

Cbi,Acb,Mumbai vs Narendra Lal Jain & Ors on 28 February, 2014

Equivalent citations: 2014 AIR SCW 1603, 2014 (5) SCC 364, AIR 2014 SC (SUPP) 532, (2014) 2 BOMCR(CRI) 394, (2014) 1 CRILR(RAJ) 283, (2014) 85 ALLCRIC 346, (2014) 57 OCR 1061, (2014) 2 ALLCRILR 296, 2014 CALCRILR 2 328, (2014) 1 ALLCRIR 1125, (2014) 2 CURCRIR 19, 2014 (2) SCC (CRI) 579, (2014) 3 KCCR 176, (2014) 3 SCALE 137, 2014 ALLMR(CRI) 1481, (2014) 2 UC 912, (2014) 136 ALLINDCAS 1 (SC), 2014 CRILR(SC MAH GUJ) 283, (2014) 3 MH LJ (CRI) 606, 2014 CRILR(SC&MP) 283, (2014) 2 RECCRIR 15, (2014) 2 MAD LJ(CRI) 124, 2014 (2) ABR (CRI) 31

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Bench: N.V.Ramana, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.517 OF 2014
(Arising out of Special Leave Petition (Crl) No. 6138 OF 2006)

CBI, ACB, MUMBAI . . . APPELLANT (S)

VERSUS

NARENDRA LAL JAIN & ORS. . . RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. Leave granted.

2. The appellant, Central Bureau of Investigation (CBI) ACB, Mumbai seeks to challenge an order dated 28.10.2005 passed by the High Court of Bombay quashing the criminal proceedings against the respondents Narendra Lal Jain, Jayantilal L. Shah and Ramanlal Lalchand Jain. The aforesaid respondents had moved the High Court under Section 482 Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) challenging the orders passed by the learned Trial Court refusing to discharge them

and also questioning the continuance of the criminal proceedings registered against them. Of the three accused, Jayantilal L. Shah, the court is informed, has died during the pendency of the present appeal truncating the scope thereof to an adjudication of the correctness of the decision of the High Court in so far as accused Narendra Lal Jain and Ramanlal Lalchand Jain are concerned.

3. On the basis of two FIRs dated 22.03.1993, R.C. No. 21(A) of 1993 and R.C. No.22 (A) of 1993 were registered against the accused-respondents and several officers of the Bank of Maharashtra. The offences alleged were duly investigated and separate chargesheets in the two cases were filed on the basis whereof Special Case No. 15 of 1995 and Special Case No. 20 of 1995 were registered in the Court of the Special Judge, Mumbai. In the chargesheet filed, offences under Sections 120-B/420 IPC and Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 corresponding to Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short “PC Act”) were alleged against the accused persons. In so far as the present accused-respondents are concerned the gravamen of the charge is that they had conspired with the bank officials and had projected inflated figures of the creditworthiness of the companies represented by them and in this manner had secured more advances/loans from the bank than they were entitled to.

4. While the criminal cases were being investigated the bank had instituted suits for recovery of the amounts claimed to be due from the respondents. The said suits were disposed of in terms of consent decrees dated 23.04.2001. Illustratively, the relevant clause of the agreement on the basis of which the consent decrees were passed reads as follows:

“10. Agreed and declared that dispute between the parties hereto were purely and simply of civil nature and on payment mentioned as aforesaid made by the Respondents the Appellants have no grievance of whatsoever nature including of the CBI Complaint against the Respondents.”

5. Applications for discharge were filed by the accused-respondents which were rejected by the learned Trial Court by order dated 04.09.2011. The learned Trial Court, thereafter, proceeded to frame charges against the accused. In so far as the present accused-respondents are concerned charges were framed under Sections 120-B/420 of the Indian Penal Code whereas against the bank officials, charges were framed under the different provisions of the Prevention of Corruption Act, 1988 (PC Act). The challenge of the respondents to the order of the learned Trial Court refusing discharge and the continuation of the criminal proceedings as a whole having been upheld by the High Court and the proceedings in question having been set aside and quashed in respect of the respondent, the CBI has filed the present appeal challenging the common order of the High Court dated 28.10.2005.

6. We have heard Mr. P.P. Malhotra, learned Additional Solicitor General appearing on behalf of the appellant and Mr. Sushil Karanjkar, learned counsel appearing on behalf of Respondent Nos. 1 and 4.

7. Shri Malhotra, learned Additional Solicitor General, has taken us through the order passed by the High Court. He has submitted that the High Court had quashed the criminal proceeding registered against the accused- respondents only on the ground that the civil liability of the respondents had been settled by the consent terms recorded in the decree passed in the suits. Shri Malhotra has submitted that when a criminal offence is plainly disclosed, settlement of the civil liability, though arising from the same facts, cannot be a sufficient justification for the premature termination of the criminal case. Shri Malhotra has also submitted that the offence under Section 120-B alleged against the accused-respondents is not compoundable under Section 320 Cr.P.C.; so also the offences under the PC Act. Relying on the decision of a three Judges Bench of this Court in *Gian Singh vs. State of Punjab and Another*[1], Shri Malhotra has submitted that though it has been held that the power of the High Court under Section 482 Cr.P.C. is distinct and different from the power vested in a criminal Court for compounding of offence under Section 320 of the Cr.P.C., it was made clear that the High Court must have due regard to the nature and gravity of the offences alleged before proceeding to exercise the power under Section 482 Cr.P.C. Specifically drawing the attention of the Court to para 61 of the report in *Gian Singh (supra)* Shri Malhotra has submitted that “any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act.... cannot provide for any basis for quashing criminal proceeding involving such offences”. Shri Malhotra had contended that having regard to the gravity of the offences alleged, which offences are prima facie made out, in as much as charges have been framed for the trial of the accused- respondents, the High Court was not justified in quashing the criminal proceedings against the accused-respondents.

8. Per contra, the learned counsel for the respondents (accused) have submitted that the High Court, while quashing the criminal proceedings against the respondents (accused), had correctly relied on the judgments of this Court in *Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta*[2] and *B.S.Joshi and Others vs. State of Haryana and Another*[3]. Learned counsel has submitted that though simultaneous criminal and civil action on same set of facts would be maintainable, in *Duncans Agro Industries Ltd. (supra)* it has been held that the disposal of the civil suit for recovery, on compromise upon receipt of payments by the claimants, would amount to compounding of offence of cheating. No error is, therefore, disclosed in the order of the High Court insofar as the offence under Section 420 IPC is concerned. As for the offence under Section 120-B it is submitted that this Court in *B.S. Joshi (supra)* has held that the power under Section 482 Cr.P.C. to quash a criminal proceeding is not limited by the provisions of Section 320 Cr.P.C. and even if an offence is not compoundable under Section 320 Cr.P.C., the same would not act as a bar for the exercise of power under Section 482 Cr.P.C. As the dispute between the parties have been settled on the terms of the compromise decrees, it is submitted that the High Court had correctly applied the principles laid down in *B.S. Joshi (supra)* to the facts of the present case.

9. Learned counsel has further pointed out that the charges framed against the accused-respondents are under Section 120-B/420 of the Indian Penal Code and the respondents not being public servants, no substantive offence under the PC Act can be alleged against them. The relevance of the views expressed in para 61 of the judgment of this Court in *Gian Singh (supra)*, noted above, to the present case is seriously disputed by the learned counsel in view of the offences alleged against the

respondents. Learned counsel has also submitted that by the very same impugned order of the High Court the criminal proceeding against one Nikhil Merchant was declined to be quashed on the ground that offences under Sections 468 and 471 of the IPC had been alleged against the said accused. Aggrieved by the order of the High Court the accused had moved this Court under Article 136 of the Constitution. In the decision reported in Nikhil Merchant vs. Central Bureau of Investigation and Another[4] this Court understood the charges/allegations against the aforesaid Nikhil Merchant in the same terms as in the case of the accused-respondents, as already highlighted. Taking into consideration the ratio laid down in B.S. Joshi (supra) and the compromise between the bank and the accused Nikhil Merchant (on the same terms as in the present case) the proceeding against the said accused i.e. Nikhil Merchant was quashed by the Court taking the view that the power and the Section 482 Cr.P.C. and of this Court under Article 142 of the Constitution cannot be circumscribed by the provisions of Section 320 Cr.P.C. It is further submitted by the learned counsel that the correctness of the view in B.S. Joshi (supra) and Nikhil Merchant (supra) were referred to the three Judges Bench in Gian Singh (supra). As already noted, the opinion expressed in Gian Singh (supra) is that the power of the High Court to quash a criminal proceeding under Section 482 Cr.P.C. is distinct and different from the power vested in a criminal court by Section 320 Cr.P.C. to compound an offence. The conclusion in Gian Singh (supra), therefore, was that the decisions rendered in B.S. Joshi (supra) and Nikhil Merchant (supra) are correct.

10. In the present case, as already seen, the offence with which the accused-respondents had been charged are under Section 120-B/420 of the Indian 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. 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 is not. To the latter offence the ratio laid down in B.S. Joshi (supra) and Nikhil Merchant (supra) would apply if the facts of the given case would so justify. The observation in Gian Singh (supra) (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120B IPC.

11. 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 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C.

12. We, therefore, decline to interfere with the impugned order dated 28.10.2005 passed by the High Court and dismiss this appeal. We, however, make it clear that the proceedings in Special Case No. 15/95 and 20/95 stands interfered with by the present order only in respect of accused- respondents Narendra Lal Jain and Ramanlal Lalchand Jain.

.....CJI.

[P. SATHASIVAM]J. [RANJAN GOGOI]J.
[N.V.RAMANA] NEW DELHI, FEBRUARY 28, 2014.

- [1] (2012) 10 SCC 303
- [2] (1996) 5 SCC 591
- [3] AIR 2003 SC 1387
- [4] (2008) 9 SCC 677
