(2016) 02 SC CK 0021

In the Supreme Court Of India

Case No : Criminal Appeal No. 161 of 2016 (Arising Out of Special Leave Petition (Crl.) No. 259 of 2011)

State Rep. By Inspector of Police, Chennai — APPELLANT

Vs

M/s. Intek Eng. & Ser. P. Ltd. & Ors. — RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 320
Penal Code, 1860 (IPC) — Section 420, 47

Citation : (2016) AllSCRCrl 736 : (2016) 2 ApexCourtJudgments(SC) 107 : (2016) 2 CriCC 393 : (2016) 2 LawHerald 1775 : (2016) 2 LawHeraldSC 1120 : (2016) 2 RCRCriminal 357 : (2016) 2 RecentApexJudgments(RAJ) 267

Hon'ble Judges : V. Gopala Gowda;Arun Mishra, JJ.

Bench : Division Bench

Advocate : Karpaghavinayagam, Sr.Adv, V. Prabhakar, R. Chandrachud, Ms. Jyoti Parasher, Sunder Mohan, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. The appellant has questioned the correctness of the order dated 22.7.2010 passed in Criminal O.P. No. 6128/2009 by the High Court of judicature at Madras in exercise of its power under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as the ''Cr.P.C.'') for quashing the proceedings against the respondents in CC No.3186/2007 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

3. The brief facts of the case are that the respondents are facing prosecution for the offences under Section 120-B read with Sections 420 and 471 of the Indian Penal Code (hereinafter referred to as ''IPC''). The same has arisen as a result of a loan transaction between the first respondent and the Indian Overseas Bank (hereinafter called ''the Bank''). On the non-clearance of the loan amount/dues, a complaint was preferred by the Bank on having reason to suspect the

commission of the offences referred to supra. An FIR was registered in R.C. No. 5E of 2006. After investigation, the report under Section 173 of the Cr.P.C. was filed informing commission of offence under the aforesaid sections. It is the case of the appellant that the dispute between the Bank and A-1 borrower company (respondent No.1 herein) has been brought to an end on the payment of a sum of RS. 68,00,000/- (rupees sixty eight lakhs only). On receipt of such sum, the Bank vide letter dated 18.3.2009 had informed the appellants that they would withdraw the case filed in the Court.

4. After concluding that no case under the Prevention of Corruption Act is involved, the High Court also ascertained from the Public Prosecutor (CBI cases) that the dues payable to the bank by the first respondent Company stood duly paid, the High Court placed reliance upon the judgment of this Court in the case of Nikhil Merchants v. Central Bureau of Investigation [2008 (9) SCC 677], wherein this Court had observed at paragraph No. 3 that the dispute involved between the parties had overtones of a civil dispute with certain criminal facets and further observed that the question required to be answered was whether the power which independently lies with the Apex Court to quash the criminal proceedings pursuant to the compromise arrived at between the parties should at all be exercised. Thereafter extracting paragraph 24 from the said judgment and after referring to clause 11 of the consent terms in the compromise petition filed in the suit compromise arrived between the first respondent Company and the Bank in the said case, the High Court felt that this is a fit case where mere technicality should not be allowed to stand in the way of quashing the criminal proceedings. The High Court was of the view that the continuance of the same after the compromise arrived at between the parties would be a futile exercise. Following the rationale of the decision of this Court in the case of Nikhil Merchants (supra) the Madras High Court exercised its power under Section 482 of the Cr.P.C. and quashed the proceeding in C.C. No. 3186 of 2007 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

5. The correctness of the same has been questioned on certain tenable grounds. The learned Additional Solicitor General Mr. Maninder Singh has submitted that the view taken by Division Benches of this Court in Nikhil Merchant (supra) and State of Maharashtra v. Vikram Anantrai Doshi (2014) 15 SCC 29], and a three Judge Bench of this Court in the case of Gian Singh v. State of Punjab [(2012) 10 SCC 303] is required to be examined with regard to the power of the High Court as regards the quashing of the criminal proceedings on the basis of the compromise arrived at between the parties in relation to the debt due to the Bank. After adverting to the judgment of this Court in Narinder Singh v. State of Punjab, Dimpey Gujral v. UT Chandigarh and State of Rajasthan v. Shambhu Kewat and thereafter the ratio in CBI v. Narendra Lal Jain [2014) 5 SCC 364] wherein the charges were framed under Section 120-B read with Section 420 IPC in paragraph 22 of the Vikram Anantharao Doshi''s case (supra), Nikhil Merchant''s case, Narender Lal Jain''s case and Gian Singh''s case, have been referred to and it was held that power under Section 482 Cr.P.C. should not be

exercised to quash a criminal case against the accused. The learned ASG Mr. Maninder Singh in support of his submission also placed reliance upon another judgment of this Court in the case of CBI v. Maninder Singh reported in 2016 (1) SCC 389 and State of Tamil Nadu v. R.Vasanthi Stanley and Another.

6. Learned senior counsel Mr. Karpaghavinayagam appearing on behalf of the respondents has strongly placed reliance upon the three Judge Bench judgment of this Court in the case of Gian Singh v. State of Punjab. The said judgment has also been adverted to in the case of CBI v. Maninder Singh at paragraphs 8, 15, 16 and 19, in support of the proposition that the position of law regarding quashing of criminal charges in civil case is well settled and in the instant case, the Bank agreed to withdraw the case pursuant to the said clause No.11 in the settlement arrived at between the parties. The learned senior counsel, thus, contends that the High Court has rightly exercised its inherent power and quashed the proceedings. Therefore, the same may not be set aside by this Court having regard to the peculiar facts of the case wherein the Bank has initiated proceedings in O.A. Nos. 229-230 of 2007 on 31.3.2009 and the Debt Recovery Tribunal recorded the statement of the learned counsel for the Bank that it has received a letter from the bank that the dues have been paid by the first respondent Company and there are no dues/liabilities from the respondents. In the month of April 2009 the respondents filed criminal O.A.Nos. 229-230 of 2007 before the High Court of Madras requesting for quashing of the criminal proceedings on the ground that the dispute between the bank and Company had been settled and the said dispute is of a civil nature. The said contention placing reliance upon the judgment of this Court in Nikhil Merchant''s case (Supra), extracted paragraph 23 and 24 of the said judgment recorded a finding that the impugned decision to the bank has been settled and it is of a civil nature therefore the criminal proceedings are quashed by the High Court in exercise of its power. Therefore, the said judgment need not be interfered. He has also placed reliance upon another judgment of this Court in Gian Singh''s case (supra) for justification of the finding and reasons recorded by the High Court placing reliance upon the judgment of Nikhil Merchant''s case.

7. After hearing learned Additional Solicitor General for the appellant and learned senior counsel appearing for the respondents, we are of the view that this Court in the case of State of Tamil Nadu v. R. Vasanthi Stanley and Another as adverted to the State of Maharashtra v. Vikram Ananthrai Doshi''s case and Gian Singh v. State of Punjab, the learned senior counsel contends that citing paragraph 14 from Vikram Ananthrai Doshi''s case and also para 26 from the said judgment and CBI v. Maninder Singh which have clearly held that a grave criminal 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 or parameter, for that would amount to destroying the stem cells of law and order in many a realm and further strengthen the marrows of the unscrupulous litigations should not have to be conceived of.

8. In view of the above, three Judge Bench judgment Gian Singh v. State of Punjab has been referred to examine the powers of the High Court under Section 482 of the Cr.P.C. for quashing the criminal proceedings on the basis of a compromise in respect of matters of financial institutions including banks. This Court has held that the borrowers, after availing finance by creating mortgage on the base of certain documents which, as alleged, are forged, ingeniously adopt the same modus operandi to avail the benefit from a number of banks, who in due course, facing the problem, set the criminal law machinery in motion by lodging different FIRs. The borrowers subsequently entered into settlements in an adroit manner and paid the amount. Thereafter, they knocked at the doors of the High Court seeking exercise of inherent jurisdiction under Section 482 of the Cr.P.C. or the extra ordinary jurisdiction under Article 226 of the Constitution for quashing of the criminal proceedings. The High Court, in the instant case quashed the same on the ground that continuance of criminal proceedings after the settlement have taken place between the Bank and first respondent would be a fruitless exercise. Applying the legal principle laid down in the case of State of Tamil Nadu v. R. Vasanthi Stanley and Anr. to the fact situation and accepting the submission made by the learned Additional Solicitor General as legal and valid and based on legal principles laid down by this Court in the aforesaid case, we have to set aside the impugned order for quashing the criminal O.P. No. 6128/2009 on the file of learned Additional Chief Metropolitan Magistrate Egmore, Chennai and we reject the submission made by learned senior counsel on behalf of the respondents, as the said submissions are contrary to the latest two judgments, referred to supra, that is State of Tamil Nadu v. R. Vasanthi Stanley and Another as well as in the case of CBI v. Maninder Singh.

9. We allow the appeal. Learned Additional Chief Metropolitan Magistrate Court is directed to hear the learned counsel for the parties and to consider the case for framing of the charges against the respondents. It is also open for the respondents to urge such legal grounds that may be available before the learned Additional Chief Metropolitan Magistrate requesting the learned Judge to discharge them in the case and if such contention is urged, the same may be considered and appropriate order be passed in accordance with law.

