

Anil Bhavarlal Jain & Anr.

v.

The State of Maharashtra & Ors.

(Criminal Appeal No(s). 5581-5582 of 2024)

20 December 2024

[Vikram Nath and Prasanna B. Varale, * JJ.]

Issue for Consideration

Whether criminal proceedings can be quashed on the basis of a settlement arrived at between the parties on the consent terms drawn and submitted before the Debt Recovery Tribunal.

Headnotes[†]

CrPC – s.482 – FIR and chargesheet filed against Appellants for offences punishable under Sections 409, 420 and 120B of the Indian Penal Code, 1860 along with Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 – High Court rejected petition under Section 482 of Code of Criminal Procedure, 1973 to quash FIR and chargesheet – Appeals dismissed – High Court justified in not exercising powers under Section 482:

Held: FIR and chargesheet filed against Appellants for offences punishable under Sections 409, 420 and 120B of the Indian Penal Code, 1860 (“IPC”) along with Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (“PC Act”) – Appellants preferred writ petition in High Court for quashing of FIR and chargesheet under Section 482 of Code of Criminal Procedure, 1973 (“CrPC”) – High Court rejected the petition observing that alternative remedy under CrPC available to Appellants – High Court’s order challenged – Appeals dismissed – Previous proceedings before Debt Recovery Tribunal (“DRT”), wherein the parties filed consent terms and agreed to a one-time settlement cannot be grounds for quashing criminal proceedings – Substantial injury caused to the public exchequer and consequently public interest has been hampered – Quashing of offences under the PC Act would have a grave and substantial impact not just on the parties involved, but also on the society at large – High Court justified in not exercising powers under Section 482.

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Criminal proceedings – Quashing of – On basis of settlement – Scope – *Gian Singh v State of Punjab* relied on – offences of mental depravity under IPC or offences of moral turpitude under special statutes like PC Act or offences committed by the public servants while working in that capacity, settlement between offender and victim has no legal sanction.

Parbatbhai Aahir v. State of Gujrat & Anr relied on – economic offences affecting financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants – economic offences stand on a different footing than other offences.

State v. R Vasanthi relied on – grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions is not to be quashed on the ground of delay in trial or on the basis of settlement of matter by the parties. [Para 13-15, 16,17]

Case Law Cited

Gian Singh v. State of Punjab [2012] 8 SCR 753: (2012) 10 SCC 303 – relied on.

Parbatbhai Aahir v. State of Gujrat & Anr., 2017 SCC Online SC 1189; *State v. R Vasanthi Stanley*, 2015 SSC Online SC 815 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Quashing of FIR and chargesheet; Alternate remedy; Non performing asset; One-time settlement; Diverted funds; Economic offences.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5581 of 2024

From the Judgment and Order dated 26.07.2023 of the High Court of Judicature at Bombay in CRLWP No. 2546 of 2022

With

Criminal Appeal No. 5582 of 2024

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Appearances for Parties

Ms. Malvika Trivedi, Siddharth Bhatnagar Sr. Advs., Mahinder Singh Hura, Jasmeet Singh, Saif Ali, Pushpendra Singh Bhadoriya, Vijay Sharma, Pranav Menon, Ms. Ranjeeta Rohatgi, Vivek Punjabi, Ms. Shrika Gautam, Advs. for the Appellants.

Mrs. Sonia Mathur, Sr. Adv., Samrat Krishnarao Shinde, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Mukesh Kumar Maroria, Mrs. Noor Rampal, Digvijay Dam, Shantanu Sharma, Mrs. Sakshi Kakkar, Sanjay Kr. Tyagi, Sanjay Kapur, Surya Prakash, Ms. Isha Virmani, Mrs. Shubhra Kapur, Ms. Mahima Kapur, Advs. for the Respondents.

Judgment/Order of the Supreme Court

Judgment

Prasanna B. Varale, J.

1. Leave granted.
2. In these appeals filed under Article 136 of Constitution of India, the appellant is seeking setting aside of the common order dated 26.07.2023 passed by the High Court of Bombay in Criminal Writ Petition No. 2546 of 2022 and Criminal writ Petition no. 1960 of 2022, wherein the High Court dismissed the petitions filed by the appellants herein, under Section 482 of Code of Criminal Procedure, 1973¹ seeking quashing of the FIR bearing No. RC/026/2020/A-0010 dated 24/07/2020, for offences punishable under Sections 409, 420 and 120B of the Indian Penal Code, 1860² along with Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988³ and the consequent chargesheet.
3. The appellants in the Appeal arising from SLP(Crl.) No.10078 of 2023 are the Directors of M/s Sun Infrastructure Pvt. Ltd.;⁴ and

1 In short, "Cr.P.C."

2 In short, "IPC"

3 In short, "PC Act"

4 In short, "the Company"

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appellants in the Appeal arising from SLP (Crl.) No.12776 of 2023 are the employees of respondent no.3 Bank. The appellants in both the appeals are the named accused in the above-mentioned FIR.

4. In the year of 2013, appellant nos. 1 and 2, being Directors of the Company, had obtained sanction for a building permit and commencement certificate for plot bearing Survey Nos. 145/1, 145/3, 141/1, 149/2, 151, 152 and 155/2.⁵ On 15.02.2014, the respondent no. 3-State Bank of India had sanctioned a loan of Rs. 50 crores to the Company. On 30.10.2014, the Company opened a collateral security and mortgaged the commercial land. The appellant had made timely payments till 2017, while on 28/11/2017 the bank declared the loan account of the Company as Non-Performing Asset with an outstanding amount of Rs. 23.86 crores. The bank also started a recovery process and filed an application before the Debt Recovery Tribunal.⁶ On 18.12.2019, the Company and respondent no. 3 filed consent terms before the DRT amounting to Rs. 15 Crore. According to the consent terms, the Company paid Rs. 20 lacs on 16.06.2020. Remaining amount of Rs. 14.88 crore was subsequently paid by the Company with interest and the loan account was closed as per the one-time settlement. Accordingly, the application before the DRT came to be disposed of.
5. Respondent no. 3 lodged a complaint with respondent no. 2-Central Bureau of Investigation, against the appellants for diverging the funds from the loan account of respondent no. 2, SICOM Ltd. from whom they had allegedly availed a loan of Rs.25 Crores in 2013; and against the Company for changing the building plans of the project which resulted in the reduced value of the collateral security, without the consent of the Bank. On 24.07.2022, On the basis filed by respondent no.3, an FIR came to be registered against the appellant by Central Bureau of Investigation, Anti-Corruption Bureau, Mumbai. Charge sheet dated 31.12.2021 was filed by respondent no.2 in the above-mentioned FIR.
6. The appellant preferred a Writ Petition before the High Court bearing WP No. 2546 of 2022 under Section 482 of Cr.P.C seeking quashing of the aforementioned FIR and chargesheet.

5 In short, "subject property"

6 In short, "DRT"

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7. Vide order dated 26.07.2023, High Court rejected the said Writ Petition observing that the appellant has a substantive alternative remedy under the provisions of the Code of Criminal Procedure before the High Court.
8. Learned Counsel for the appellant has made the following submissions:
 - 8.1. It is submitted that the appellants have already arrived at a compromise and the DRT after considering the settlement had disposed of the application filed by the respondent no. 3. The allegation that the bank suffered a loss of Rs. 11 crores is false and bogus since the bank received an amount of Rs. 47 crores as against a total disbursed amount of Rs. 33.5 crores. It was argued that there was a delay in registration of the present FIR insofar as the complaint was lodged by the respondent no. 2 bank on 30th October 2019 but the FIR was registered on 24th July 2020 by respondent no. 2.
 - 8.2. It was further submitted that departmental inquiry by the bank against appellant no. 1 in appeal arising from SLP(Crl.) No.12776 of 2023 was concluded and a final enquiry report was filed wherein charges as per the complaint dated 31.10.2019 were dropped and it was stated that the remaining charges are of a technical nature and had to be submitted to the Disciplinary Authority for consideration. It was submitted that the allegations in the complaint pertain to an act which was committed after they were relieved from their position and the new officer took charge of the said post, which was recorded in the departmental inquiry against appellant no.1.
 - 8.3. It was further stated that the provisions of the PC Act are not applicable to the appellants in appeal arising from SLP (Crl.) No.10078 of 2023, as there is no allegation of bribery against the present appellant.
 - 8.4. It was stated that there was a difference in the valuation report of the said property since the valuer appointed by the bank valued the properties at Rs. 107.7 Crores in the year 2014, and when it was again valued on 28.09.2018 after the account of the borrower company was declared as a Non-Performing Asset, it came down to Rs. 3.45 crores. He further stated that after the consent terms were filed, the same valuer valued the same property at Rs. 57.17 Crores on 23.01.2020.

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9. Learned counsel for respondent no.2 submitted before us that mere delay in lodging of the FIR *ipso facto* will not affect the merits of the case. The counsel further submitted that the settlement as arrived at between the bank and the accused persons would not absolve the appellants from the criminal offences which they have committed. The counsel relied on the judgment of this Court in **Gian Singh vs State of Punjab**⁷ to state that in cases where societal interest is involved, it is not prudent to quash the proceedings or reduce the sentence. He further stated that mere fact of repayment of diverted funds and consequent settlement would not dilute the criminal offenses committed. He further submitted that the charges against the appellant were proved in the departmental proceedings.
10. Learned counsel for respondent no. 3 submitted before us that there are serious allegations of fraud and cheating levelled against the appellants in the FIR and a loss has been caused to the bank which ultimately is dealing with public money. The property of a lesser value was valued at exorbitant rates which was offered as security for the loan sanctioned. Further, there was diversion of funds which is also a criminal offence. It was further submitted that a perusal of the FIR does not lead to the conclusion that no cognizable offence is made out against the appellants. Moreover, under clause 15 of the consent terms, it was agreed between the parties that the criminal proceedings and the charges will continue as per law. It is well settled that when a settlement is arrived at between the creditor and debtor, the offence committed as such does not come to an end. Furthermore, in view of the misconduct, the Disciplinary Authority imposed a major penalty of reduction to a lower stage in the time scale of pay on the appellant employees.
11. We have heard the arguments and perused other relevant documents as also the judgment passed by the High Court.
12. The moot question which arises for our consideration in the present case is whether the criminal proceedings can be quashed based upon a settlement arrived at between the parties as per the consent terms drawn and submitted before the DRT.
13. The Counsel for the appellant heavily relied on the case of **Gian Singh** (supra) to state that their case is squarely covered by the

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said judgment. Relevant paragraph from the said judgment can be extracted as below:

"60 ... criminal cases having overwhelmingly and predominantly civil flavour stand on a different footing for the purpose of quashing particularly the offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the offences arising out of matrimony related 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 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 proceedings or continuation of the criminal proceeding would tantamount to abuse of process of law..."

14. This Court in **Gian Singh** (supra) has dealt with the powers of the High Court under Section 482 r/w Section 320 of the CrPC and the consequent authority of the High Court to quash criminal proceedings, FIRs or complaints under its inherent jurisdiction as in contradistinction to the power with criminal courts for compounding offenses under Section 320 of the CrPC. The High Court observed that quashing was dependent on the unique circumstances of each case and though no fixed category can be established, heinous and severe offences should not be quashed even if the parties have settled. However, this Court in **Gian Singh** (supra) categorically made an observation that:

"61. The offences of mental depravity under the Indian Penal Code or offences of moral turpitude under special statutes like Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all."

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15. In the light of above, the facts of the present case are distinguishable from the facts that came for consideration before this Court in the above case relied on by the appellants herein.
16. Another reference can be made to the judgment of this Court in ***Parbatbhai Aahir vs State of Gujarat and Anr.***⁸ wherein it was observed that, economic offenses involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.
17. A profitable reference in this regard can be made to the judgment in ***State vs. R Vasanthi Stanley***⁹ wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:

“15. A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the *financial* health of the institutions is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the head on the system. That can never be an acceptable principle or parameter, for that would amount to destroying stem cells of law and order in many a realm and further strengthen the marrow of unscrupulous litigations. Such a situation should never be conceived of.

8 2017 SCC Online SC 1189

9 2015 SCC Online SC 815

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18. In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs. 6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings.
19. For the reasons stated above, we are of the view that the High Court was justified in not exercising its jurisdiction under Section 482 of CrPC. The appeals are accordingly dismissed.
20. Pending application(s), if any, shall be disposed of accordingly.

Result of the Case: Appeals dismissed.

[†]*Headnotes prepared by:* Swathi H. Prasad, Hon. Associate Editor
(Verified by: Shibani Ghosh, Adv.)