K. Bharathi Devi vs The State Of Telangana on 3 October, 2024

Author: B.R. Gavai

Bench: B.R. Gavai, Prashant Kumar Mishra

2024 INSC 750

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____OF 2024
[Arising out of Special Leave Petition (Criminal) No.4353 of 2018]

K. BHARTHI DEVI AND ANR. …APPELLANT(S)

VERSUS

STATE OF TELANGANA & ANR. …RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. Leave granted.

2. The present appeal challenges the final judgment and order dated 1st September 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, whereby the High Court dismissed the Criminal Petition No. 5778 of 2016 filed by the accused persons, including the appellants herein, under Section 482 of the Code of Criminal Procedure, 1973 ("CrPC." for short) thereby seeking quashing of the charge-sheet in C.C. No. 16 of 2014 on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad ("trial Court" for short).

3. Shorn of details, the case of the prosecution is as given below.

3.1 K. Suresh Kumar (Accused No. 1), the Sole Proprietor of M/s Sirish Traders, a firm engaged in processing of Uradh Dhall, was granted various credit facilities in the group loan account by the

Indian Bank, Osmanganj Branch, Hyderabad ("respondent No. 2 Bank" for short). The credit facilities were secured by collateral security executed by the accused persons including the present appellants who are Accused No. 3 & 4.

3.2 Since the borrowers/mortgagors (Accused Nos. 1-5) failed to service the interest and re-pay the dues, the group loan account was declared a Non-Performing Asset on 31st March 2010.

3.3 To realize the outstanding amount, the respondent No. 2 Bank filed an Original Application being OA No. 253 of 2010 before the Debts Recovery Tribunal, Hyderabad ("DRT" for short) for recovery of amounts due.

3.4 During the pendency of the proceedings before the DRT, the respondent No. 2 Bank came to know that some of the title documents executed by the accused persons by virtue of which equitable mortgage was created were not original documents, rather the same were fake, forged and fabricated. 3.5 The respondent No. 2 Bank, accordingly, lodged a written complaint dated 3rd September 2012. Based on the said complaint, the Central Bureau of Investigation – Economic Offence Wing (CBI-EOW) Chennai registered an FIR No. RC.14/E/2012 dated 15th September 2012. 3.6 The CBI-EOW Chennai after investigation prima facie found that offences punishable under Sections 120-B read with 420, 409, 467, 468 and 471 of Indian Penal Code 1860 ("IPC" for short) and Section 13(1)(d) and 13(2) of the Prevention of Corruption Act 1988 ("PC Act" for short) have been committed. The CBI filed charge-sheet dated 27th December 2013 in the trial Court and prayed that the trial Court take cognizance of the said offences committed by the accused persons.

3.7 Since the proceedings before the DRT were still pending, the borrowers/mortgagors (Accused Nos. 1-5) approached the respondent No. 2 Bank for settlement of the amount due regarding the group loan accounts. To that effect, a One Time Settlement ("OTS" for short) dated 19th November 2015 of Rs. 3.8 crores was offered to the respondent No. 2 Bank for settling all the dues. The same was accepted by the respondent No. 2 Bank. The OTS amount was paid, and the respondent No. 2 Bank issued a No Dues Certificate dated 21st November 2015 to the borrowers/guarantors. 3.8 When the matter stood thus, the Accused Nos. 1 to 5, including the present appellants, filed a Criminal Petition bearing No. 5778 of 2016 on 18th April 2016 before the High Court under Section 482 CrPC seeking quashing of the charge-sheet filed before the trial Court by the CBI. 3.9 During the pendency of the Criminal Petition before the High Court, the DRT vide order dated 4th May 2016, recorded that the matter has been settled as per the OTS and disposed of the OA as settled, in full satisfaction of the dues of the respondent No. 2 Bank.

3.10 The High Court, however, vide the impugned final judgment and order dismissed the Criminal Petition filed by the Accused Nos. 1 to 5 holding that the settlement arrived at was only a private settlement and was not a part of any decree given by any court. The charges include the use of fraudulent, fake and forged documents that were used to embezzle public money and if these are proved, they would be grave crimes against the society as a whole and hence, merely due to a private settlement between the Bank and the accused, it cannot be said that the prosecution of the accused persons would amount to abuse of process of the court. 3.11 Aggrieved thereby, two of the accused persons (Accused Nos.

3 & 4) have filed the present appeal.

4. We have heard Shri Dama Seshadri Naidu, learned Senior Counsel for the appellants and Shri Vikramjeet Banerjee learned Additional Solicitor General ("ASG" for short) appearing for the CBI, Ms. Devina Sehgal, learned counsel for the respondent No.1-State and Mr. Himanshu Munshi, learned counsel for the respondent No.2-Bank.

5. Shri Naidu submits that the appellants before this Court had no active role to play. It is submitted that the Appellant No.1 (Accused No.3) is the wife of Accused No.2 and Appellant No.2 (Accused No.4) is the wife of Accused No.1. It is submitted that even from the perusal of the chargesheet it would reveal that no active role is attributed to the present appellants.

6. Shri Naidu further submits that in the proceedings before the DRT, the matter has been amicably settled between the respondent No.2 Bank and the accused persons. It is submitted that in addition to the total amount paid by the borrowers to the tune of Rs. 7,78,25,143/-, the Bank has also realized an amount of Rs. 1,07,54,000/- by auctioning the mortgaged properties.

7. It is further submitted that during the pendency of OA before the DRT, in view of OTS an amount of Rs. 3,80,00,000/- was also paid to the respondent No.2 Bank and as such, the respondent No.2 Bank has closed the loan account. The learned Senior Counsel, therefore, submits that the continuance of the proceedings against the appellants would be an exercise in futility.

8. Shri Naidu in support of his submissions relied on the following judgments of this Court in the cases of:

(i) Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta1;

(ii) Nikhil Merchant v. Central Bureau of Investigation and another2;

(iii) Gian Singh v. State of Punjab and another3;

(iv) Central Bureau of Investigation, ACB, Mumbai v.

Narendra Lal Jain and others4;

(v) Narinder Singh and others v. State of Punjab and another5;

(1996) 5 SCC 591 (2008) 9 SCC 677 (2012) 10 SCC 303 (2014) 5 SCC 364 (2014) 6 SCC 466

(vi) Gold Quest International Private Limited v. State of Tamil Nadu and others6; and

(vii) Central Bureau of Investigation v. Sadhu Ram Singla and others7.

9. Mr. Himanshu Munshi, learned counsel for the respondent No.2 Bank confirms the fact regarding the settlement entered into between the Bank and the borrowers.

10. Shri Vikramjeet Banerjee, learned ASG, appearing on behalf of the CBI, however, submits that merely because the matter is settled between the Bank and the borrowers, it does not absolve the accused persons of their criminal liability. It is submitted that the learned judge of the High Court has rightly, upon consideration of the legal position, dismissed the petition under Section 482 of the CrPC. The learned ASG, therefore, prays for dismissal of the present appeal.

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 is also not in dispute that, upon (2014) 15 SCC 235 (2017) 5 SCC 350 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.

13. At the outset, we may state that we are only considering the cases only of two women i.e. Accused Nos. 3 and 4, who are wives of original Accused Nos. 2 and 1 respectively.

14. A perusal of the chargesheet would reveal that the specific role is attributed to Accused No.1-K. Suresh Kumar. The allegations against the present appellants are that they were involved in criminal conspiracy with Accused No.1.

15. We may gainfully refer to the following observations of this Court in the case of Duncans Agro Industries Ltd., Calcutta (supra):

> "26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] and Janata Dal [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] , since relied on by Mr Tulsi, the guiding principles in quashing a criminal case have been indicated.
>
> 27. .....

> 28. .....
>
> 29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. 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. It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs.

Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further....." [Emphasis supplied]

16. It could thus be seen that this Court in the case of Duncans Agro Industries Ltd found that the Banks had already filed suits for recovery of the dues of the Banks on account of credit facility and the said suits had been compromised on receiving the payments from the companies concerned. The Court found that 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, amounted to compounding of the offence of cheating.

17. In the case of Nikhil Merchant (supra), this Court was considering a civil dispute with certain criminal facets. The matter also involved offences which were not compoundable in nature. This Court, therefore, considered the question as to whether the criminal proceedings could be quashed under Article 142 of the Constitution of India on the basis of compromise, even where non-compoundable offences are involved.

18. An argument was advanced on behalf of the Union that this Court should not exercise its powers under Article 142 of the Constitution of India in order to quash the proceedings for non-compoundable offences. This Court observed thus:

> "25. It was urged that even if no steps have been taken by CBI since the charge-sheet was filed in 1998, the same would not be a ground for quashing the criminal proceedings once the charge-sheet had been filed. He submitted that in view of the decision of this Court in Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC 409] this Court would possibly not be justified in giving directions in the instant case even under Article 142 of the Constitution, since the Constitution Bench had held that in exercise of its plenary powers under Article 142, this Court could not ignore any

substantive statutory provision dealing with the subject. It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties where it is just and equitable to do so. It was further observed that the power under Article 142 of the Constitution was vested in the Supreme Court to prevent any obstruction to the stream of justice.

26. The learned Additional Solicitor General submitted that the power under Article 142 is to be exercised sparingly and only in rare and exceptional cases and in the absence of any exceptional circumstances the appeal was liable to be dismissed.

27. Having carefully considered the facts of the case and the submissions of learned counsel in regard thereto, we are of the view that, although, technically there is force in the submissions made by the learned Additional Solicitor General, the facts of the case warrant interference in these proceedings.

28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled.

29. Despite the ingredients and the factual content of an offence of cheating punishable under Section 420 IPC, the same has been made compoundable under sub-section (2) of Section 320 CrPC with the leave of the court. Of course, forgery has not been included as one of the compoundable offences, but it is in such cases that the principle enunciated in B.S. Joshi case [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] becomes relevant.

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi case [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] and the compromise arrived at between the Company and the Bank as also Clause 11 of

> the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise."

19. This Court found that though the offence punishable under Section 420 of the IPC was compoundable under sub-section (2) of Section 320 CrPC with the leave of the Court, the offence of forgery was not included as one of the compoundable offences. However, the Court found that in such cases the principle enunciated in the case of B.S. Joshi and others v. State of Haryana and another8 should be applied.

20. This Court specifically noted that though it is alleged that (2003) 4 SCC 675 certain documents had been created by the appellant therein to avail of credit facilities beyond the limit to which the Company was entitled, the power of quashing could be exercised. This Court found that in view of a compromise arrived at between the Company and the Bank, it was a fit case where a technicality should not be allowed to stand in the way of quashing of the criminal proceedings. This Court found that in view of the settlement arrived at between the parties, continuance of the same would be an exercise in futility.

21. A similar view was again taken by 2 Judge Bench of this Court in the case of Manoj Sharma v. State and others9.

22. However, another 2 Judge Bench of this Court in the case of Gian Singh v. State of Punjab and another10 doubted the correctness of the view taken by this Court in the cases of B.S. Joshi (supra), Nikhil Merchant (supra), and Manoj Sharma (supra) and referred the matter to a larger Bench.

23. The reference was answered by the learned 3 Judge Bench (2008) 16 SCC 1 (2010) 15 SCC 118 of this Court in the case of Gian Singh (supra)11. Speaking for the Bench, R.M. Lodha, J. (as His Lordship then was), observed thus:

> "57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence.
>
> They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of (2012) 10 SCC 303 criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all.

However, 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 the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.

59.B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] , Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and Shiji [(2011) 10 SCC 705 :

(2012) 1 SCC (Cri) 101] do illustrate the principle that the High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power under Section 482 of the Code and Section 320 does not limit or affect the powers of the High Court under Section 482. Can it be said that by quashing criminal proceedings in B.S. Joshi [(2003) 4 SCC 675 : 2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] , Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and Shiji [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] this Court has compounded the non-compoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence under Section 320 and quashing of a criminal case by the High Court in exercise of inherent power under

> Section 482. The two powers are distinct and different although the ultimate consequence may be the same viz. acquittal of the accused or dismissal of indictment.

60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia [(1990) 2 SCC 437 :

> 1990 SCC (Cri) 327] , Dharampal [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049] , Arun Shankar Shukla [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554] , Ishwar Singh [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] , Rumi Dhar [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] and Ashok Sadarangani [(2012) 11 SCC 321] . The principle propounded in Simrikhia [(1990) 2 SCC 437 : 1990 SCC (Cri) 327] that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled.

In Dharampal [(1993) 1 SCC 435 : 1993 SCC (Cri) 333 : 1993 Cri LJ 1049] the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554] . In Ishwar Singh [(2008) 15 SCC 667 : (2009) 3 SCC (Cri) 1153] the accused was alleged to have committed an offence punishable under Section 307 IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar [(2009) 6 SCC 364 : (2009) 2 SCC (Cri) 1074] although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for the commission of the offences under Sections 120- B/420/467/468/471 IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani [(2012) 11 SCC 321] was again a case where the accused persons were charged of having committed the offences under Sections 120-B, 465, 467, 468 and 471 IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilised such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi [(2003) 4 SCC 675 :

2003 SCC (Cri) 848] , Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] and Manoj Sharma [(2008) 16 SCC 1 : (2010) 4 SCC (Cri) 145] and it was held that B.S. Joshi [(2003) 4 SCC 675 :

2003 SCC (Cri) 848] and Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under

consideration in Ashok Sadarangani [(2012) 11 SCC 321] was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani [(2012) 11 SCC 321] supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

61. The position that emerges from the above discussion can be summarised thus : the power of 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. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 and compromise with the victim. In other words, 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

24. It could thus be seen that the learned 3 Judge Bench of this Court held that B.S. Joshi, Nikhil Merchant, and Manoj Sharma were correctly decided.

25. 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.

26. In paragraph 60, His Lordship considers the cases where the Court has refused to quash the proceedings irrespective of the settlement. The Court considers the different factual positions arising in the cases of B.S. Joshi, Nikhil Merchant, and Manoj Sharma on one hand and the other cases where the Court refused to quash the proceedings.

27. In the cases of the first type, this Court found that the dispute involved had overtures of a civil dispute but in the other line of cases, the disputes were more on the criminal aspect than on a civil aspect.

28. In paragraph 61, this Court observes that, in which cases power to quash the criminal proceeding or complaint or FIR may be exercised, where the offender and the victim have settled their dispute, would depend on the facts and circumstances of each case. However, the Court reiterates that the criminal cases having an overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing. The Court particularly refers to the offences 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 Court finds that in such cases, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 and compromise with the victim.

29. Another 3 Judge Bench of this Court in the case of Narendra Lal Jain and others (supra), following Gian Singh12 (supra) observed thus:

> “13. In the present case, as already seen, the offence with which the respondent-accused had been charged are under Larger Bench decision Sections 120-B/420 of the Penal Code. The civil liability of the respondents to pay the amount to the Bank has already been settled amicably. The terms of such settlement have been extracted above (see para 3). No subsisting grievance of the Bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120-B IPC is not. To the latter offence the ratio laid down in B.S. Joshi [B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 : 2003 SCC (Cri) 848 : AIR 2003 SC 1386] and Nikhil Merchant [(2008) 9 SCC 677 : (2008) 3 SCC (Cri) 858] would apply if the facts of the given case would so justify. The observation in Gian Singh [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120-B IPC.

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."

30. Subsequently, a 2 Judge Bench of this Court in the case of Narinder Singh and others (supra), after considering the earlier pronouncements of this Court, culled out the position thus:

> "29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:
>
> 29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.
>
> 29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:
>
> (i) ends of justice, or
>
> (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those 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. 29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. 29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, 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, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

31. It could thus be seen that this 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.

32. Though in the said case, the High Court had refused to exercise its jurisdiction under Section 482 CrPC to quash the proceedings wherein a serious offence under Section 307 IPC was involved, this Court after taking into consideration various factors including that the elders of the village, including the Sarpanch, had intervened in the matter and the parties had not only buried their hatchet but had decided to live peacefully in the future, quashed and set aside the criminal proceedings under Section 307 IPC.

33. The aforesaid view has consistently been followed by this Court in various cases including Gold Quest International Private Limited (supra) and Sadhu Ram Singla and others (supra).

34. 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.

35. 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.

36. In any case, as discussed hereinabove, both the appellants have been arraigned as wives of the Accused Nos. 1 and 2. The specific role that was attributed in the chargesheet was pertaining to Accused No.1.

37. In the result, we find that this was a fit case wherein the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quash the criminal proceedings.

38. We are therefore inclined to allow the present appeal.

39. We accordingly pass the following order:

(i) The appeal is allowed.

(ii) The impugned judgment and order dated 1st September 2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 5778 of 2016 is quashed and aside.

(iii) The criminal proceedings against the appellants in C.C. No. 16 of 2014 on the file of Principal Special Judge for CBI Cases, Nampally, Hyderabad is also quashed and set aside.

40. For the reasons stated in I.A. No. 68579 of 2021 for discharge of AOR, the same is allowed.

.....J (B.R. GAVAI) .....J (K.V. VISWANATHAN) NEW DELHI;

OCTOBER 03, 2024.