoundable offences.

5.The submissions of learned Special Public Prosecutor for CBI Cases are as follows:

(i)The learned Special Public Prosecutor filed counter in all the petitions and submitted that in this case, FIR registered on 27.12.2007 on the complaint given by United Bank of India on 19.12.2007, on completion of investigation charge sheet filed on 29.08.2007 against six persons for the offence of forgery, conspiracy, cheating under Sections 120(B) r/w 420, 467, 468 and 471 of IPC, thereafter charges framed in this case against A1 to A6 on 14.05.2009. So far 33 prosecution witnesses examined and 409 exhibits marked as documents. In this case, the prosecution evidence completed in the year 2016, the accused recalled some prosecution witnesses and final questioning under Section 313 Cr.P.C commenced on 02.12.2022 and was completed on 01.03.2023. Thereafter, the accused examined the defence witness DW1 on 14.07.2022 and marked Ex.D1. In

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this case, A1, the head of the family passed away on 19.10.2015. The written arguments on the side of the prosecution filed on 08.02.2024 and it was pending for defence side arguments for more than a year till 07.04.2025 and now the case posted for judgment on 29.04.2025. At this stage, belatedly the present petitions filed to further protract the proceedings.

(ii)He further submitted that the account of A4 and A5 became NPA with a liability of Rs.470.55 lakhs in the year 2007. Hence, GALAXY/A5 and A4, Proprietor of GAIN were facing SARFAESI proceedings before the Debt Recovery Tribunal. By protracting the proceedings, the accused got OTS negotiated for Rs.465 lakhs with M/s.ASREC India Private Limited in 2018 and by letter dated 22.10.2018, M/s.ASREC India Private Limited closed the liability of the accused owed to the United Bank of India. After entering into OTS settlement, A3, daughter of A1 filed Crl.O.P.No.11650 of 2019 to quash the charges in this case, which was not entertained, dismissed as withdrawn, with a liberty to raise all grounds in defence before the Trial Court.

(iii)He further submitted that the petitioners relying upon the case of ***Kothari Polymers's*** case (cited supra) have raised the same ground of settlement to quash the proceedings. On the facts and circumstances of the present case, the decision of ***Kothari Polymers*** is not applicable to the petitioners. In ***Kothari Polymers's*** case (cited supra) the accused were only charged for offence under Section 420 IPC which is an compoundable offence. But here the petitioners are charged for offence under Sections 467, 468 and 471 IPC which are non compoundable.

(iv)He further submitted that the petitioners relied on "***Eventus Integrated Management Pvt., Ltd., v. State and Ors.,*** reported in ***MANU/TN/2458/2023***", wherein this Court quashed non compoundable offence of Sections 468 and 471 IPC but the facts therein are not identical to the facts of the present case. In this case, there are specific overtact attributed against each of the accused in misusing the forged and bogus bills/invoices/bills of exchange in the name of bogus business entities. The plea of the petitioners/A2 and A3 that they are only women having no role of knowledge of transactions cannot be countenanced in the facts and circumstances of the case particularly when they participated in the transactions with the United Bank of India by addressing letters to the Bank enclosing the bogus bills/invoices/bills of exchanges in the name of bogus business entities and requesting the bank to release funds based on such forged documents. Similarly, A4, the son of A1, cannot take a defence that he was an youngster of 22 years of age and was not aware of the transactions particularly when he is the Proprietor of separate entity *viz.,* GAIN. A4 approached the bank, obtained secured credit facilities from the bank and thereby diverted the funds and swindled the public money using bogus bills/invoices/Bills of Exchanges. He further submitted that most of the transactions in this case wherein money was siphoned out of the bank be it through A5 Company or through the Proprietary concern independently owned by A4 to the third party bogus entities created by A6, such amounts were re-routed back into the accounts of A5 or A4. This would clearly establish the deep rooted planning and conspiracy in committing the offences in this case. The plea of A2, A3, A4 that they were towing the dictum of A1, head of the family and did not have any role in the transactions of the present case, on a demurrer taken to be true, it is only within the exclusive knowledge of A2 to A4, hence the burden is on them to prove such facts.

(v)He further submitted that it is well settled by plethora of judgments of the Hon'ble Apex Court and this Court that while exercising the extraordinary jurisdiction under Section 482 Cr.P.C, the Court should be absolutely slow and circumspect in appreciating defence versions of the case. Further, the plea of quashing of criminal charges against the accused, the Court shall only consider the documents and statements filed along with the charge sheet and shall not put to test its veracity and probative value which is the domain of the trial Court to appreciate during trial upon leading of evidence.

(vi)He further submitted that there are clear materials against A4 who is the Proprietor of GAIN who submitted to the bank fake bills of a fictitious firm named M/s.K.K Tools of which A6 posed as the Proprietor and discounted those bill and siphoned amount to the tune of Rs.53,46,548/-. The jurisdictional Postman clearly deposed that there was no firm in the name of M/s.K.K.Tools in the given address. Further, the jurisdictional Commercial Tax Officers confirmed that M/s.K.K Tools not registered under TNGST. Likewise, M/s.Premier Machine Tools of which A6 is projected as Proprietor through him the amount re-routed to A5 company. During the relevant period, IT Returns of M/s.Premier Machine Tools were shown to be of much less value which has been proved by the evidence. A4 transaction with M/s.As Pee Jay Enterprises have also proved to be forged. As regards A3, it is seen that A5 Company submitted 53 bogus bills/invoices as though they had made sale of their product to M/s.Ratna Enterprises to the tune of Rs.2.03 Crore which were discounted by United Bank of India and the money has been siphoned out whereas not a single product was supplied to the said M/s.Ratna Enterprises. The statement of LW36 Janakiraman of M/s.Ratina Enterprises and LW37 Anandraman the Manager of Ing Vysya Bank clearly established that no supplies were made to M/s.Ratna Enterprises and none of the 53 bills presented by A5 company to M/s.Ratna Enterprises and discounted through the United Bank of India were honoured by M/s.Ratna Enterprises through its bank viz., Ing Vysya Bank. As regards A2, she had signed in the account opening form of A5 Company, she had also executed documents for A5 with the Bank.

(vii)Further, the learned Special Public Prosecutor produced typed set to show that credit sanctioning letter favouring A4 and A5 by the Bank and the account opening form of A6 with South India Bank and Federal Bank and A4 presenting the invoices of fictitious firms. Further, he produced the Reserve Bank of India circular, dated 01.07.2016 and referred to 8.12.3 wherein no compromise settlement involving a fraudulent borrower is allowed unless the conditions stipulate that the criminal complaint will be continued. Thus, there is a bar for the banks to give no objection for quashing of the case.

(viii)In support of his submissions, the learned Special Public Prosecutor relied on the judgment of Hon'ble Apex Court in the case of "***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and ors., v. State of Gujarat and anr.,*** reported in ***2017 3 MWN(Cri) 321***" for the point that during the pendency of trial and when the matter is at the stage of arguments, the High Court should normally refrained from exercising its power under Section 482 of the Code and in such cases the trial Court would be in a position to decide the case finally on merits. Further, referred to the judgment of Hon'ble Apex Court in "***Md.Allauddin Khan v. The State of Bihar & Ors.,*** reported in ***(2019) 2 SCC Crl. 734***" for the point that mere pendency of civil suit is not an answer to the question as to whether a case under Sections 323, 379 r/w 34 IPC is made out or not. Further, the High Court fell in error and held that there are contradictions in the statement of witnesses on the point of occurrence. These facts are relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties.

(ix)In the case of "***Central Bureau of Investigation v. Aryan Singh etc.,*** reported in ***(2023) 18 SCC 399***" the Hon'ble Apex Court held that at the stage of discharge and/or while exercising the power under Section 482 Cr.P.C, the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not"

6.This Court considered the rival submissions and perused the materials available on record.

7.The undisputed fact is that A1/Palanichamy is the Managing Director of GALAXY/A5 and A2, A3, wife and daughter of A1, are Directors of GALAXY. A4 son of A1/Palanichamy is the Proprietor of GAIN. In this case, during the year 2004 to 2006, GAIN availed credit facilities from United Bank of India, T.Nagar Branch, Chennai. GALAXY discounted 66 bills worth of Rs.263.50 lakhs and the account of A5 and A4 became NPA and they caused wrongful loss of Rs.470.55 lakhs to the United Bank of India. The case registered on the complaint of United Bank of India on 27.12.2007, on completion of investigation, charge sheet filed on 29.08.2008 before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, taken on file as C.C.No.15214 of 2008. The Enforcement Directorate lodged a complaint against A4 herein before the learned Principal Sessions Judge, Chennai/Special Judge, hence the present case in C.C.No.15214 of 2008 transferred to the file of the Principal Sessions Court, Chennai, renumbered as C.C.No.66 of 2016. In this case, so far

PW1 to PW33 examined and Exs.P1 to P409 marked. On the side of the defence, DW1 examined and Exs.D1 to D22 marked. At this stage, the present petitions filed.

8.The primary ground assailed by the learned counsel for the petitioners is that in this case, the United Bank of India had initiated SARFAESI proceedings before the Debt Recovery Tribunal in O.A.Nos.129 and 130 of 2008. In the DRT proceedings, M/s.ASREC India Private Limited had taken over the liabilities of GALAXY and GAIN and of the petitioners by way of assignment agreement, dated 02.04.2009 from the bank. Pending civil proceedings on 29.05.2018, the petitioner approached M/s.ASREC India Private Limited and offered OTS proposal of Rs.4.65 Crore and to show their bonafide, an amount of Rs.50 lakhs paid on the same day. Considering this proposal, M/s.ASREC India Private Limited accepted and issued sanction letter on 22.06.2018. The entire amount of Rs.4.65 Crore by six intallments commencing from 29.05.2018 to 17.05.2018 and M/s.ASREC also issued no due certificate, dated 20.11.2018 and as such there is no outstanding due for the bank and there is no monetary loss to the bank. In this case, the settlement were made by the petitioners after A1 passed away on 19.10.2015. Till his life time, it was A1 who was dealing with the bank and all concern and who was running the business and was in control of entire transaction and day to day affairs of company business, negotiations of the bank, approaching the dealers, sourcing the materials, machineries etc. The petitioner being the family members *viz.,* wife, daughter and son of A1 had to follow the dictum of A1, head of the family.

9.In this case, it is seen that A2 and A3 signed only the current account opening form of GALAXY as Directors and further submitted the copy of Memorandum of Association and Article of Association which is Ex.P35. Other than that there is nothing against A2. As against A3, Exs.P218 to P231 are projected against her which are the invoice and covering letter addressed to M/s.Ratna Enterprises, Bangalore and to the Bank. Admittedly, A3 completed the Degree of Bachelor of Bank Management from Madras University during April, 2003 and completed the Degree of Master of Science in Information Technology from Madras

University during April, 2005. Ex.P218 is letter, dated 02.02.2006 and Ex.P231 is a letter, dated 04.03.2006 *i.e.,* during the period 02.02.2006 to 04.03.2006, the letter and invoices have been issued. On perusal of the statements and evidence produced, it is seen that PW1 is the Senior Manager of Vigilance during the period 2006-2007 who conducted investigation with regard to GALAXY and GAIN and submitted a report on 03.10.2006. PW2 is the Branch Manager, United Bank of India, Coimbatore Branch. PW3 is the Postman. PW4 is the Assistant General Manager, South India Bank, Armenian Street, Chennai. PW5 is the Assistant Commercial Tax Officer, Mannadi. PW2 to PW5, PW8 are pertaining to M/s.K.K Tools.

10.PW6 is the officer of the United Bank of India, T.Nagar Branch during the year 2003 to 2007. His evidence is that credit facilities were given to GAIN and its Proprietor/A4. With regard to GALAXY, PW6's evidence is that A1, A2, A3 are Directors, they had signed the current account opening form and submitted Memorandum of Association and Articles of Association. As regards A2, PW6 further states that a factory

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site in the name of A2 have been given as security for the term loan. Further, he speaks about invoices in the name of M/s.Ratna Enterprises, Bangalore raised by GALAXY Exs.P218 to P231 and ING Vysya Bank letter to the United Bank of India Exs.P232 to P234. Apart from that as regards A2 and A3, there is no other indictment. Further, PW6's evidence is that M/s.Ratna Enterprises and M/s.Srinivasa & Company were mainly dealing with some other line of business and they had returned the goods covered under the bills GALAXY to A1, who sold it to other parties but not deposited the amount to the bank for clearing the bill liability.

11.The case projected against A3 is that PW32, the Office Manager of M/s.Ratna Enterprises confirms that he had come to Chennai during February/March 2006 and executed documents to the bank for supply of products to the company at the instance of Proprietor Mr.A.H.Ramesh Kumar and M/s.Ratna Enterprises was dealing in hospital necessities such as nutritious food items etc., and they were C and F Agency of GALAXY for distribution of their products. Now PW32's evidence is that the goods were sent by the cover of invoice and covering letter to the bank for credit facility. PW32 admits that they are dealing in hospital necessities such as nutritious food items, GALAXY is dealing with nutritious food is not in dispute and further at the instance of Proprietor, PW32 had come and executed bank documents as C and F Agent, the bills have been received, he endorsed the same, he does not dispute his signatures and endorsement, thereafter the goods were returned back to GALAXY. PW7 confirms that the goods were returned by M/s.Ratna Enterprises. The only averment is that in the covering letter, A3 had signed. The execution of documents, receipt of documents, acknowledgment of documents and thereafter, returning the documents to the bank all admitted, accepted by PW32 as well as PW7. In such circumstances, there is no question of any creation of forged documents by A3 who had just completed her college education during the relevant period.

12.Further, PW24, the Manager ING Vysya Bank confirms that M/s.Ratna Enterprises and its Proprietor A.H.Ramesh Kumar was having a current account Ex.P381 and bank statement account Ex.P382 and his branch receiving discounting of bills drawn by GALAXY to M/s.Ratna

Enterprises, acceptance of the bill and on the instructions of M/s.Ratna Enterprises the bills were returned to United Bank of India. Further confirms that M/s.Ratna Enterprises had given a letter informing that they returned goods. It is to be seen that A.H.Ramesh Kumar, Proprietor of M/s.Ratna Enterprises not examined for further clarification or indictment with regard to the transaction. Other than this, there is nothing against A3.

13.PW9 is the Civil Engineer and Valuer to the Bank, had given the valuation report. PW10 is the Panel Advocate of the Bank, who confirms the title of the property submitted as security. PW11 and PW12 are the Managers of State Bank of India. PW13 is the Branch Manager of Federal Bank of India. PW14 is the Chief Manager (Law), United Bank of India. PW15 is the building material supplier. PW16 is the Branch Manager ICICI Bank. PW17 is the Sub Registrar Ambattur. PW18 is the Postman, Thirumullaivoyal. PW19 is the Sorting Postman, Ambattur. PW20 and PW21 are Assistant Commercial Tax Officers. PW22 is the Commercial Tax Officer. PW23 is the Assistant Manager of ABN Amro Bank. They have not spoken anything about A2 and A3.

14.PW23 is the Assistant Manager, ABN Amro Bank who confirms that GALAXY had opened a deposit account and as per the said firm, it is Palanichamy (A1) who is the authorized person to operate the said account. PW25 is the Commercial Tax Officer who confirmed that A1 is the Managing Director of GALAXY. PW26 is the Commercial Tax Officer. PW27 is an Employer of M/s.Premier Machine Tools. PW28 is Axis Bank Manager, Anna Nagar who again confirms that it is A1/Palanichamy who had opened an account in his bank and he was the person who was operating the bank account. Further, Palanichamy/A1 opened an current account in the name of GALAXY and with a board resolution and Memorandum of Association and Article of Association (Ex.P393) confirmed that it was Palanichamy (A1) who was operating the account and entire transactions revolves around A1. As regards A2 and A3 they were only name lenders and nothing more. PW29 is from Pamba Agencies. PW30 is from M/s.Akshaya Finance Bharat Limited. PW31 is from Five Star Business Credit Limited, he confirms that it was Palanichamy (A1) who deposited the original title deeds and had taken the loan. None of these witnesses stated anything against A2 and A3.

15.As regards PW33/Investigating Officer, he confirms that he collected documents from ING Vysya Bank on 19.02.2008, but he does not state anything about examining and recording the statement of PW24. He confirms that he examined V.Janakiraman/PW32 but not examined or taken steps to record the statement of A.H.Ramesh Kumar, Proprietor of M/s.Ratna Enterprises. He states about the investigation conducted and confirms that no bank officials made as accused in the case. He further confirmed that as regards A2, she is one of the Directors of the Company and refers to Ex.P35. Though he initially states that A2 signed in few cheques, but he is unable to produce any one cheque to confirm the same. He admits that Palanichamy (A1) was the Managing Director of the Company who was the man behind A5 Company taking care of day to day affairs of the company. As regards A3, his answer is she has signed invoices, submitted to the bank for discounting purpose. From the above narration with regard to M/s.Ratna Enterprises and connected fact, it is clear that A3 signing in some letters is of no consequence. The Investigating Officer admits that the goods were taken possession and returned back but his indictment is that the goods were not physically moved. As C and F

Agent, it is for M/s.Ratna Enterprises to take possession of the goods and to distribute it and do business. He admits that he has not examined A.H.Ramesh Kumar, Proprietor of M/s.Ratna Enterprises, who accepted the bills and PW32 is a mere employee acted on the direction and instruction of his employer.

16.The evidence of DW1 confirms that the liabilities of GALAXY and GAIN loan all have been discharged with United Bank of India as per OTS and he had also produced Ex.D1. Thus, the contention that there is no material against A2 and A3, gains credence.

17.On the ground of compromise, the learned counsel for the petitioners relied on the decisions *viz.,* ***Nikhil Merchant***, ***B.S.Joshi***, ***Gian Singh*** and ***Narendra Lal Jain*** (cited supra) wherein the Hon'ble Apex Court approved the quashing of complaint when the offences have been compounded and even for non compoundable offences. But the only caveat is that the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences which have a serious impact on the society, not to be quashed. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions, the High Court may quash criminal proceedings because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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.

18.With regard to ***Kothari Polymers's*** case (cited supra), the case was at the stage of questioning under Section 313 Cr.P.C. The Hon'ble Apex Court compounded the offence following ***Narendra Lal Jain's*** case (cited supra) and held that in criminal cases having a predominantly civil character, especially where a settlement is arrived at after the alleged commission of the offence, the Court may be liberal in accepting the settlement and quashing the criminal proceedings but predominantly on "plea bargaining". In ***Tarina Sen's*** case (cited supra), the Hon'ble Apex

Court accepted the plea of the petitioners therein since they are womenfolk from the family.

19.In the case of ***K.Bharathi Devi*** (cited supra), the Hon'ble Apex Court referred to various judgments on this subject and finding that the case is at the initial stage and the petitioners are womenfolk of the family, had quashed the proceedings against them. Further reiterated the principle that even in cases of non compoundable offences where the parties have settled the matter between themselves, the cases can be quashed. However, this power is to be exercised sparingly and with caution. The guiding factor is that the quashing of the case would be to secure the ends of justice and to prevent abuse of process of any Court. Further, the Hon'ble Apex Court reiterates the position that the criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves. This includes non compoundable offence cases.

20.In the case of "***Narinder Singh and others v. State of Punjab and another reported in (2014) 6 SCC 466***" the Hon'ble Apex Court held that timing of settlement would also play a crucial role. Where the cases are at the stage of investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. Likewise when the charge is framed but yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably. But where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code. This principle is again reiterated by the Hon'ble Apex Court in the case of ***K.Bharathi Devi*** (cited supra).

21.There is no quarrel that the above case arises out of commercial transaction and now as per One Time Settlement, the Bank is paid its dues and the quash petition can be entertained, but for the stage of the case. In this case, admittedly, the case is at the advanced stage and short of rendering judgment.

22.In view of the above, this Court finds that entertaining the present Quash Petitions is not proper. It is for the trial Court to consider the plea of the petitioners on its own merits. The RBI Circular referred by the learned Special Public Prosecutor is of the year 2016 cannot have a binding on the above case.

23.A4 being the Proprietor of GAIN and it is submitted the Enforcement Directorate filed a complaint under the PMLA case is pending. Further, A5 Company is a facilitator for A4. In view of the above, this Court refrains from considering the contention of A4 and A5 and the same has to be decided during trial. The petitioners/A2 and A3, namesake Directors and womenfolk though makes forceful contention, the same cannot be entertained due to the advanced stage of the case. It is for the trial Court to decide the case on its own merits uninfluenced with the observations made herein. The petitioners to be given one more opportunity to put forth their arguments.

24.In the result, these Criminal Original Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

28.04.2025

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order
vv2

To

1.The Principal Sessions Judge,
Chennai.

2.The Superintendent of Police,
CBI/EOW,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-600 098.

3.The Special Public Prosecutor for CBI Cases,
Madras High Court.

Note: Issue Today.

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M.NIRMAL KUMAR, J.

vv2

Crl.O.P.Nos.11671, 11677,
12862 & 12867 of 2025

28.04.2025

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