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

\+ W.P.(CRL) 3125/2023 & CRL.M.A. 28994/2023

SATISH KUMAR SETHI & ANR. .....Petitioners

Through: Mr. Mohit Chaudhary, Ms. Katyayani Vajpayee, Mr. Nishwant Wali, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION (CBI) & ANR. .....Respondents

Through: Mr. Rajesh Kumar, SPP with Ms. Mishika Pandita, Mr. Mohd. Changez Ali Khan, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **05.05.2025**

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973[1] seeks quashing of FIR No. RC0502022A0020 dated 31st December, 2022, registered at Police Station CBI SPE, under Section 120-B read with Section 420 of Indian Penal Code, 1860[2] and Section 13(2) read with Section 13(1)(D) of the Prevention of Corruption Act, 1988,[3] and all the proceeding emanating therefrom. The chargesheet in this case has been filed, a copy of which has been handed over across the board, and the same is taken on

[1] "Cr.P.C."
[2] "IPC"
[3] "PC Act"

record. As per the chargesheet, the Petitioners have been charged with offences under Sections 420, 471 and 477-A read with Section 120B of the IPC.

2. The request for quashing of FIR is made in light of the settlement reached between the Petitioners and the Respondent Bank (Respondent No. 2), as evidenced by the One-Time Settlement[4] Sanction dated 4th October, 2023. Pertinently, the OTS involved a composite settlement for two borrower companies, namely Ritzy Chemicals Pvt. Ltd. and Meghaaarika Impex Pvt. Ltd., for a total settlement amount of INR 25.50 Crores. The Petitioners acted as guarantors for the financial facilities availed by both of these companies. A copy of the OTS has been duly placed on record.

3. Briefly stated, the factual background, leading to the filing of the present petition is as follows:

3.1 On 1st October, 2013, Meghaaarika Impex Pvt. Ltd. (the borrower company) was sanctioned cash credit limit of INR 15 Crores and Import LC/ Inland LC limit of INR 80 Crores by the Industrial Finance Branch of the Respondent Bank, located at M-11, Middle Circle, Connaught Place, New Delhi. Petitioner Nos. 1 and 2 stood as guarantors for the said loan.

3.2 Subsequently, the Respondent Bank declared the account of the borrower company as a Non-Performing Asset. Thereafter, the Bank filed Original Application No. 485/2021 before the Debt Recovery Tribunal-II, Delhi, seeking recovery of an amount of INR 57.23 Crores as of 31st July, 2021.

3.3 Parallelly, an FIR was lodged at the instance of the Respondent Bank, alleging that the borrower company, through its directors and guarantors, in criminal conspiracy with unidentified bank officials and private individuals, had, with dishonest intent, defrauded the Respondent Bank by siphoning off and diverting/round-tripping funds through group and associate companies, thereby causing a wrongful loss of INR 53.03 crores to the Bank. In the complaint made by the Deputy General Manager of the Respondent Bank, it was further alleged that the forensic audit of the borrower company revealed diversion and round-tripping of the borrowed funds through group companies and related parties. Based on the findings of the forensic audit report, the account of the borrower company was also classified as fraud on 04th May, 2022 by the bank.

4. The Petitioners submit that they have resolved their dispute with the Respondent Bank, culminating in a One Time Settlement dated 4th October, 2023. Under the terms of the OTS, the Bank agreed to settle the outstanding dues (of Ritzy Chemicals Pvt. Ltd. and Meghaaarika Impex Pvt. Ltd.) for a total amount of INR 25.50 Crores, payable in accordance with the schedule outlined in the settlement agreement. The Petitioners confirm that the entire amount under the OTS has been duly paid, and in acknowledgment thereof, the Bank has issued a No Dues Certificate/ Settlement Letter on 19th February, 2024. In view of this settlement, the Petitioners have approached this Court seeking quashing of the FIR.

5. Counsel for the Respondent Bank has confirmed the factum of settlement, and submitted that the Bank leaves it to the discretion of this Court to pass appropriate orders in the present petition, thereby indicating that it does not oppose the prayer for quashing. The objection, however, arises from the Investigating Agency, Respondent No. 1, the Central Bureau

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[4] "OTS"

of Investigation.[5] Counsel for the CBI has drawn the attention of this Court to Clause 12 of the OTS agreement, which reads as follows:

> *"Post settlement, criminal case will not be withdrawn by Bank. All the assistance required or called for by the investigating agency or court to take the case to its logical conclusion should be promptly by the branch."*

6. The CBI has, in fact, filed a detailed reply opposing the plea for quashing of the FIR, raising the following key contentions:

6.1. The fraud committed against the Respondent Bank constitutes an offence not merely against a financial institution, but against society at large. Therefore, the petition seeking quashing of the FIR ought not to be entertained in the larger public interest. This principle has been affirmed by the Supreme Court in the case of ***Anil Bhavarlal Jain & Anr. vs. State of Maharashtra;***[6] ***State of Maharashtra vs. Vikram Anantrai Doshi & Ors.;***[7] and ***CBI vs. Maninder Singh***.[8]

6.2. The Bank conducted a forensic audit of the borrower company's loan account, which revealed that the company, acting through its directors and guarantors (i.e., the Petitioners), had engaged in the diversion and round-tripping of borrowed funds through group companies and related parties. Such actions amount to serious offences including fraud, cheating, misappropriation of funds, diversion of loan proceeds, and criminal breach of trust.

6.3. While the Bank had alleged a total loss of INR 53.03 Crores, the settlement amount under the OTS is limited to INR 25.50 Crores, which is grossly inadequate, raises serious doubts about the genuineness of the

[5] "CBI"
[6] 2024 SCC OnLine SC 3823.
[7] (2014) 15 SCC 29.
[8] (2016) 1 SCC 389.

settlement, and is contrary to the principles laid down by the Supreme Court in the aforementioned judgments.

7. The Court has considered the aforenoted contentions. The present petition concerns quashing of the FIR arising out of the claims made by the Respondent Bank against Meghaaarika Impex Pvt. Ltd. The prayer for quashing the FIR in respect of the other borrower company, Ritzy Chemicals Pvt. Ltd., has been decided by a separate order passed today in W.P. (CRL) 3126/2023.

8. At the outset, it must be noted that the Supreme Court, in a catena of judgments, has outlined several factors to be considered by the High Court when deciding the question of quashing criminal proceedings, particularly in the exercise of its extraordinary powers under Article 226 of the Constitution or the inherent powers under Section 482 of the Cr.P.C.[9] These include the nature of the disputes between the parties, the terms of compromise and whether the continuance of such criminal proceedings would be a futile exercise. The Supreme Court has consistently reiterated that criminal cases which are predominantly civil in nature, particularly those arising out of civil, commercial, financial or mercantile transactions, may, warrant quashing, if the dispute has been amicably resolved.[10] In such cases, the High Court may, in the exercise of its inherent powers under Section 482 of the Cr.P.C., quash the criminal proceedings to prevent abuse of the process of law, if it is of the opinion that the likelihood of conviction is remote and bleak, and that the continuation of the proceedings would result in undue oppression and prejudice to the accused.

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[9] Gian Singh v. State of Punjab, 2012(10) SCC 303.

[10] Parbatbhai Aahir @ Prabatbhai vs. The State of Gujarat , (2017) 9 SCC 641; Nikhil Merchant v. CBI,

9. The Court duly acknowledges and appreciates the concerns raised by the CBI, who opposes this petition. The CBI has relied on judgments of the Supreme Court that underscore instances where the Court, after examining the specific facts and circumstances, has declined to quash the FIR and chargesheet. However, at the same time, there is also a substantial array of judgments wherein the Supreme Court has upheld the quashing of criminal proceedings, particularly where the dispute is predominantly civil in nature. In essence, there is no rigid straight-jacket formula for allowing or denying the quashing of an FIR. The fundamental principle is that the exercise of inherent powers under Section 482 of the CrPC to quash an FIR must be governed by a careful evaluation of the peculiar facts and circumstances of each individual case. In other words, Court's discretion to grant such relief is primarily contingent upon the unique nature of the dispute and the specific facts and circumstances of each case.

10. At this juncture, it is apposite to refer to the judgement of the Supreme Court in ***Tarina Sen v. Union of India & Anr.***,[11] wherein, after considering a series of precedents concerning the quashing of FIRs, the Court made the following observations:

> *"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."*

(2008) 9 SCC 677.
[11] MANU/SC/1083/2024.

11. In the present case, the dispute between the borrower company and the Respondent Bank has been resolved through a mutually agreed compromise evidenced by the OTS, pursuant to which the Bank's dues have been cleared, and there are no remaining claims against the borrower company. In view of this settlement and the absence of any surviving grievance, the Court is required to examine whether the nature of the dispute, though involving criminal allegations, has overtones of a civil dispute. In this regard, it becomes crucial to note that the chargesheet against the Petitioners has been filed only under Sections 420, 471 and 477-A and 120-B of the IPC, which pertain to allegations of cheating, forgery, falsification of accounts and criminal conspiracy. Such allegations, particularly in the context of financial and commercial transactions, carry a predominantly civil character and, warrant consideration for quashing in view of the settlement between the parties.

12. While the CBI has argued that the settlement amount of INR 25.50 Crores is grossly inadequate compared to the alleged defrauded amount of INR 53.03 Crores, it is pertinent to note that the Respondent Bank, as the custodian of public funds, has, in its discretion, deemed it appropriate to settle the financial dispute for a composite settlement amount of INR 25.50 Crores. It is the Respondent Bank that made the commercial decision to resolve the matter with the Petitioners and issued a No Dues Certificate/ Settlement Letter to that effect. Furthermore, although the Petitioners were accused of manipulating funds, engaging in round-tripping, and violating the terms of the financial facilities, the Bank opted to settle the dispute. In fact, the Respondent Bank explicitly stated in the No Dues Certificate/ Settlement Letter as follows:

"SUB: SETTLEMENT LETTER FOR ACCOUNT M/S RITZY CHEMICALS PVT LTD AND M/s MEGHAAARIKA IMPEX PVT LTD

Dear Sir/Ma'am,
With reference to your application for One Time Settlement, our competent authority has approved the proposal for Rs 25.50 Crore as on 28.09.2023, against the total dues of Rs 207.84 Crores. As per the terms & conditions you have paid the entire OTS amount of Rs 25.50 Crores along with delay period interst and also deposited cash margin of Rs 0.79 Crores for outstanding Bank Guarantees. Hence as on date your loan accounts pertaining to M/s Ritzy Chemicals Pvt Ltd and M/s Meghaaarika lmpex Pvt Ltd. has been settled with our Bank."

13. Pertinently, in ***CBI, ACB, Mumbai Vs. Narendra Lal Jain***,[12] the Supreme Court held that when the liability to compensate for the monetary loss suffered by the Bank has been mutually settled between the parties, the continuation of criminal proceedings may become oppressive or, in effect, amount to a futile prosecution. In such circumstances, the Court should exercise its extraordinary powers under Section 482 Cr.P.C. to quash the proceedings.

14. In view of the foregoing legal principles, and taking into consideration the facts and circumstances of this case, the Court is satisfied that this is a fit case for exercise of powers under Article 226 of the Constitution of India and Section 482 to Cr.P.C. to quash the FIR, as the continuation of criminal proceedings would serve no purpose and would be a futile exercise.

15. Accordingly, FIR No. RC0502022A0020, registered at P.S. CBI SPE, New Delhi, and all the consequent proceeding emanating therefrom are quashed. As the FIR itself has been quashed, the Look Out Circular issued against the Petitioners in relation to the subject FIR also stands quashed.

[12] (2014) 5 SCC 364.

16. The petition is disposed of.

SANJEEV NARULA, J

MAY 5, 2025/ab