Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2048 OF 2014
(Arising out of S.L.P. (Crl.) No. 6461 of 2011)

State of Maharashtra Through CBI ... Appellant

Versus

Vikram Anantrai Doshi and Others ...Respondents

J U D G M E N T

Dipak Misra, J.

The centripodal issue that strikingly emerges, commanding the judicial conscience to ponder and cogitate with reasonable yard-stick of precision, for consideration how far a superior court should proceed to analyse the factual score in exercise of its inherent jurisdiction bestowed upon it under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India, to quash the criminal proceeding solely on the ground that the parties

have entered into a settlement and, therefore, the continuance of the criminal proceeding would be an exercise in futility, or the substantial cause of justice warrants such quashment to make the parties free from unnecessary litigation with the assumed motto of not loading the system with unfruitful prosecution, of course with certain riders, one of which, as regards the cases pertaining to commercial litigations, appreciation of predominant nature of civil propensity involved in the lis or social impact in the backdrop of the facts of the case. The primary question that we have posed has a substantial supplementary issue; i.e. should the courts totally remain oblivious to the prism of fiscal purity and wholly brush aside the modus operandi maladroitly adopted, as alleged by the prosecution, on the part of industrial entrepreneurs or the borrowers on the foundation that money has been paid back to the public financial institutions. We think not, especially regard being had to the obtaining factual matrix in the case at hand.

2. Presently to the factual exposition. On the basis of a written complaint of chief vigilance officer, Bank of Baroda a

case was registered against the respondents on 6.1.2006 and after completion of investigation a report was filed before the Special Court, CBI cases, Mumbai with a prayer to forward the chargesheet to the learned Magistrate who was competent to take cognizance of the offences as the involvement of R.C. Sharma, the concerned Bank Officer, a public servant, in the crime in question, could not be prima facie found during the investigation. As the facts would undrape, on 3.2.2006 upon perusal of the chargesheet the learned Special Judge, CBI cases directed to place the chargesheet before the appropriate court and accordingly a fresh chargesheet was filed before the ACMM, 19th Court, Esplanade, Mumbai vide criminal case no. 82/CPW/2006 for commission of offences punishable under Section 120-B, Section 406, 20, 467, 468 and 471 IPC against the accused persons.

3. On a perusal of the charge sheet, it is evincible that there are allegations to the effect that Vikram Doshi, A 1, Vineet Doshi, A 2, and Sanjay J. Shah, A 3, made number of applications to the Bank of Baroda for sanction of various

credit facilities, stating that they wanted to induct the said bank as a new consortium member to replace the existing members, namely, the UTI Bank and the Federal Bank. They requested the said Bank to sanction 15% of the total Working Capital facility sanctioned by the consortium of Banks, so that, that much amount could be transferred to the UTI bank and Federal Bank to take over the existing liabilities with the said two banks. It was revealed during investigation that the account of the company, with the consortium of banks as well as the finance institutions, was highly irregular and in the said condition the accused persons approached the Bank for sanction of loan. In the application to the Bank, the accused persons concealed the fact relating to the dues outstanding against them. Thereafter, when asked for the outstanding position with the existing consortium members, the accused persons willfully and with the criminal intent to mislead the Bank of Baroda, furnished wrong statements about the outstanding position by giving considerably lesser amount as outstanding than the actual.

4. As further alleged, the amount of loan sought was sanctioned on 24.01.2003 by one Mr. K.K. Aggarwal, General Manager and communicated to the branch. As per the terms and conditions of the said Term Loan, the primary security for the same was the first charge to be created on the fixed assets of the company ranking *pari passu* with the existing Term Lending Institutions. The primary charge for the cash credit and working capital demand loan was the hypothecation of current assets such as stocks, stocks in trade, raw materials and book debts, and, that apart, one of the important terms and conditions was that the CC, WCDL and Term Loan amounts were to be directly paid to the company's account with the UTI Bank and Federal Bank so as to take over the liabilities as well as the securities mortgaged with the two banks. Despite the said situation, the Bank on 29.01.2003 intimated the sanction to ATCOM, the company in question. It is further demonstrable from the chargesheet that A-1 and A-2, with the intention to escape personal liabilities, made A-3 and one Mr. Chirag Gandhi directors in ATCOM and got all the loan documents

including the Demand Promissory Note (DPN) signed by the said persons. The terms and conditions of the sanction was that the entire Working Capital of Rs.570.00 lakhs (Rs.114.00 lakhs + Rs.456.00 lakhs) and the Term Loan of Rs.360.00 lakhs were to be directly paid to the UTI Bank and Federal Bank. Consequently, the Term Loan was released and paid as per the sanction terms and conditions. As alleged, A-1 induced the Bank to release the sanctioned Working Capital Funds to the Current Account and from the said account money was dishonestly diverted to his own accounts with SBI and Dena Bank, to bring down the outstanding liabilities in those accounts. As per the Chargesheet, Rs.114.00 lakhs of Cash Credit (the Fund Based portion of Working Capital) and Rs.456.00 lakhs (the Demand Based portion of Working Capital) were released into the Current Account on 27.03.2003. Thus, the total funds released into the Current Account was Rs.560.00 lakhs out of which A-1 dishonestly transferred Rs.352.00 lakhs to SBI and about Rs.200.00 lakhs to Dena Bank, which

amounted to diversion of concerned Bank's funds dishonestly and caused wrongful loss to the said Bank.

5. As is evident from the chargesheet the transfer of funds of CC and DL to the current account was with a dishonest intention to further divert the funds from the current account, and for transfer of the said funds of CC and WCDL. A-1 used the cheque leaf available with him for the Current Account and substituted out the words "Current Account" and substituted them with "Cash Credit". It has come out in the investigation that in order to further divert the funds from the Current Account, A-3 used to issue "Pay Yourself cheques" by obtaining Banker's Cheque favouring their account with SBI and Dena Bank. It is also perceivable from the chargesheet that though the accused A-1 and A-3 knew that the said Working Capital was sanctioned only for the purpose of taking over the liabilities of UTI Bank and Federal Bank yet they dishonestly diverted the funds to SBI and Dena Bank. The sanctioned money, as alleged, was not used for the purpose it was availed of and the sanction terms and conditions were violated as a consequence of which the

Bank could not get the charge in *pari passu* with the other consortium Banks. The said diversion of funds by A-1 and A-3 deprived the Bank of its security and the entire loan became unsecured.

6. The investigation further revealed that A-1 got letter of credits (hereinafter referred as "LCs") issued from SBI and Dena Bank in favour of fictitious companies propped by the accused and used the said LCs to siphon the funds from these Banks. The LCs beneficiary firms, favoring whom the A-2 and A-3 had requested the LCs to be issued, were companies existing only on paper without any commercial activity. The said fictitious companies got the LCs discounted by attaching their bogus bills and portion of these discount proceeds were used for personal benefits of A-1 and a certain portion was routed back to ATCOM. On the due dates, ATCOM did not discharge its liabilities with SBI and Dena Bank. In the chargesheet, the particulars of the names of fictitious companies have been given. The said list covers 10 companies. It has been further mentioned in the chargesheet that the Proprietors/Directors of these fictitious

companies had issued false bills under their signatures and discounted these false bills backed by the LCs, with the discounting Banks, at the instance of one Kanakranjan Jain. Some of these Proprietors/Directors are the employees and domestic servants of said Kanakrajan Jain.

7. After so stating the chargesheet proceeds as follows:

> "That, in two of these fictitious companies, viz., M/s Anew Electronics & M/s Covet Securities, Sh. Vikram Doshi (A-1) and Sh. Vineet Joshi, (A-2) were Directors for some period of time. These two companies were maintaining their accounts at United Western Bank. Sh. Vikaram Doshi (A-1) was also having his personal account in the same bank. From these two Accounts Sh. Vikram Doshi had received a sum of Rs. 1, 48,50,000/-. This amount was utilized by him towards purchase of residential flat. Thus it is clear that the accused persons under the garb of business requirements had obtained credit facilities from the bank but had utilized the funds for acquiring immovable property for personal use. In order to clear the liability generated because of such illegal acts, they had induced the Bank of Baroda to sanction the credit facilities, which facility was dishonestly used by them. The entire amount sanctioned and released by the Bank of Baroda is outstanding and nothing has been repaid. Because of the acts of the accused, the facilities sanctioned by the Bank of Baroda

> are rendered without any securities and the bank has thus suffered wrongful loss."

8. During the pendency of the case before the trial court on 30th March 2009 the informant, Bank of Baroda, had transferred its debts to a trust IARC – BOB-01-07 under the control of Kotak Mahindra Bank. The accused, Vikram Doshi, settled the disputes and paid Rs.42 lacs for settling the dispute. On that basis, Kotak Mahindra Bank issued a "no due certificate" to M/s Atcom Technology Limited stating that on receipt of Rs.42 lacs, there was no amount outstanding and payable by them in respect of facility advanced by Bank of Baroda. The said bank also confirmed that the guarantees issued by Vikram Doshi stood discharged.

9. After the receipt of such "No dues certificate" the respondent preferred a petition under Section 482 of the Cr.P.C. bearing Criminal Application No. 2239 of 2009 before the High Court of Judicature at Bombay and the learned Single Judge vide order dated 24.2.2010 quashed the criminal proceedings pending before the learned Addl.

Metropolitan Magistrate. The learned Single Judge referred to one of its earlier orders and came to hold as follows:-

> "Both the offices under Sections 406 and 420 are compoundable with the permission of the court. As already discussed hereinabove, the Bank has already given its No Due Certificate to the borrower i.e. ATCOM. It can clearly be seen that even if the matter is permitted to go for trial, no fruitful purpose would be served, except burdening the criminal Courts which are already over-burdened."

10. To arrive at the same conclusion the High Court relied on the decision in ***Madan Mohan Abbot v. State of Punjab***[1] and distinguished the pronouncement in ***A. Ravishanker Prasad*** (supra).

11. We have heard Ms. Pinky Anand, learned ASG and Mr. P.K. Dey, learned counsel for the Central Bureau of Investigation and Arunabh Chowdhury and Mr. Anupam Lal Das for the respondents.

12. In the backdrop of aforesaid facts the seminal question that arises is whether in the obtaining factual matrix the High Court is justified in quashing the criminal proceeding. Learned counsel for the appellants submits that the High Court has erroneously opined that the remaining offences are 406 and 420 of IPC whereas the chargesheet, also

[1] (2008) 4 SCC 582

included other offences against the accused persons. It is further contended that the chargesheet was not filed against the public officer as the allegation against public officer could not be substantiated during the investigation and the High Court without appreciating the gravity of the other offences has quashed the proceeding which makes the order absolutely vulnerable in law. Learned counsel for the respondent would contend that when "No due certificate" was obtained from the bank and the matter had been settled the High Court has correctly quashed the proceeding and hence, it does not warrant any interference.

13.At this juncture, we are obligated to state that when the High Court decided, the issue was whether a proceeding could be quashed in exercise of inherent jurisdiction in respect of the non-compoundable offences and principle of law in that regard was not in a state of certainty. The said position has been made clear by this Court that High Court has the jurisdiction to quash a criminal proceeding under Section 482 of the Code in respect of non-compoundable offences barring certain nature of crimes.

14.To appreciate the complete picture in proper perspective we think it seemly to refer to the relevant decisions in the field. In ***Rumi Dhar v. State of W.B.***[2] while dealing with an order declining to discharge the accused under Section 239 of the Code by the learned Special Judge which has been affirmed by the High Court, a two-Judge Bench referred to the decision in ***Central Bureau of Investigation v. Duncans Agro Industries Ltd.***[3] and ***Nikhil Merchant v. C.B.I.***[4] came to hold as follows:-

> **"14.** It is now a well-settled principle of law that in a given case, a civil proceeding and a criminal proceeding can proceed simultaneously. Bank is entitled to recover the amount of loan given to the debtor. If in connection with obtaining the said loan, criminal offences have been committed by the persons accused thereof including the officers of the Bank, criminal proceedings would also indisputably be maintainable."

In the said case, the Court took note of the fact the compromise entered into between the Oriental Bank of Commerce and the accused pertaining to repayment of loan

[2] (2009) 6 SCC 364
[3] (1996) 5 SCC 591
[4] (2008) 9 SCC 677

could not form the foundation of discharge of the accused. The two-Judge Bench appreciated the stand of the C.B.I. before the High Court that the criminal case against the accused had started not only for obtaining loan but also on the ground of criminal conspiracy with the Bank officers and accordingly upheld the order passed by the High Court.

15.In ***Central Bureau of Investigation v. A. Ravishanker Prasad and Others***[5], the Court was dealing with the fact situation wherein the accused persons had committed offences such as forgery, fabrication of documents and used the said documents as genuine. There was allegation that they had entered into conspiracy with the Bank officers for availing huge credit facilities. In course of the pendency of the criminal proceedings, the accused persons had settled the outstanding dues by paying a sum of rupees 157 crores and on that basis preferred an application under Section 482 of the Code for quashing of the criminal proceeding and the High Court quashed the proceedings on the basis of the settlement. Be it stated, the

[5] (2009) 6 SCC 351

trial had progressed in the said case and 92 witnesses had already been examined. The question that arose before this Court was whether such a proceeding should have been quashed. The Court distinguished the decision in ***Duncans Agro Industries Ltd.'s*** case and opined that the tenor of the language implied therein indicates that quashing of the complaint depends on the facts of each case. The Court also distinguished the decision in ***Nikhil Merchant's*** case.

16. A three-Judge Bench in the case of ***Gian Singh v. State of Punjab and Another***[6] while answering the reference whether the High Court has the jurisdiction under Section 482 of the Code to quash a proceeding in respect of non-compoundable offences, after referring to number of authorities, ruled that Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of court or otherwise to secure the ends of justice. The words, "nothing in this Code" which means that the provision is an overriding provision and the said words leave no manner of doubt that none of the

[6] (2012) 10 SCC 303

provisions of the Code limits or restricts the inherent power. The Bench proceeded to state that the guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice and in different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non. The Court further added that it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process and the maxim ex debito justitiae is inbuilt in such exercise for the whole idea is to do real, complete and substantial justice for which it exists.

After so stating, the three-Judge Bench addressed to the issue pertaining to the quashing of a criminal proceeding on the ground of settlement between an offender and the victim and in this context, it ruled thus:-

“61. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (*i*) to secure the ends of justice, or (*ii*) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would . depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High

> Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim."

17. Recently, in ***Narinder Singh & Ors. v. State of Punjab & Anr.***[7], a two-Judge Bench placed reliance on ***Gian Singh's*** case (supra) and ***Dimpy Gujral v. Union Territory through Administrator***[8] and distinguished the decision in ***State of Rajasthan v. Sambhu Kevat***[9], and came to hold that in the facts of the said case the proceedings under Section 307 deserved to be quashed. The two-Judge Bench laid down certain guidelines by which the High Courts would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement. Some of the guidelines

[7] 2014(4) SCALE 195
[8] AIR 2012 SCW 5333
[9] 2013(14) SCALE 235

which are relevant for the present purpose are reproduced below :-

> "(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:
>
> (i) ends of justice, or
> (ii) to prevent abuse of the process of any Court.
>
> While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.
>
> (III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
>
> (IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.
>
> (V) While exercising its powers, the High Court is to examine as to whether the possibility of

> conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

18. At this stage it is apt to notice a three-Judge Bench decision in ***CBI, ACB, Mumbai v. Narendra Lal Jain & Ors.***[10] In the said case during the investigation pertaining to the culpability of the accused in the crime, the concerned bank had instituted suits for recovery of the amount claimed to be due from the respondents and said suits were disposed in terms of the consent decrees. On the basis of the said consent decrees an application for discharge was filed which was rejected by the trial court but eventually was allowed by the High Court. Be it stated, charges were framed under Section 120-B/420 IPC by the learned trial Judge against the private parties. As far as bank officials are concerned, charges were framed under different provisions of the Prevention of Corruption of Act, 1988. Being dissatisfied with the said order, the CBI had preferred an

[10] 2014 3 SCALE 137

appeal by obtaining special leave and in that context the court observed that the accused respondent had been charged under Section 120-B/420 IPC and the civil liability of the respondent to pay the amount had already been settled and further there was no grievance on the part of the bank. Taking note of the fact that offence under Section 420 of IPC is compoundable and Section 120-B is not compoundable, the Court eventually opined thus:-

> "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."

19. Slightly more recently in ***Gopakumar B. Nair v. CBI and Anr.***[11] the Court referred to the paragraph 61 of ***Gian Singh's Case,*** distinguished the decision in ***Narendra Lal Jain (supra)*** regard being had to the fact that the accused persons were facing charges under Section 120-B r/w Section 13(2) r/w 13 (1) (d) of the 1988 Act and Section 420/471 of IPC and came to hold that substratum of the charges against the accused-appellant were not similar to those in ***Narendra Lal Jain*** (supra) wherein the accused was charged under Section 120-B read with Section 420 IPC only. After so stating the Court observed as follows:-

> "The offences are certainly more serious; they are not private in nature. The charge of conspiracy is to commit offences under the Prevention of Corruption Act. The accused has also been charged for commission of the substantive offence under Section 471 IPC. Though the amount due have been paid the same is under a private settlement between the parties unlike in ***Nikhil Merchant*** (supra) and ***Narendra Lal Jain*** (supra) where the compromise was a part of the decree of the Court. There is no acknowledgement on the part of the bank of the exoneration of the criminal liability of the accused-appellant unlike the terms of compromise decree in the aforesaid two

[11] 2014 4 SCALE 659

> cases. In the totality of the facts stated above, if the High Court has taken the view that the exclusion spelt out in ***Gian Singh*** (supra) (para61) applies to the present case and on that basis had come to the conclusion that the power under Section 482 CrPC should not be exercised to quash the criminal case against the accused, we cannot find any justification to interfere with the said decision."

20. The present obtaining factual score has to be appreciated on the anvil of aforesaid authorities. On a studied scrutiny of the principles stated in ***Gain Singh*** (supra) it is limpid that the three-Judge Bench has ruled that proceeding in respect of heinous and serious offences and the offences under prevention of corruption Act and all other offences committed by public servants while working in that capacity are not to be quashed. That apart, the court has also emphasized on offences having a serious impact on society. It has been further laid down that criminal cases having overwhelmingly and predominantingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil partnership or such like transactions or the

offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature. In ***Narendra Lal Jain*** (supra) the three-Judge Bench quashed the proceeding as the charges were famed under Section 120/420 IPC in respect of the private respondents. In ***Gopakumar B. Nair's case*** the court distinguished the decision in ***Narendra Lal Jain*** (supra) and opined that the accused had also been charged for the commission of offence under Section 471 of IPC and on that basis declined to interfere with the order passed by the High Court which had refused to quash the criminal proceeding.

21. In the case at hand, as per the chargesheet the respondents had got LCs issued from the bank in favour of fictitious companies propped up by them and the fictitious beneficiary companies had got letters of credits discounted by attaching their bogus bills. The names of 10 fictitious companies have been mentioned in the chargesheet. Thus, allegation of forgery is very much there. As is manifest from the impugned order, the learned Single Judge has not adverted to the same. It is not a simple case where an

accused has borrowed money from the bank and diverted it somewhere else and, thereafter, paid the amount. It does not fresco a situation where there is dealing between a private financial institution and an accused, and after initiation of the criminal proceedings he pays the sum and gets the controversy settled. The expose' of facts tells a different story. As submitted by the learned Counsel for CBI the manner in which the letters of credits were issued and the funds were siphoned has a foundation in criminal law. Learned counsel would submit that it does not depict a case which has overwhelmingly and predominatingly civil flavour. The intrinsic character is different. Emphasis is laid on the creation of fictitious companies.

22. In this context, we may usefully refer to a two-Judge Bench decision in ***Central Bureau of Investigation v. Jagjit Singh***[12] wherein the court being moved by the CBI had overturned the order of the High Court quashing the criminal proceeding and in that backdrop had taken note of the fact that accused persons had dishonestly induced delivery of the property of the bank and had used forged

[12] (2013) 10 SCC 686

documents as genuine. Proceeding further the Court opined as follows:-

> "The offences when committed in relation with banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well-being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, the society in general, including customers of the bank is the sufferer. In the present case, there was neither an allegation regarding any abuse of process of any court not anything on record to suggest that the offenders were entitled to secure the order in the ends of justice."

23. We are in respectful agreement with the aforesaid view. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The *modus operandi* as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be

regarded as a case having overwhelmingly and predominantingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal proceeding on the hypostasis that nothing more remains to be done. The collective interest of which the Court is the guardian cannot be a silent or a mute spectator to allow the proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under Article 226 of the Constitution

or under Section 482 of the Code and quash the proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of success, readily invokes the inherent jurisdiction for quashing of the criminal proceeding. The court's principal duty, at that juncture, should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the Court nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a finding in our view

would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that the order of the High Court is wholly indefensible.

24. Ex consequenti, the appeal is allowed, and the order passed by the High Court is set aside and it is directed that the trial shall proceed in accordance with law. We may hasten to add that our observations in the present appeal are solely in the context of adjudicating the justifiability of order of quashing of the criminal proceeding and it would not have any bearing at the time of trial. And we so clarify.

.....J.
[Dipak Misra]

.....J.
[Vikramajit Sen]

New Delhi;
September 19, 2014.