Madras High Court
B.Ranganathan vs State Represented By on 8 October, 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 8.10.2012

Coram

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

Crl.O.P.Nos. 21714, 23140 and 24938 of 2011
and M.P.Nos.1 and 1 of 2011

1.B.Ranganathan
2.Venkatesh @ Gowrishankar .. Petitioners in all Crl.OPs

VS.

1.State represented by
Inspector of Police,
V7 Nolambur Police Station,
Chennai-37. .. 1st respondent in all Crl.OPs

2.D.Varatharajulu .. 2nd Respondent in Crl.O.P.21714 and 24938/2011

2.P.Selvamani .. 2nd respondent in Crl.O.P.23140/2011 Crl.O.P.Nos.21714 and 23140 of 2011 filed under Section 482 Cr.P.C to call for the records relating to Crime Nos.834 of 2011 dated 24.8.2011 and 758 of 2011 dated 1.8.2011 respectively on the file of V7 Nolambur Police Station, Chennai-37 and to quash the same.

Crl.O.P.No.24938/2011 filed under Section 482 Cr.P.C to call for the records relating to C.C.No.293 of 2011 dated 21.9.2011 on the file of Judicial Magistrate, Ambattur and to quash the same.

For Petitioners : Mr.R.Shanmuga Sundaram and N.R.Elango, SC for Mr.A.Saravanan and K.Muralibabu in all OPs For respondents : Mr.I.Subramanian, PP for R1 assisted by Mr.C.Balasubramanian, APP Mr.M.Krishnamoorthy, for R2 COMMON ORDER While Crl.OP.No.21714 of 2011 is filed by A1 and A2 in Crime No.834 of 2011 against the State represented by Inspector of Police, V7 Nolambur Police Station, Chennai-37/Investigation officer and one D.Varatharajulu/defacto Complainant to call for the records relating to Crime No.834 of 2011 dated 24.8.2011 on the file of V7 Nolambur Police station and to quash the same, Crl.O.P. No.24938 of

2011 is filed by A1 and A2 to call for the records in C.C.No.293 of 2011 on the file of Judicial Magistrate, Ambattur, arising out of the same Crime no.834 of 2011. In short, both the criminal original petitions are filed to quash the FIR and charge sheet in respect of Crime No.834 of 2011 dated 24.8.2011 filed against the accused 1 and 2. Crl.O.P.No.23140 of 2011 is filed for similar relief as sought for in Crl.O.P.No.21714 of 2011 in respect of Crime No.758 of 2011 dated 1.8.2011 on the file of the same police station registered on the basis of the complaint given by one Selvamani who is arrayed as the 2nd respondent in the Crl.O.P.

2.Few facts, which are relevant for consideration herein are:

An extent of 20.59 acres of land situated in various survey Nos.81, 88 to 91, 93, 94/2, 94/3, 106 to 108, 109/1, 109/2, 111 and 112, 123 and 124/1 in Nolambur Village, Ambattur Taluk, Tiruvellore District originally belonged to one Balakrishnan and others, who sold it to N.K.Kirubai Nayagam and others and a suit O.S.No.3427 of 1974 came to be filed for dissolution of firm by name M/s.Kiruba Brick Works by one P.Jeyamani and the land and property in question were shown as assets of the firm in the suit and the suit was subsequently disposed of, on the basis of joint compromise memo. In pursuance of the compromise decree, the second set of parties in the compromise memo through power of attorney created sale deeds in favour of number of individuals, who are also the members of one association by name Annamalai Avenue (Nolambur) Plot Owners Association. During 2008, O.S.23 of 2008 came to be filed by (i)Dhanasingh (ii) Albert (iii) Jayapal (iv) Rathinavathy and (v) Juliet Gnanavathy, represented by their power of attorney T.C.Venkatesh @ T.C.Gowri Sankar, who is the second petitioner herein, for various reliefs for declaring the compromise decree made in O.S.No.3427 of 1974 on the file of City Civil Court, Chennai as null and void on the ground of fraud and for consequential permanent injunctions and for preliminary decree for partition of the plaintiffs' 5/7th share in the suit properties, after declaring the compromise decree as not binding upon the plaintiffs. The plaintiffs along with the plaint filed 22 documents as per the list appended to the plaint. The suit was, as per the memo of valuation appended to the plaint, valued at 30 times of kist value and court fee was paid under Tamil Nadu Court fee Act for such value of the properties. The suit was filed against other rival claimants, who are the claimants of other set of suit property, individuals, who obtained sale deeds in respect of different extent in different suit survey numbers and Annamalai Avenue (Nolambur) Plot Owners Association and other revenue and other departmental officials for the reliefs as stated supra. The suit was filed along with IA.Nos.156 and 157 of 2008 for interim reliefs of injunction.

3.The contesting defendants/respondents in the suit as well as in IAs, having entered appearance through their respective counsel, seriously contested I.As by raising various contentions both on legal and factual aspects. One of the contentions raised therein was that the plaintiffs have filed the suit reliefs on the basis of forged documents executed between the individuals and forged kist receipts enclosed as plaint document Nos. 19 to 21. The IAs were after due contest dismissed on 6.6.2008. Aggrieved against the same, CRP.Nos.2913 and 3006 of 2008 came to be filed by the defendants to struck off the suit on different grounds. Both the CRPs were disposed of by common order dated 5.8.2009, in and under which, CRPs were dismissed and direction was issued to the trial court to dispose of the suit within the time specified in the order. The common order passed by the High court in CRPs was challenged before the Hon'ble Supreme Court by the defendants by way

of SLP Nos.30471 and 30472 of 2009 and the Hon'ble Supreme Court by order dated 6.1.2010 initially stayed further proceedings in the suit.

4.Pending disposal of SLPs on the file of the Supreme Court, one P.Selvamani residing at No.B1/17, Moon Enclave Apartment, Mugappair West, Chennai-37, who is the second respondent in Crl.O.P.No.23140 of 2011 lodged a complaint before V7 Nolambur Police Station on 1.8.2011 against the first petitioner Ranganathan, the second petitioner T.C.Venkatesh @ Gowri Sankar and 5 others Dhanasingh, Albert, Jayaram, Rathinapati, and Juliet Gnanavathi. The complaint proceeds as if the defacto complainant is the permanent resident of Moon Enclave Apartment, Mugappair and he purchased a house site measuring 1 ground from one Gupta during 2002 and obtained due license and permission for putting up construction and while so, during 2008 he along with 120 persons, who are all the purchasers of land measuring 20 acres in different survey numbers in Nolambur, received copy of exparte injunction order granted in favour of one Gowri Sankar on the basis of the documents produced on his side before Poonamallee court and the defacto complainant and others immediately entered appearance in the suit and injunction order was modified into an order of status quo. While so, the named second accused Venkatesh @ Gowri Sankar at the instigation of the named first accused B.Ranganathan, came to the property along with his hirelings, armed with weapons and put up a shed and installed a board and when the defacto complainant and others met Gowri Sankar and others in the site, they were threatened with dire consequences, to leave the site, after receiving 25% of the amount paid by them by way of sale consideration. The enquiry in the Tahsildar office reveals that kist receipts in C77 series for the faslis 1405, 1406 and 1407, which were filed into court by Gowrisankar, are forged documents on the strength of which Ranganathan and others threatened the individual owner of the land with dire consequences and action is warranted against all the seven accused for act of criminal intimidation on the basis of the forged documents. The compliant was received at 3pm on 1.8.2011 and the same was registered on the file of V7 Nolambur Police station as Cr.no.758 of 2011 for the offences under sections 147, 148, 447, 427, 387, 506(ii), 465, 468, 471 and 420 IPC and the same was followed by commencement of investigation by the first respondent/IO. Pending investigation, A1 to A5 were arrested on 2.8.2011 and were remanded to judicial custody on 3.8.2011 and an application was filed into court on 3.8.2011 under Section 167 (2) Cr.P.C seeking police custody of the accused 1 and 2 for their custodial interrogation and the same was rejected by the concerned judicial Magistrate. The correctness of the order of rejection by the Judicial Magistrate was challenged in Crl.O.P.No.18888 of 2011 and this court by order dated 12.8.2011 dismissed the criminal Original Petition on the ground that the police custody of A1 and A2 for custodial interrogation is unwarranted.

5.Immediately thereafter, the second respondent in Crl.O.P.No.21714 of 2011 by name Varadarajulu, who is one of the residents of S Block 16th Street, Anna Nagar, Chennai, lodged a complaint on 24.8.2011 in V7 Nolambur Police Station against the petitioners 1 and 2 viz., Ranganathan and Gowrisankar and four others Dhanasingh, Albert, Jayapaul, Jayasingh, who are the accused 1 to 6 in Crime no.758 of 2011. The allegations raised in the complaint giving rise to Crime No.834 of 2011 culminating into CC.No.293 of 2011 relates to criminal acts constituting the offences under sections 420, 468, 506(ii) r/w 120 B IPC relating to misrepresentation made by A1 and A2 regarding ownership of the property and offer made by them for sale of the property on behalf of the owners and negotiation held between the defacto complainant and his close relatives on one hand and A1

and A2 on other hand and acceptance of the defacto complainant and others to purchase the property for sale consideration of Rs.5 crores arrived at by them and payment of Rs.2.50 crores by way of two cheques each on two occasions drawn in favour of M/s.National Developers and sale agreement executed between the defacto complainant and A3 to 6 in Poonamallee Sub Registrar Office and postponement of execution of sale deed by A1 and A2 inspite of repeated demands and relating to act of criminal intimidation by A1 and A2 by threatening the defacto complainant and others to leave the property, after receiving part of the money etc.

6.The complaint proceeds as if the defacto complainant, his brother Dhanasekaran and his paternal uncles Padmanabhan and Venkatraman have been running Brick Klins and are income tax assessees and T.C.Venkatesh @ Gowrisankar claiming himself to be the representative of M/s. National Developers established and run by B.Ranganathan, former M.L.A of Villivakkam and Purasaiwakkam constituencies, represented to them that other four accused are the absolute owners and possessors of vacant land in various survey numbers measuring 20.95 acres in Nolambur Village and a portion of the land measuring 94 cents is offered for sale and the owners have authorised M/s.National Developers to mediate for and on their behalf to fix the sale price and to sell the said portion of the land and the second petitioner herein T.C.Venkatesh @ Gowrisankar was assisting the first accused Ranganathan and the same was also verified from A1 Ranganathan. When the defacto complainant and others met him in person, A1 and A2 assured and represented that other four accused have valid and marketable title and the landed property in question is not subjected to any encumbrance and all of them bonafidly believed and trusted the representation made by A1 and A2 respectively as genuine and agreed to purchase the land for sale consideration of Rs.5 crores and paid advance of Rs.2,50,00,000/- by way of two cheques drawn in favour of National Developers and two cheques were also encashed and thereafter, the intending purchasers were summoned to Sub Registrar Office at Konnur at 4 pm for getting the sale agreement executed and three out of four persons had been to Registrar office and the remaining four accused were shown as owners and family cards and bank cards were shown as proof of their identity and the defacto complainant and two others were compelled to sign the documents without being allowed to read the same and the same was also registered. Subsequently, they came to know that larger extent of 17.15 acres as against 94 cents has been mentioned as the land agreed to be purchased for Rs.34,30,00,000/- instead of Rs.5,00,00,000/- and when they questioned A1 and A2 regarding the discrepancy, they promised them to set right all the matters and make other four persons to execute the sale deed by mentioning the correct particulars. Inspite of repeated demands made, the execution of sale documents being postponed by A1 and A2 and A3 to A7. In the mean while, they approached the civil court by filing suit O.S.No.23 of 2008 for certain reliefs and again, the defacto complainant met them and they promised them to settle the issue shortly and thereafter to execute the sale deeds. Subsequently, there was no proper response from the persons concerned, which compelled the defacto complainant and others apprehending foul play to approach the plot owners association, who filed earlier complaint against A1 and A2 and who issued publication in the newspaper.

7.The complaint further proceeds as if the enquiry with Annamalai Avenue Nolambur Plot Owners Association revealed pendency of Civil Suit and that the predecessors-in-title of the members of the said association were the real owners and possessors of the entire Nolambur vacant land and after

the sales made by them, the members of the said association become the absolute owners and possessors of the same and A1, A2 and others dishonestly and fraudulently created invalid and illegal sale agreement dated 5.4.2007 in favour of the defacto complainant and others to cheat and defraud the complainant and others. Again, the defacto complainant and others met A1 and A2 and demanded return of sale advance amount, but A1 and A2 threatened the defacto complainant and others to end their life, if they make any such demand. The complaint was received at 10.30 am on 24.8.2011 and was registered as Crime No.834 of 2011 on the file of V7 Nolumbur Police Station against the petitioners 1 and 2 and four others.

8.Admittedly, during pendency of civil suit filed by A3 to A7 represented through A2/power of attorney and investigation upon police complaints, compromise was arrived at between the individuals by A1 and A2 returning entire amount to the defacto complainant and others and by their giving up any claim upon the land in question and the defacto complainant in both FIRs and others have mainly on the strength of such settlement arrived at between the parties, intended and agreed to drop the criminal proceedings. The petitioners 1 and 2, who are arrayed as A1 and A2 in both the crime Nos.758 and 834 of 2011 have hence approached this court by way of Crl.O.P.Nos.21714 of 2011 and 23140 of 2011 under Section 482 Cr.P.C to call for the records relating to both crime numbers and to quash the same.

9.Crl.O.P.Nos.21714 and 23140 of 2011 were filed on 6.9.2011 and 21.9.2011 respectively to call for the records relating to both Crime Nos.834 and 758 of 2011 respectively and to quash the same on the ground that the petitioners/A1 and A2 have settled the issue with the defacto complainant and all 120 members of Annamalai Avenue Nolambur Plot Owners Association and in pursuance of the compromise, the civil suit O.S.No.23 of 2008 was dismissed by Supreme Court and SLPs pending before the Supreme Court were also dismissed and consequent upon the same, the civil suit O.S.No.23 of 2008 on the file of sub court, Poonamallee was also withdrawn by the plaintiffs, who are the accused in both Crime numbers. It is contended by the learned counsel for the petitioners in Crl.OP.Nos.21714 and 23140 of 2011 that the defacto complainant and others, in view of the settlement arrived at between the parties, received the full amount and agreed to drop further action and to withdraw the proceedings which are already initiated, as no purpose will be served in continuing the prosecution as the dispute between the parties is purely civil in nature and is amicably settled and no useful purpose will be served in keeping the prosecution against the petitioners alive and pending, as the chances of the defacto complainant and others deposing against the petitioners and chances of getting them convicted are remote and bleak and FIR registered as Crime Nos.758 and 834 of 2011 are hence, in exercise of inherent jurisdiction under Section 482 Cr.P.C, liable to be quashed. However, before obtaining any order in both the Crl.OPs., investigation was completed in Crime No.834 of 2011 and charge sheet was filed and the same was taken up on file as C.C.No.293 of 2011 by the Judicial Magistrate, Ambattur, as such, the accused 1 and 2 herein have filed subsequent Crl.O.P.No.24938 of 2011 to call for the records in CC.No.293 of 2011 on the file of the Judicial Magistrate, Ambattur and to quash the same.

10.The petitioners have also in support of the settlement theory produced identical affidavits of the defacto complainant and remaining 120 owners/members of plot owners association to the effect that after the dispute was amicably settled, it was represented before the Supreme Court and on the

basis of representation, O.S.No.23 of 2008 was dismissed as withdrawn by the Supreme Court and the petitioners have, as per the settlement, relinquished their claim in property and the defacto complainant and others have no other claim against the petitioners either civil or criminal and they have no intention to continue the prosecution against the petitioners and have no objection to quash the proceedings.

11.Per contra, the learned Public Prosecutor would seriously oppose the relief sought for herein on the ground that the allegations levelled against the accused are not compoundable and are very serious in nature involving crime against society and hence are not liable to be quashed at the initial stage by exercising inherent powers under Section 482 Cr.P.C.

12.Both the learned counsel on record have also submitted catenna of authorities for and against the contentions raised on both sides.

13.Heard the rival submissions made on both sides.

14.It is well settled that Section 482 of the Code does not confer any new powers on the High Court, but only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised namely (i) to give effect to the order under the court (ii)to prevent abuse of process of court and (iii)to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction and no legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. It is also equally well settled that inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist and if it finds that initiation/continuance of the proceedings amounts to abuse of process of court or quashing of these proceedings would otherwise serve the ends of justice.

15.In one of the earliest cases R.P.Kapur V. State of Punjab 1960 (3) SCR 388 the Hon'ble Supreme Court has culled out various situations, wherein Section 482 Cr.PC could be exercised by the High Court to quash the main proceedings against the accused. These are (1)Where it manifestly appears that there is a legal bar against the institution or continuance of proceedings (2)Where the allegations in the FIR or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged (3)Where the allegations constitute an offence. But there is no legal evidence adduced clearly or manifestly fails to prove the charge. The broad principles so laid down are reiterated in the subsequent judgments of the Supreme Court, our High Court and other High Courts. The petitioners have, in the present case, sought to quash the proceedings, not on any of the grounds as mentioned above, but solely on the ground that the disputes between the defatco complainant and others have been settled amicably and the claim of the defacto complainant and other persons claiming to be the agreement holders or purchasers of the property against the petitioners herein are fully satisfied and finally settled and no useful purpose would serve in

continuing the prosecution and the continuance of criminal case would be a futile exercise.

16. The power of the Court to quash the proceedings in respect of the offences which are compoundable and non compoundable under Section 320 Cr.P.C. in identical situation under settlement theory came up for consideration before the Supreme Court and there were divergent views expressed by the Supreme Court and the same is finally on reference before larger bench recently settled in the latest three judges larger bench of the Supreme Court. Earlier in 2003 (4) SCC 675 in BS.Joshi V. State of Haryana the criminal proceedings initiated against her husband at the instance of the wife for the offences under Section 498A, 323 and 406 IPC and during the pendency of the proceedings the dispute between the husband and wife and the family members was settled, the wife filed an affidavit to that effect before the Court concerned and both the parties have jointly prayed for quashing the criminal proceedings on the same ground, the High Court dismissed the petition on the ground that the offences under Section 498A and 406 IPC were non-compoundable and the inherent powers under Section 482 of the code could not be invoked to by-pass Section 320 of the code. The order of the High Court was challenged before the Supreme Court wherein it is held that the High Court, in exercise of its inherent powers, can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the code. It is observed in para 14 of the judgment that "the hyper technical view would be counterproductive and would act against interests of women and against the object for which this provision was added and there is every likelihood that non exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier and this is not the object of Chapter XX-A of the Indian Penal Code.

17. Similarly, in Nikhil Merchant's case in 2008 (9) SCC 677, one Mumbai company was granted financial assistance by Andhra Bank and the company defaulted in repayment of loan resulting in institution of civil suit for recovery of amount and the bank also filed a complaint against the Managing Director and the officials of the bank for diverse offfences namely Sections 120-B r/w Sections 420, 467, 468, 471 IPC r/w. Sections 5(2), and 5(1)(d) of the Prevention of Corruption Act 1947 and section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. The suit for recovery of the amount was compromised between the company and the bank, upon the defendants agreeing to pay the amount due as per the schedule mentioned in the consent terms. Clause 11 of the consent terms read, "agreed that save as aforesaid neither party has any claim against other and parties do hereby withdraw all the allegations and counter allegations made against each other". Based on the same, the Managing Director of the company filed an application for discharge from the criminal complaint. The application was rejected by the Special Judge, CBI, Greater Bombay and the same was challenged before Bombay High Court and the High Court rejected the contention raised before the same that since the subject matter of the dispute had been settled between the parties, it would be unreasonable to continue with the criminal proceedings and rejected the application for discharge and the same was challenged before the Supreme Court. The Supreme Court, having regard to the facts of the case and the earlier decision made in B.S.Joshi's case, set aside the order of the High Court and quashed the criminal proceedings. The Supreme Court has, while doing so, observed that "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 and 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? and it is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings since the continuance of the same after the compromise arrived at between the parties would be a futile exercise .

18.In the next case reported in (2008) 16 SCC 1 Manoj Sharma's case, identical question came up for consideration is whether FIR registered for the offences under sections 420, 468, 471, 34 and 120B IPC can be quashed either under Section 482 Cr.P.C or under Article 226 of the Constitution, when the accused and the complainant have compromised and settled the matter between themselves. The Hon'ble Justice Altamas Kabir, who delivered the lead judgment referred to B.S.Joshi's case, set aside the order of the High Court in rejecting to quash the proceedings. The Supreme Court in the said judgment, though upheld the power of the High court to refuse to quash the FIR, observed that "the ultimate exercise of discretion either under Section 482 Cr.P.C or under Article 226 of the Constitution is with the court, which has to exercise such jurisdiction in the facts of each case and the said power is in no way limited by the provisions of Section 320 Cr.P.C. The High Court has inherent powers to quash any criminal proceeding or first information report or complaint whether the offences were compoundable or not. The Supreme court has by observing so, decided in Manoj's case that in the facts of the case concerned, continuing with the criminal proceedings would be an exercise in futility. The Supreme Court has also in Manoj's case negatived the contention raised on behalf of the State that the decision made in B.S.Joshi's case requires reconsideration. In the same judgment, His Lordship Justice Markandey Katju, while concurring with the view of His Lordship Justice Altamas Kabir that the case in hand is a fit case wherein the criminal proceedings deserved to be quashed, expressed the opinion that question may have to be decided in some subsequent decision or decisions (preferably by a larger Bench) as to which non compoundable cases can be quashed under section 482 Cr.P.C or Article 226 of the Constitution on the basis that the parties have entered into compromise and held that "where a line is to be drawn will have to be decided in some later decisions of this Court preferably by a larger Bench and some guidelines will have to be evolved in this connection and the matter cannot be left at the sole unguided discretion of Judges, which has to be exercised on some objective guiding principles and criteria, otherwise there may be conflicting decisions and judicial anarchy . The Hon'ble Justice Markandey Katju has expressed the opinion by accepting the contention raised by the learned counsel for the respondent therein that the decision in B.S.Joshi's case should not be understood to have meant that courts can quash any kind of criminal case merely because there has been a compromise between the parties.

19. In Shiji @ Pappu and other v. Radhika and another (2011) 10 SCC 705 the offences involved are Sections 354 and 394 IPC. The High court rejected the prayer for discharge on the ground that the charges are not personal in nature to justify quashing the criminal proceedings on the basis of a compromise arrived at between the complainant and the appellants. When the same was challenged before the Supreme Court, the Supreme Court has observed that "the width and the nature of the power itself demands that its exercise is sparing and only in cases where the High court is for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. The Supreme Court has, on the facts of the case in hand, found that

"it was not a case of broad daylight robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them and continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception" will be a futile exercise that will serve no purpose and is thus nothing but an empty formality. Section 482 Cr.P.C could in such circumstances, be justifiably invoked by the High court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below.

20.The Supreme Court has in the judgement reported in (2012) 5 SCC 627 Rajiv Saxena and others v. State (NCT of Delhi) and another, allowed the quashment of criminal case under sections 498A and 496 r/w Section 34 IPC on the ground that the parties had settled their disputes and the complainant agreed that the criminal proceedings need not be continued.

21. Similarly in Jayarajsinh Digvijaysinh Rana V. State of Gujarat JT 2012 (6) SC 504, the Supreme Court quashed and setaside the FIR registered for the offences under Sections 467, 468, 471, 420 and 120B IPC in so far as the appellant/A3 is concerned in terms of the settlement arrived at between the parties.

22. In Joseph Salvaraj v. State of Gujarat and others in (2011) 7 SCC 59, the Supreme Court is of the view that "the purely civil dispute is sought to be given a colour of a criminal offence to wreak vengeance against the appellant and it is necessary to draw a distinction between civil wrong and criminal wrong and the appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the appellant and respondent/complainant and is still sub judice. The Supreme Court quashed the FIR on the ground that the prosecution against the appellant before the same would only lead to his harassment and humiliation.

23. Whereas, in Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667 the parties arrived at compromise during pendency of the appeal against the order of conviction for the offence under section 307 IPC. The Supreme Court observed that "no offence shall be compounded, if it is not compoundable under the Code", however, while dealing with such matters, this court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence and the Supreme Court by referring to the earlier decisions reported in Jetha Ram v. State of Rajasthan (2006) 9 SCC 255, Murugesan v. Ganapathy Velar 2001 (10) SCC 504, Ishwarlal v. State of M.P. (2008) 15 SCC 671 and Mahesh Chand and another v. State of Rajasthan 1990 (supp) SCC 681, held that "considering the totality of facts and circumstances, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (accused 1) is reduced to the period already undergone".

24.In Rumi Dhar v. State of West Bengal and another 2009 (6) SCC 364 the accused was being prosecuted for the offences under sections 120B, 420, 467, 468 and 471 IPC along with the bank officers who were being prosecuted under Section 13(2) r/w section 13(1)(d) of Prevention of Corruption Act and the accused prayed for her discharge on the grounds that the accused paid the entire amount as per the settlement with the bank in the matter of recovery before the Debts

Recovery Tribunal and the dispute between the parties were purely ciivl in nature and that she had not fabricated any document nor cheated the bank in any way whatsoever. The Supreme Court has, by referring to Section 320 Cr.P.C and the earlier decisions of the Supreme court, refused to quash the charge against the accused on the ground that the High Court in exercise of its jurisdiction under section 482 Cr.P.C and the Supreme Court in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing the charges.

25.In Sushil Suri V. CBI reported in 2011 5 SCC 708 similar question arose regarding the scope and ambit of inherent jurisdiction of the High Court. In that case, the company and its directors were charge sheeted by the CBI and petition was filed under Section 482 for quashing the charge sheet mainly on the ground that the company repaid the entire loan to Punjab and Sind Bank along with interest and no loss was caused to Punjab and Sind Bank and therefore, no offence was committed by them. It was argued so by relying upon the decision of the Supreme Court in Nikhil Merchant V. Central Bureau of investigation and another in 2008 (9) SCC 677. The argument was opposed by CBI on the ground that the appellant and others had not only duped PSB but also defrauded the revenue by claiming depreciation on non existent machinery by forging documents/vouchers to show purchase of machinery, a precondition for release of instalments of loan and in the process cheated the public exchequer of crores of rupees. The High Court refused to quash the proceeding by ordering that merely because the Company and its directors had repaid the loan to PSB, they could not be exonerated of the offences committed by forging/fabricating the documents with the intention of defrauding the bank as well as the exchequers. The High Court was pleased to hold so by applying the ratio decidendi laid down in Rumi Dhar (smt.) V. State of West Bengal and another 2009 (6) SCC 364. The Supreme Court distinguished the facts involved in Nikhil Merchant case and the case at hand and held that the view in Rumi Dhar case is more applicable than the decision made in Nikhil Merchant case and declined to quash the criminal proceedings.

26. In the latest case reported in JT 2012 3 SCC 469 Ashok Sadarangani and another v. Union of India, the accused was charged for the offences under sections 120B, 465, 467, 468 and 471 IPC for having secured the credit facilities by submitting forged property documents. However, the Supreme Court, having regard to the facts of the case, held that "in the instant case, where the emphasis is more on the criminal intent of the petitioners than on the civil aspect involving the dues of the bank in respect of which a compromise was worked out, as such, the ratio laid down in the decisions made in Joshi, NiKhil Merchant, Manoj Sharma's cases are not applicable and hence rejected the relief sought for by the accused for quashing the criminal proceedings.

27. Thus, in view of the conflicting views of the Hon'ble Supreme Court in the judgments referred to above, the Hon'ble Supreme Court has, when Gian Singh V. State of Punjab and another case in Special Leave Petition (Crl) No.8989 of 2010 along with the batch of similar SLP (Crl) cases, came up for hearing referred the matter to a larger Bench. While doing so, the Bench consisting of their Lordships Justice Markandey Katju and Justice Gyan Sudha Misra, doubted the correctness of the decision of Supreme Court in B.S.Joshi and others V. State of Haryana and another, Nikhil merchant case and Manoj Sharma V. State and others and expressed the opinion that the above

three decisions required to be reconsidered as something which cannot be done directly cannot be done indirectly and non compoundable offences cannot be permitted to be compounded whether directly or indirectly. When the matter came up for consideration before three judges larger bench (consisting of their Lordships R.M.Lodha, J, Anil R.Dave, J. and Jyoti Mukhopadhaya,J.) the larger bench after duly referring to all the earlier judgments in this regard finally laid down the correct law. For better appreciation, para 57 of the judgment in which the legal position summarised is extracted herein:

"57. 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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 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 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, High Court may quash criminal proceedings if in its view, 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 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

28.Thus, the legal position is now well settled that in appropriate cases, the High Court can, in exercise of its inherent powers, quash the criminal case on the basis of compromise between the offender and victim as the possibility of conviction in such cases is remote and bleak and continuation of 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 the same would tantamount to abuse of process of law and it is but appropriate to put an end to criminal case to secure the ends of justice.

29.In the legal premises as discussed above, the merits and demerits of the reliefs sought for in all the three Crl.OPs are to be now decided.

30. The offences involved in Crl.O.P.Nos.21714 and 24938 of 2011 in Crime No.834 of 2011 are Sections 420, 468, 506(ii) r/w 120 (B) IPC. Section 420 deals with act of cheating and dishonestly inducing the person deceived to deliver any property to any person. Section 468 deals with forgery for purpose of cheating. Section 506(ii) r/w 120 B IPC is an act of criminal intimidation to cause death or grievous hurt in furtherance of criminal conspiracy. The recitals of FIR proceeds as if A1 and A2 cheated the defacto complainant and others and made them to part with Rs.5 crores on false and misrepresentation that the remaining accused have valid and marketable title over the vacant land and had an agreement of sale with false particulars executed between the defacto complainant and others and other remaining accused and thereafter, failed to respond to their demand for return of advance amount paid by them and criminally intimidated them to cause death, if any money is demanded. The final report was after investigation filed by the police in the same line and the same was also taken up as CC for the offences as referred to above. The reading of Section 320 Cr.P.C and the tabular column appended to the same would disclose that out of four offences as above referred to, the offences under Section 420 and Section 506(ii) are compoundable offences and other offences are non compoundable.

31. Whereas, the offences involved in Crl.O.P.No.23140/2011 in Crime no.758 of 2011 dated 1.8.2011 are under Sections 147, 148, 447, 427, 387, 506(ii) 465, 468, 471, 420(II) counts IPC. Sections 147 and 148 deal with punishment for rioting and rioting, armed with deadly weapon. Section 427 deals with mischief causing damage to the amount of Rs.50/-. Section 447 deals with punishment for criminal trespass. Section 387 is against putting the person in fear of death or of grievous hurt, in order to commit extortion. Section 506(ii) deals with punishment for criminal intimidation if threat be to cause death or grievous hurt. Section 465 deals with punishment for forgery. Section 468 deals with forgery for purpose of cheating. Section 471 is against using as genuine a forged document or electronic record and Section 420 IPC deals with an act of cheating and dishonestly inducing the person deceived to deliver or to make, alter or destroy any property to any person. The allegations raised herein proceeds as if the defacto complainant and others purchased the property measuring 20 acres and A2 Gowrisankar, who is benami of Ranganathan/A1, obtained an order of exparte injunction by using forged kist receipts and thereafter, A2 Gowrisankar along with 15 hirelings arming with weapons trespassed into the property and threatened the defacto complainant and others to leave the property by receiving the amount failing which to put end to their life. Here also, out of 10 sections mentioned in FIR, Sections 427, 447, 420 and 506 are compoundable offences and other offences are non compoundable.

32. For the purpose of combined appreciation of the reliefs sought for in Crl.OP Nos.21714/2011 and 24938/2011 and 23140 of 2011, the offences to be commonly considered are all the offences mentioned in FIR No.834 of 2011 culminating into CC.293 of 2011 and the offences under sections

147, 148, 447, 427, 387, 506(ii) and 420 IPC in FIR No.758 of 2011 which are both compoundable and non compoundable. The other non compoundable offences allegedly punishable under sections 465, 468 and 471 are, in my considered view, to be dealt with separately.

33. In my considered view, compoundable and non compoundable nature of the offences as mentioned above is not relevant for deciding the reliefs sought for herein on the basis of the settlement arrived at between the parties in view of the latest legal position laid down in the judgments cited above. The Hon'ble Supreme Court and our High court in the judgments cited above reiterated the legal position that non compoundable offences cannot be compounded under section 320 Cr.P.C, but the power of this court under Section 482 Cr.P.C is wider in nature, with no statutory limitation and the High court can well within its jurisdiction, to quash non compoundable offences, when the opinion of the High court is that continuance of criminal proceeding is abuse of process of law and is futile and it is appropriate to put an end to criminal case to secure the ends of justice.

34. It may be true that both the FIRs can be said to be arising out of same cause of action i.e. act of cheating on the part of A1 abetted by other accused, but the allegations raised in Crime Nos.758 and 834 of 2011 are for different acts constituting different offences and all the three Crl.OPs are filed against identical set of accused for identical relief to quash the FIR on the same ground of settlement between the parties. As rightly argued by the learned counsel for the petitioners, unlike the case decided by the Supreme Court in Rumi Dhar v. Centrel Bureau of Investigation, Ashok Sadarangani and another and Susil Suri cases, the allegations constituting the offences, which are referred to above, in both crime numbers do not involve any crime against the society. The parties have arrived at amicable settlement in respect of main dispute between them i.e. Claim made upon the land in question and in respect of huge amount received by A1 and A2 as sale consideration and withdrew the civil case. Though any judgment in civil proceedings on the basis of the settlement entered into between the parties would not automatically render the criminal proceedings to come to an end and it is not much relevant to the criminal proceeding, the compromise effected herein not only put an end to the dispute between the parties, but will also, considering the nature of the offences, have very little impact upon the society in the event of the same being quashed.

35. As already referred to, the allegations raised in the FIR and the charge sheet in both the crime numbers insofar as the offences as referred to above would reveal that the same constitute a civil wrong arising out of civil transaction involving no public policy and ingredients of criminal offences are wanting and is civil dispute with certain criminal facets as explained in Nikhil Merchant's case and the facts involved in the case at hand is more or less similar to that of Nikhil Merchant's case and B.S.Joshi and others case. The parties have admittedly on the basis of the compromise, agreed to withdraw all the claims and allegations made against each other. The affidavits are filed by the defacto complainant and others to that effect before Apex Court, Civil court before the concerned criminal court and also before this Court. Under such circumstances, the defacto complainant and the witnesses are not likely to support their allegations during trial and the chances of ultimate conviction are very remote and no useful purpose will be served by allowing the prosecution to continue. It is held by the Supreme court in Madan Mohan Abbot case (2008) 4 SCC 582 that "it is perhaps advisable that in disputes, where the question involved is of a purely personal nature, the

court should ordinarily accept the terms of the compromise even in criminal proceedings since keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilised in deciding more effective and meaningful litigation". The Supreme Court termed it as a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law". The Supreme Court in Manoj Sharma's case was of the view that "once the complainant decided not to pursue the matter further, High court could have taken a more pragmatic view of the matter".

36.The learned brother Judge of our High court T.Mathivanan J. in (2012) MLJ (Crl) 473 by relying upon the cases cited in the same, quoted the wording of Hon'ble Mr. Justice K.G.Balakrishnan, the then Chief Justice of India and Hon'ble Mr. Justice S.B.Sinha, on different occasions on different context on alternate dispute mechanism, which are extracted at paragraphs 47, 48, 49, 50 , 52 and 53 in the judgment which read as follows:

7. Nowadays, ADR mechanism gets momentum and the needs, for getting the cases, be it civil or criminal in nature, compounded by way of amicable settlement, have been increasing day by day.

48. From the notes for a law lecture, prepared by Mr.ABRAHAM LINCOLN, in the year 1850, it appears that he has advised the lawyers community and the litigant public as under:

Discourage litigation. Persuade your neighbours to compromise wherever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses and waste of time. As a peace maker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

49. It is also imperative on the part of this Court to quote the wordings of their Lordships Hon'ble Mr.JUSTICE K.G.BALAKRISHNAN, the Then Chief Justice of India and Hon'ble Mr.JUSTICE S.B.SINHA, which they have employed in their messages dated 10.06.2009 and 11.06.2009 respectively sent to the Tamil Nadu State Legal Services Authority on the eve of publishing a book on Alternative Disputes Resolution-Mediation titled 'ADR # An Overview' on 13.06.2009.

50. His Lordship Hon'ble Mr.JUSTICE K.G.BALAKRISHNAN, in his message has stated as under:

The importance of mediation is underscored by the fact that it is an important device to tackle the mounting caseload before courts at all levels.

His Lordship Hon'ble Mr.JUSTICE S.B.SINHA, in his message has stated as under:

When a person knocks at the door of justice, he does so because he has a grievance and in the expectations that the matter will be dealt within a reasonable period of time. This is intricately connected with the issue of the huge pendency of cases in the Courts and the solution to this problem lies in Alternative Disputes Resolution.

52. In the following two cases, the Hon'ble Supreme Court of India has suggested that the Law Commission should undertake the exercise of identifying more compoundable offences to be included with the proviso to Section 320 Cr.P.C., i.In the case of Ramgopal vs. State of M.P., reported in 2010 (7) SCALE 711, the Supreme Court of India has observed as under:

There are several offences under the IPC that are currently non-compoundable. These include offences punishable under Section 498-A, Section 326 etc., of the IPC. Some of such offences can be made compoundable by introducing a suitable amendment in the statute. We are of the opinion that the Law Commission of India could examine whether a suitable proposal can be sent to the Union Government in this regard. Any such step would not only relieve the courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of re-conciliation between them. We, accordingly, request the Law Commission and the Government of India to examine all these aspects and take such steps as may be considered feasible.

ii.In an another case, viz.in Crl.A.No.433 of 2004 (Diwaker Singh vs. State of Bihar) decided on 18.08.2010, the Hon'ble Supreme Court has made similar observations, which are extracted as under:

Further, we are of the opinion that Section 324 IPC and many other offences should be made compoundable. We have already referred to the Law Commission of India and the Ministry of Law & Justice, Government of India our suggestion that suitable amendments should be made in the Code of Criminal Procedure for making several offences which are presently treated as non-compoundable under Section 320 Cr.P.C., as compoundable. This will greatly reduce the burden of the courts.

The Law Commission of India and the Ministry of Law & Justice, Government of India may also examine this suggestion. The Law Commission may also examine several other provisions of the Indian Penal Code and other statutes in order to recommend that they may also be made compoundable even if they are presently non-compoundable.

53. It appears that pursuant to these observations of the Supreme Court, the Law Commission of India has embarked on the task of identifying appropriate offences which could be added to the list of compoundable offences under Section 320 Cr.P.C., It also appears that the Law Commission has undertaken that the exercise is only in respect of the offences made punishable under Indian Penal Code for the present. It also appears that the Law Commission of India has addressed a letter to the Hon'ble Minister for Law and Justice forwarding the report of the Law Commission of India, on 'Compounding of (IPC) Offences'.

The learned brother judge concluded the judgment by expressing firm belief that "the Government of India will make necessary amendment to sub section 9 of Section 320 of the Code of Criminal Procedure, 1973 to relax its vigor and rigidity and to identify more compoundable offences under section 320 of the Code of Criminal Procedure, 1973".

37.For the discussions held above, this court is, on overall appreciation of the facts and conduct of the parties involved herein, of the view that it is a fit case, wherein, it is but expedient to meet the ends of justice, not to permit the prosecution to continue and is in exercise of inherent power vested upon this court under Section 482 Cr.P.C, inclined to quash the criminal proceedings against A1 and A2 in its entirety in Crl.O.P.Nos.21714 and 24938 of 2011 and in respect of the offences under Sections 147, 148, 447, 427, 387, 506(ii) and 420 IPC in Crl.OP.No.23140 of 2011.

38.As far as the allegations raised against the petitioners/A1 and A2 for the offences under Sections 465, 468 and 471 IPC in Crime No.758 of 2011 are concerned, the same are in respect of act of forgery of the documents i.e., kist receipts in C77 series for the faslis 1405, 1406 and 1407, which are according to the defacto complainant, forged and produced before the Civil Court to obtain order of status quo. The kist receipts are admittedly filed along with plaint in OS.No.23 of 2008 by the accused Dhanasingh, Albert, Jayapaul, Rathinavathy and Juliet Gnanavathy, who are arrayed as A3 to A7 herein through the second accused T.C.Venkatesh @ Gowrisankar/A2 as their power of attorney. The three kist receipts are for the faslis 1405 to 1407 corresponding calender years 1995 to 1997 having S.No.C77 509489. This suit is filed against the rival claimants and against the members of Annamalai Avenue Nolambur Plot owners Association and other officials for questioning the validity and enforceability of compromise decree made in earlier suit OS.No.3427 of 1974 and for other consequential and permanent injunctions. The suit is filed along with 22 documents, out of which, the documents 19 to 21 filed along with plaint are kist receipts dated 19.3.1995, 18.2.1996 and 18.4.1997 obtained from Deputy Tahsildar by the plaintiffs. The kist receipts are issued in the names of N.K.K.Dhanasingh, N.K.K.Albert and N.K.K.Jayapaul for the faslis 1405, 1406 and 1407 for 20.59 acres in S.No.88 situated in Saidapet Taluk, Chengalpet District and the amount collected under each of the receipts is Rs.11,968/-. The reading of para 56 at page 33 of the plaint and memo of calculation would reveal that the property is, for the purpose of payment of court fee in suit, valued at 30 times of the kist value at Rs.76.13 and the total kist value comes to Rs.2284/- and the plaintiff's 5/7th share is valued at Rs.1631-50 and the court fee is paid under section 37(1) of the Tamil Nadu Court Fee Act at Rs.122-50. The suit is valued for the relief of declaration at Rs.10,400/- and the injunction reliefs are valued at Rs.1,000/- each etc. The suit is filed along with I.A.Nos.156 and 157/2008. But, the kist receipts are not produced as exhibits in the course of enquiry in IAs. However, the contesting respondents have in the course of argument in I.As, seriously contended that the documents so produced before this court are forged for the purpose of the present case. But, the trial court declined to render any finding on the genuineness of the documents on the ground that the documents are not marked as exhibits and while doing so, the trial court also stated that in the event of the property being valued on the basis of the documents, the property can be, for the purpose of suit reliefs, re-valued and subject to such revaluation be presented before the appropriate court, but the suit cannot be dismissed on the basis of the documents, the genuineness of which need not be gone into.

39.Similar observation was made by High court in para 27 of its order dated 5.8.2009 made in CRP.Nos.2913 and 3006 of 2008 filed under Article 227 of the Constitution of India against numbering and entertaining of suit OS.23 of 2008 and to strike out the same from the file of the same court. Our High court though pointed out certain discrepancies in the kist receipts produced by the plaintiffs, was not inclined to render any observation and finding as regards the pleadings on

merits, probative value of the documents, nature of the reliefs sought for and the right of the parties and left the same to be decided by the trial court. Aggrieved against the same, SLP.30471 and 30472 of 2011 are filed before the Supreme court, where again, forgery nature of the documents, is seriously agitated. The serious objection raised before the Supreme Court is that the kist receipts for previous years i.e. receipts dated 19.3.95, 18.2.96 and 18.4.1997 are forged by using the kist receipt book printed in the year 2003 and the entries made therein are written in hand. Similarly, the plaintiffs have produced adangal register relating to the fasli year 1388 corresponding with calendar year 1978-79, which is much prior to compromise decree dated 8.10.1980 and which is also forged document and the same was used to make the court to believe that they are the persons in possession and enjoyment of the property, thereby obtained interim injunction using the forged documents. The supreme court by order dated 6.1.2010 entertained SLPs and issued notice to the respondents and stayed the proceedings. The supreme court thereafter, in view of the compromise entered into between parties, finally disposed of SLPs on 13.9.2011 in and under which, interlocutory applications filed by the respondents 1 to 5, who are the plaintiffs in O.S.23 of 2008 are allowed and the suit is dismissed as withdrawn and SLP are also dismissed as infructuous.

40.In the present compliant registered as FIR No.758 of 2011 filed on 1.8.2011, during the pendency of SLPs before the Supreme Court, here again, the allegations raised for the offences under sections 465, 468 and 471 IPC are that three receipts are forged and such forged receipts are produced before the court for obtaining an order of status quo. In the course of investigation upon the same, the investigating officer reported to have obtained statement from the witnesses and also statement from the revenue officials and reported to have collected the copy of the documents produced before the court and the original kist receipts book pertaining to C77 bearing kist receipts serial nos.509489. The other documents collected by the Investigating Officer is the reply given by Tahsildar, Ambattur by name K.Mahatma in Na.Ka.No.4548/2011/A6 dated 2.7.2011 and the reply is addressed to the Inspector of Police, Crime Branch, Nolambur Police Station and the letter of the Inspector of Police dated 20.7.2011 is mentioned in the reference column. The document reads as if the same is given in reply to reference cited letter of the Inspector of Police dated 20.7.2011. It is stated therein that the receipts in question in C.77 serial numbers, on verification of the original kist receipts book, found to be not genuine. The Investigating Officer has also reported to have obtained statement from the author of the aforementioned letter and collected further particulars on 4.10.2011 and also obtained statement from one Manoharan, VAO, Ambattur Taluk and Retired VAO, Murthy, who is the signatory in the receipts in question.

41.It may be true that the letter dated 20.7.2011 addressed by Tahsildar, K.Mahtma to the Inspector of Police, Crime branch need not be looked to, as the same is much before the date of the complaint dated 1.8.2011. When the complaint is filed on 1.8.2011, this court is at loss to understand how the investigation on the genuineness of documents which are xerox copy of the receipts, is commenced much earlier on 20.7.2011 and what could be the relevancy and importance attached to the same. As rightly pointed out by the learned counsel for the petitioners, this court discussed about the authenticity of the reply of the Inspector of Police dated 2.7.2011 in earlier Crl.O.P.No.18888 of 2011 arising out of the same crime number on different context and negatived the same and refused to place any reliance on the reply. But that by itself in my considered view, would not go to reject the allegations raised herein regarding the act of forgery of the kist receipts in toto.

42.As already referred to, the kist receipts produced before the civil court in O.S.No.23 of 2008 and the corresponding kist receipts book maintained in the department concerned, are produced for perusal of this court. The glance at kist receipt printed book maintained in the department reveals that the kist receipts pertaining to C77 series bearing serial no.509489 and consecutive two receipts are issued on 25.5.2006, in the name of different individual for falsi 1415, corresponding with calender year 2005 and they are issued in the kist receipts book printed at Madurai during 2003. Whereas, the kist receipts produced herein are prepared by using the same receipt book printed during 2003 and are for faslis 1405, 1406 and 1407 corresponding with calender years 1995 to 1997 issued in the name of different persons. The cursory glance at the disputed kist receipt copies reveal that out of the 3 receipts, Serial numbers in two kist receipts are not clearly printed. When the receipt book is printed during 2003, the same could not have been, except by an act of forgery, used for kist receipts for the previous calender years. In that event, allegations regarding the act of forgery, are to be prima facie accepted to be true or at least to be held that it is too earlier to reject the allegations regarding act of forgery. Having found some foul play, it is considered to be fit case, wherein the same requires detailed investigation to find out the genuineness of the receipts produced as plaint document nos.19 to 21 and the persons and the officials at whose instance and by whom the same are forged etc.

43.As rightly argued by the learned Public Prosecutor, unlike the cases cited on the side of the petitioners, the act of forgery alleged herein is in respect of kist receipts obtained from the revenue department and hence, amounts to an act of forgery of public documents and the same cannot hence be brushed aside lightly, but ought to have been viewed very seriously. It is rightly argued on the prosecution side that the compromise of personal dispute between the individuals, who are in no way of concerned with the act of forgery of kist receipts will have no impact upon criminal proceedings initiated for the offences under section 465, 468 and 471 IPC. Even in the event of the failure on the part of the individuals to depose in support of the allegations regarding the act of forgery of public documents, the same is not likely to affect the case of the prosecution, as the prosecution may still be able to establish the same through the evidence of the departmental personnel and through relevant documents maintained in the department, as such, this court by applying the view expressed by the Supreme court in the judgments reported in (i) Rumi Dhar (smt.) V. State of West Bengal and another (2009 (6) SCC 364), (ii) JT 2012 3 SCC 469 Ashok Sadarangani and another v. Union of India; (iii)Sushil Suri v. Central Bureau of investigation and another (2011) 5 SCC 708 (iv) CBI v. Ravishankar Prasad (2009) 6 SCC 351 and (v)Ram Dhan v. State of UP and another (2012 5 SCC 536), is of the view that the criminal proceedings in respect of the offences for act of forgery under sections 465, 468 and 471 IPC cannot be quashed on the basis of the settlement between the individuals. The Supreme Court has in Ashok Sadarangani case dismissed the petition for quash by observing that "in the case at hand, where the emphasis is more on the criminal intend of the petitioners than on the civil aspect involving dues of the Bank in respect of which a compromise was worked out". Such observation of the Apex court is squarely applicable to the facts of the present case.

44.However, the next aspect to be considered herein is as to whether the criminal prosecution for the three offences as referred to above has to go on against both the petitioners. It is sought to be argued on the side of the petitioners herein that the suit along with the documents in question

having been filed only by A3 to A7 through A2 power of attorney and as the proceedings of the supreme court having been agitated between A2 to A7 on one hand and the individuals on other hand, A1 cannot be involved into the alleged act of forgery of the documents. The attention of this court is also drawn to the allegations raised in the FIR and the statement recorded from the individuals, which do not point at A1 as the person in any manner responsible for alleged act of forgery of kist receipts or for producing it to the court as genuine one. That being the nature of the allegations raised herein, the same do not even prima facie make out any case against A1 for the offences referred to above, as such, the prosecution initiated for the offences under sections 465, 468 and 471 IPC is liable to be quashed against A1.

45.At this juncture, the learned counsel for the petitioners would raise an objection regarding the locus standi of individual/defacto complainant to lodge any complaint in respect of any offence punishable under sections 465, 468 and 471 IPC. It is contended by the learned senior counsel appearing for the petitioners that the offence under section 471 IPC is the punishment section for fraudulently or dishonestly using the document or electronic record as genuine and the manner of taking cognisance is dealt with under section 195(1)(b)(ii) Cr.P.C, as per which, the offence shall not be taken cognisance except on the complaint given in writing of that by such officer of the court, as the court may authorise in writing in this behalf, or some other court to which that court is subordinate. It is argued that as the act of forgery is in respect of the documents being produced into court to make the court believe the same to be genuine one for obtaining an order in favour of the plaintiffs, the individual has no locus standi to file a complaint and it is for the court or officer of the court with the permission of the court alone has the locus standi to file a complaint.

46.Per contra, the learned Public Prosecutor would by relying upon the judgments reported in Iqbal Singh Marwah case ((2008) 15 SCC 667) and Ram Dhan case ((2012) 5 SCC 536) and Sushil Suri case ((2011) 5 SCC 708) argue that section 195(1)(b)(ii) is applicable to any act of forgery in respect of the documents already produced before the court and it is not applicable to any document, which is forged elsewhere and thereafter produced before the court as genuine. This court, in view of the principles laid down by the Supreme court in the cases cited supra, is inclined to agree with such argument advanced by the learned Public Prosecutor.

47.In Iqbal Singh Marwah and another v. Meenakshi Marwah and another, 2005 Crl LJ 2161, the larger bench of the Supreme court has dealt with identical question as involved in the present case. The document involved in the other case is Will and the question relating to genuineness of the same is the issue before the District Court in probate proceedings. The contesting parties filed the criminal complaint before the Court of Chief Metropolitan Magistrate, New Delhi for prosecution of the opposite party on the ground that Will was a forged and fictitious document and the complaint was dismissed on the ground that Section 195(1)(b)(i) and (ii) Cr.P.C operated as a bar for taking cognizance of the offences under Sections 192, 193, 463, 464, 471, 475 and 476 IPC. Aggrieved against the order, the defacto complainant filed criminal revision before the Sessions court and the Sessions Judge, by relying upon the judgment reported in Sachida Nand Singh v. State of Bihar AIR 1998 SCC 1121 held that "the bar contained in Section 195(1)(b)(ii) Cr.P.C would not apply where forgery of a document was committed before the said document was produced in court. The revision petition was accordingly allowed and the matter was remanded to the court of Chief Metropolitan

Magistrate for proceeding in accordance with law. That order was challenged by the person arrayed as accused by filing a petition under Section 482 Cr.P.C. which was again, by following the same Supreme Court judgment, dismissed by Delhi High Court. The order of the Delhi High Court was challenged before the Supreme Court. The Supreme court dismissed the appeal as totally lacking in merit. The Supreme court, while interpreting the expression, in respect of a document produced or given in evidence in para 5 referred to the principal controversy in issue that "when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court" occurring in Clause (b)(ii) of sub section (1) of Section 195 Cr.P.C. The Supreme court has, after having detailed analysis of all the earlier cases upon the issue, held in para 25 of its judgment, that Sachida Nand singh case is correctly decided and the view taken therein is the correct view. The other judgments referred to therein are (i)AIR 1996 SC 1592 Surjit Singh v. Balbir Singh (ii)AIR 1998 SC 1121 Sachida Nand Singh (iii)AIR 1931 Allahabad 443 (Full Bench) Emperor v. Kushal Pal Singh (iv) AIR 1971 SC 1935 (3 judges bench) Patel Lalji Bhai Somabhai v. State of Gujarat (v) AIR 1973 SC 1100 Raghunath v. State of UP (vi) AIR 1974 SC 299 Mohan Lal v. State of Rajasthan (vii) AIR 1976 SC 2225 Government of West Bengal v. Haridas Mundra (viii)AIR 1994 SC 1549 Mahadev Bapuji Mahajan v. State of Maharastra (ix) AIR 1983 SC 1053 Gopalkrishna Menon v. D.Raja Reddy (x) AIR 1988 SC 419 Sushil Kumar v. State of Haryana.

48.The discussion of the Supreme court in the above judgment would reveal that except Surjit Singh case and GopalKrishna Menon case, in all other cases, the supreme court has laid down the ratio that "Section 195 (1)(b)(ii) Cr.P.C would be attracted only when offences enumerated in the said provision have been committed with respect to the document, after it has been produced or given in evidence in the proceeding in any court during trial, when the document was in custodia legis". For better appreciation and understanding, the relevant paragraphs of the full bench decision of the supreme court are extracted hereunder:

"5.In Sachida Nand Singh after analysis of the relevant provisions and noticing a number of earlier decisions (but not Surjit Singh), the Court recorded its conclusions in paras 11, 12 and 23 which are being reproduced below:

1. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that court. In other words, the offence should have been committed during the time when the document was in custodia legis.....

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the court and long before its production in the court, could also be treated as one affecting administration of justice merely because that document later reached the court records.....

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.

6. On a plain reading clause (b)(ii) of sub-section (1) of Section 195 is capable of two interpretations. One possible interpretation is that when an offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 IPC is alleged to have been committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any court, a complaint by the court would be necessary. The other possible interpretation is that when a document has been produced or given in evidence in a proceeding in any court and thereafter an offence described as aforesaid is committed in respect thereof, a complaint by the court would be necessary. On this interpretation if the offence as described in the section is committed prior to production or giving in evidence of the document in court, no complaint by court would be necessary and a private complaint would be maintainable. The question which requires consideration is which of the two interpretations should be accepted having regard to the scheme of the Act and object sought to be achieved.....

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9.The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is Of Contempts of the Lawful Authority of Public Servants . These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as Of False Evidence and Offences Against Public Justice . The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

10. Section 195(1) mandates a complaint in writing to the court for taking cognizance of the offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 CrPC which occur in Chapter

XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is Provisions as to Offences Affecting the Administration of Justice . Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the sections which follow them than might be afforded by a mere preamble. (See Craies on Statute Law, 7th Edn., pp. 207, 209.) The fact that the procedure for filing a complaint by court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer to the legislative intent that the offence committed should be of such type which directly affects the administration of justice viz. which is committed after the document is produced or given in evidence in court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in court cannot, strictly speaking, be said to be an offence affecting the administration of justice.....

Paras 11 to 15.....

16.As mentioned earlier, the words by a party to any proceeding in any court occurring in Section 195(1)(c) of the old Code have been omitted in Section 195(1)(b)(ii) CrPC. Why these words were deleted in the corresponding provision of the Code of Criminal Procedure, 1973 will be apparent from the 41st Report of the Law Commission which said as under in para 15.39:

5.39. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to witnesses, the extension would be in conformity with the broad principle which forms the basis of Section 195. Since the object of deletion of the words by a party to any proceeding in any court occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good.....

para 17.....

18.In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words court is of opinion that it is expedient in the interests of justice . This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the

magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.....

19. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).....

20. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

21. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the

type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong. The learned author has referred to Sheffield City Council v. Yorkshire Water Services Ltd.12, WLR at p. 71, where it was held as under:

Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society . In S.J. Grange Ltd. v. Customs and Excise Commrs. while interpreting a provision in the Finance Act, 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause (b)(ii).....

Paras 22 to 24.....

25.In view of the discussion made above, we are of the opinion that Sachida Nand Singh2 has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis."

Thus, the aforesaid ratio laid down by the supreme court is applicable to the facts of the present case in full force.

49.In this case, the allegations raised herein are for the offences under Sections 465, 468 and 471 IPC. It is the specific case alleged in the complaint that the forged documents are produced before the court for obtaining order of status quo and the allegations are not to the effect that documents in question are produced before the court and are thereafter forged with an intention to use the same as genuine. In that event, the observation of the supreme court in Ram Dhan case (2012) 5 SCC 536 is to be applied, wherein the nature of offences involved are under sections 177, 181, 182 and 195 IPC and the Supreme court has, while dealing with applicability of sections 195 and 340 Cr.P.C, held that having regard to the composite nature of the offences under sections 177 and 182 which deal with

the cases totally outside the court, the provisions of Section 195 Cr.P.C is not attracted. The Supreme Court has, by following the earlier decision of the Supreme court in Sachida Nand Singh case, held that section 195 Cr.P.C is not attracted. While doing so, it is observed that "it is not necessary that the fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Thus, viewing from both the angles, the complaint lodged by the individuals in respect of the document allegedly forged outside and produced in a proceeding before the court is maintainable . Thus, applying the same view, the objection regarding maintainability of the complaint on locus standi issue has to be necessarily negatived. The defacto complainant is but competent person to set in motion criminal law against the offenders for act of forgery alleged.

50.In view of the discussion held above, this court, having negatived the contentions raised on the side of the petitioners, is of the considered view that there is no other factual or legal impediment to keep alive and to proceed with the criminal investigation against A2 for the offences under Sections 465, 468 and 471 IPC in Crime No.758 of 2011.

51.In the result, Crl.OP.Nos.21714 and 24938 of 2011 are ordered as prayed for, thereby the criminal proceedings in CC.No.293/11 on the file of Judicial Magistrate, Ambathur arising out of Crime No.834 of 2011 dated 24.08.2011 on the file of V7 Nolambur Police Station is quashed.

52.In the result, Crl.OP.No.23140/2011 is partly ordered thereby FIR registered in V7 Nolambur Police Station Cr.No.758 of 2011 is quashed in its entirety in so far as first petitioner/A1-Ranganathan is concerned and the same is quashed for the offences under Section 147, 148, 387, 427, 447, 420 IPC and 506(ii) IPC in so far as the 2nd petitioner/2nd accused is concerned and the Crl.O.P. is partly dismissed in respect of other offences insofar as the 2nd petitioner/A2 is concerned. Consequently, all the Miscellaneous petitions are closed.

rk tsh