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GOPAKUMAR B. NAIR

v.

C.B.I. & ANR.

(Criminal Appeal No. 831 of 2014)

B

APRIL 7, 2014

**[P. SATHASIVAM, CJI, RANJAN GOGOI AND
N.V. RAMANA, JJ.]**

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CODE OF CRIMINAL PROCEDURE, 1973:

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s. 482 - Power of High Court to quash proceedings - Settlement of dispute between parties - Effect of - Criminal proceedings against accused-appellant for offences punishable u/s 120B IPC, s.13 (2) r/w s. 13(1)(d) of PC Act and ss. 420 and 471, IPC - Held: In the instant case, charge-sheet has been submitted and charges have been framed - Appellant has been charged u/s 13(1)(d) of PC Act, u/s 420 IPC (compoundable with leave of court) and s. 471, IPC (non-compoundable) - The offences are serious and not private in nature - Charge of conspiracy is to commit offence under PC Act - Though amounts due to bank have been paid under a private settlement, there is no acknowledgement by the bank of exoneration of accused-appellant from criminal liability - Since High Court has come to the conclusion that power u/s 482 should not be exercised to quash criminal proceedings against accused-appellant, there is no justification to interfere with the said decision - Prevention of Corruption Act, 1988 - s, 13 (2) r/w s.13(1)(d) - Penal Code, 1860 - ss. 120 B, 420 and 471.

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REFERENCE TO LARGER BENCH:

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Judgement - Binding effect of - Held: Reference of a case to a larger Bench necessarily has to be for a reconsideration of the principle of law on which the case has

been decided and not the merits of the decision -- The decision rendered by any Bench is final inter-parte, subject to the power of review and the curative power.

The instant appeal arose out of the order of the High Court passed in a petition filed by the appellant u/s 482 Cr.P.C., declining to quash the criminal proceedings against the appellant-accused for offences punishable u/s 120-B, IPC, and s. 13(2) read with s. 13 (1) (d) of the Prevention of Corruption Act, 1988 and ss. 420/471, IPC registered against the appellant-accused and two other persons, namely, A-1, a Branch Manager of respondent no. 2-Bank and A-3 (since deceased). After investigation, charge-sheet was submitted by respondent no. 1 CBI and charges were framed. The stand of the appellant before the High Court was that the accused-appellant had tendered all the amounts due to the Bank and an acknowledgement dated 30.3.2009 was issued by the Bank stating that it did not have any further claims and charges against the accused-appellant.

Dismissing the appeal, the Court

HELD: 1.1 Reference of a case to a larger Bench necessarily has to be for a reconsideration of the principle of law on which the case has been decided and not the merits of the decision. The decision rendered by any Bench is final inter-parte, subject to the power of review and the curative power. Any other view would have the effect of conferring some kind of an appellate power in a larger Bench of this Court which cannot be countenanced. However, the principle of law on which the decision is based, is open to reconsideration by a larger Bench in an appropriate case. [Para 12] [801-G; 802-A-B]

1.2 The decision in Gian Singh holding the decision rendered in Nikhil Merchant and other cases to be correct

A is only an approval of the principle of law enunciated in the said decisions i.e. that a non-compoundable offence can also be quashed u/s. 482 CrPC on the ground of a settlement between the offender and the victim. Neither Nikhil Merchant nor Gian Singh can be understood to mean that in a case where charges are framed for commission of non-compoundable offences or for criminal conspiracy to commit offences under the PC Act, if the disputes between the parties are settled by payment of the amounts due, the criminal proceedings should invariably be quashed. What really follows from the decision in Gian Singh is that though quashing a non-compoundable offence u/s. 482 CrPC, following a settlement between the parties, would not amount to circumvention of the provisions of s. 320 of the Code, the exercise of the power u/s. 482 will always depend on the facts of each case. Furthermore, in the exercise of such power, the note of caution sounded in Gian Singh (para 61) must be kept in mind. [Para 13] [802-D-H]

Gian Singh vs. State of Punjab and Another - 2012 (8) SCR 753 = 2012 (10) SCC 303; B. S. Joshi vs. State of Haryana -2003 (4) SCC 675; Nikhil Merchant vs. Central Bureau of Investigation and Another - 2008 (14) SCR 539 = (2008) 9 SCC 677 and Manoj Sharma vs. State 2008 (4) SCR 1= (2008) 16 SCC 1 - relied on.

F 1.3 In the instant case, the appellant has been charged with the offence of criminal conspiracy to commit the offence u/s. 13(1)(d). He is also substantively charged u/s. 420 (compoundable with the leave of the court) and s. 471 (non-compoundable). A careful consideration of the facts of the case would indicate that unlike in Nikhil Merchant, no conclusion can be reached that the substratum of the charges against the accused-appellant in the instant case is one of cheating nor are the facts similar to those in Narendra Lal Jain where the accused was charged u/s. 120-B read with s. 420 IPC

only. 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 u/s. 471 IPC. Though the amounts due have been paid, the same is under a private settlement between the parties unlike in Nikhil Merchant and Narendra Lal Jain 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 said two cases. [Para 14] [803-A-F]

CBI, ACB, Mumbai vs. Narendra Lal Jain & Ors. - 2014
(3) SCALE 137- referred to.

1.4 In the totality of the facts, the High Court has taken the view that the exclusion spelt out in Gian Singh (para 61) applies to the instant case and on that basis has come to the conclusion that the power u/s. 482 CrPC should not be exercised to quash the criminal case against the accused and, as such, there is no justification to interfere with the said decision. The order dated 25.06.2013 of the High Court, is affirmed. [Para 14] [803-F-G]

Case Law Reference:

2012 (8) SCR 753	relied on	Para 6
2008 (14) SCR 539	relied on	Para 6
2014 (3) SCALE 137	referred to	Para 6
2008 (4) SCR 1	relied on	Para 11
2003 (4) SCC 675	relied on	Para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 831 of 2014.

A From the Judgment and order dated 25.06.2013 of the High Court of Kerala at Ernakulam in CRLMC No. 2480 of 2013.

B Sidharth Luthra, ASG, H.P. Raval, P. Suresh Kumar, Abid Ali Beeran, Anando Mukherjee, Divya Anand, Sudha Gupta, Charul Sarin, Sanbha, B.V. Balram Das, Rajeev Mishra, Sanand Ramakrishnan for the appearing parties.

The Judgment of the Court was delivered by

C **RANJAN GOGOI, J.** 1. Leave granted.

D 2. The appellant is the second accused (hereinafter referred to as 'A-2') in CC No. 48 of 2011 (RC 27(A)/2004) in the Court of the Special Judge (SPE/CBI), Thiruvananthapuram. He is aggrieved by the refusal dated 25.06.2013 of the High Court of Kerala to quash the aforesaid criminal proceeding lodged by the respondent-Central Bureau of Investigation (hereinafter for short 'CBI').

E 3. The allegations made against the accused-appellant in the FIR dated 30.11.2004 are to the effect that the accused-appellant alongwith one T.K. Rajeev Kumar (A-1), Branch Manager, Indian Overseas Bank, Killippalam Branch, Trivandrum and C. Sivaramakrishna Pillai (A-3) (since deceased) had entered into a criminal conspiracy to obtain undue pecuniary advantage for themselves. Specifically, it was
 F alleged that in furtherance of the aforesaid criminal conspiracy the accused-appellant dishonestly applied for a car loan of Rs. 5 lakhs and opened a bank account bearing No. 1277 on 24.08.2002 without proper introduction. Thereafter, according
 G to the prosecution, the accused-appellant furnished a forged agreement for purchase of a second hand Lancer Car bearing No. KL-5L-7447 showing the value thereof as Rs. 6.65 lakhs though the accused-appellant had purchased the said vehicle for Rs. 5.15 lakhs only. It is further alleged that A-1, by abusing
 H his official position as Branch Manager, dishonestly sanctioned Rs. 5 lakhs towards car loan without prerequisite sanction

inspection. It is also alleged that A-1, who did not have the authority to do so, sanctioned education loan of Rs.4 lakhs under the Vidyajyothi Scheme to the accused-appellant for undergoing a course on Digital Film Making at SAE Technology College, Thiruvananthapuram. According to the prosecution, the accused-appellant had submitted two forged receipts of the aforesaid college showing payment of Rs. 1,60,000/- as fees which amount was duly released in his favour though he had actually paid Rs. 47,500/- to the college and had attended the course only for three days.

4. It is the further case of the prosecution that A-1, without being authorised to do so, sanctioned cash credit facility of Rs. 17 lakhs to one M/s. Focus Infotainments of which the accused-appellant is the proprietor and in this regard had obtained inflated value of the collateral security offered by the accused-appellant from deceased accused, A-3. According to the prosecution in the valuation report submitted by A-3 the value of the property offered as a collateral security by A-2 was shown at Rs.17,34,675/- though the subsequent valuation thereof by an approved valuer was for Rs.8,56,600/-. The prosecution had also alleged that after sanction of the said loan, A-1 wiped out the over draft facility of Rs. 13,94,000/- given to the accused-appellant without any authority by transferring the said amount from the cash credit account which was not only against the banking procedure but had also caused undue pecuniary advantage to the accused-appellant to the extent of Rs. 23,57,887/-. On the aforesaid facts, commission of offences under Section 120-B IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Sections 420/471 IPC was alleged insofar as the accused-appellant is concerned.

5. Based on the aforesaid allegations RC Case No. 27(A)/2004 dated 21.7.2005 was registered wherein chargesheet had been filed against the accused-appellant under the aforesaid sections of the Indian Penal Code as well as the PC Act. It is not in dispute that charges under the aforesaid

A provisions of law have been framed against the accused-appellant in the court of the Special Judge (SPE/CBI), Thiruvananthapuram on 29 07 2013.

B 6. Shri H.P. Raval, learned Senior Counsel appearing for the accused-appellant had contended that all amounts due to the bank from the accused-appellant has been tendered in full in an out of court settlement between the parties. An acknowledgement dated 30.3.2009 has been issued on behalf of the bank to the aforesaid effect wherein it is also stated that the bank has no further claims and charges against the accused-appellant in view of the compromise reached. Placing
 C reliance on the decisions of this Court in *Nikhil Merchant vs. Central Bureau of Investigation and Another*¹ and *Gian Singh vs. State of Punjab and Another*² and a recent pronouncement in *CBI, ACB, Mumbai vs. Narendra Lal Jain & Ors.*³ Shri Raval
 D had contended that in view of the settlement arrived at between the bank and the accused-appellant, the High Court ought to have exercised its power under Section 482 Cr.P.C. to quash the criminal proceedings against the accused-appellant. Shri Raval has taken the Court through the details of the allegations
 E made and the charges framed to contend that the same are identical with those in *Nikhil Merchant* (supra). The charges against the accused in both the cases are identical; the same has been quashed in *Nikhil Merchant* (supra) which decision has been endorsed by a larger Bench in *Gian Singh* (supra)
 F and also in *Narendra Lal Jain* (supra). It is, therefore, contended that the criminal proceeding against the accused-appellant is liable to be quashed and the impugned order passed by the High Court set aside.

G 7. On the contrary, Shri Sidharth Luthra, learned Additional Solicitor General has submitted that the decision in *Nikhil Merchant* (supra) turns on its own facts and what has been

1. (2008) 9 SCC 677.

2. (2012) 10 SCC 303.

H 3. 2014 (3) SCALE 137.

approved in *Gian Singh* (supra) is merely the principle of law laid down in *Nikhil Merchant* (supra), namely, that quashing a non-compoundable offence under Section 482 Cr.P.C., following the settlement between the parties, does not amount to a circumvention of the provisions of Section 320 of the Code of Criminal Procedure. Notwithstanding the above, according to Shri Luthra, whether a criminal proceeding should or should not be interdicted midway would really depend on the facts of each case. Shri Luthra has also drawn our attention to the observations made in para 61 of the judgment in *Gian Singh* (supra) wherein this Court had carved out an exception by observing that,

"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."

According to Shri Luthra in view of the above and having regard to the charges framed in the present case the High Court was fully justified in declining to quash the criminal proceeding against the accused.

8. Insofar as the judgment in *Narendra Lal Jain* (supra) is concerned, Shri Luthra has pointed out that in the aforesaid case the accused was charged for the offence under Section 120B read with Section 420 of the IPC whereas in the present case the charges against the accused-appellant are under Section 120-B read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 420/471 of the Indian Penal Code. It is submitted that the offences

A under the Prevention of Corruption Act and Section 471 of Indian Penal Code are not compoundable.

B 9. We have also heard Shri P. Suresh Kumar, learned senior counsel for the respondent No 2-bank who had admitted the payment of the entire amount due from the accused-appellant under the transaction in question. Learned counsel has, however, submitted that in written acknowledgment issued by the Bank there is no mention regarding any 'settlement' of the criminal case against the accused-appellant insofar as the bank is concerned.

C 10. The charges framed against the accused-appellant, it may be repeated, are under Section 120-B IPC read with Section 13(2) read with Section 13(1)(d) of the PC Act and Sections 420/471 of the IPC. It is true that in *Nikhil Merchant* (supra) the charges framed against the accused were also D under Sections 120-B read with Section 5(2) and 5(1) (d) of the PC Act, 1947 (Section 13(2) read with 13(1)(d) of the PC Act, 1988) and Sections 420, 467, 468, 471 of the Indian Penal Code. However, in para 28 of the judgment in *Nikhil Merchant* (supra) on a consideration of the totality of the facts and E circumstances in which the charges were brought against the accused this Court had come to the following conclusion:-

F "28. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the Company, M/s Neemuch Emballage Ltd., Mumbai, in order to avail of the credit facilities to an extent to which the Company was not entitled. In other words, the main intention of the Company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the Company was not otherwise entitled."

G The Court, thereafter, took into account the fact that the dispute between the parties had been settled/compromised and such compromise formed a part of the decree passed in the suit filed by the bank. After holding that the power under H Section 482 Cr.P.C. to quash a criminal proceeding was not

contingent on the provisions of Section 320 of the Code of Criminal Procedure, and taking into account the conclusion recorded in para 28 of the judgment, as noticed above, the Court ultimately concluded that in the facts of the case (*Nikhil Merchant*) it would be justified to quash the criminal proceeding. In this regard, it is important to note that the Court in *Nikhil Merchant* (supra) had come to the conclusion that "the dispute involved herein has overtones of a civil dispute with certain criminal overtones."

11. The decisions in *Nikhil Merchant* (supra) as well as in some other cases namely *B.S. Joshi vs. State of Haryana*⁴ and *Manoj Sharma vs. State*⁵ were referred to a larger Bench in *Gian Singh* (supra) for an authoritative pronouncement as to whether in the said cases this Court had "*indirectly permitted compounding of non-compoundable offences*". The larger Bench hearing the matter in its judgment² took the view that the,

"Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction." [Para 57]

Eventually, in para 61 the note of caution insofar as heinous and grave offences and offences under special laws, as already noticed, was sounded and it was held that *Nikhil Merchant* (supra), *B.S. Joshi vs. State of Haryana* (supra) and *Manoj Sharma vs. State* (supra) were correctly decided.

12. Reference of a case to a larger Bench necessarily has to be for a reconsideration of the principle of law on which the case has been decided and not the merits of the decision. The decision rendered by any Bench is final inter-parte, subject to

4. (2003) 4 SCC 675.

5. (2008) 16 SCC 1.

2. Gian Singh Vs. State of Punjab & Anr. (2012) 10 SCC 303.

A the power of review and the curative power. Any other view
 would have the effect of conferring some kind of an appellate
 power in a larger Bench of this Court which cannot be
 countenanced. However, the principle of law on which the
 decision based is open to reconsideration by a larger Bench
 B in an appropriate case. It is from the aforesaid perspective that
 the reference in *Gian Singh* (supra) has to be understood,
 namely, whether quashing of a non-compoundable offence on
 the basis of a compromise/settlement of the dispute between
 the parties would be permissible and would not amount to
 overreaching the provisions of Section 320 of the Code of
 C Criminal Procedure. In fact, this is the question that was referred
 to the larger Bench in *Gian Singh* (supra) and not the merits
 of the decision in *Nikhil Merchant* (supra).

13. The decision in *Gian Singh* (supra) holding the
 decision rendered in *Nikhil Merchant* (supra) and other cases
 D to be correct is only an approval of the principle of law
 enunciated in the said decisions i.e. that a non-compoundable
 offence can also be quashed under Section 482 CrPC on the
 ground of a settlement between the offender and the victim. It
 is not an affirmation, for there can be none, that the facts in
 E *Nikhil Merchant* (supra) justified/called for the due application
 of the aforesaid principle of law. Also, neither *Nikhil Merchant*
 (supra) nor *Gian Singh* (supra) can be understood to mean that
 in a case where charges are framed for commission of non-
 compoundable offences or for criminal conspiracy to commit
 F offences under the PC Act, if the disputes between the parties
 are settled by payment of the amounts due, the criminal
 proceedings should invariably be quashed. What really follows
 from the decision in *Gian Singh* (supra) is that though quashing
 a non-compoundable offence under Section 482 CrPC,
 following a settlement between the parties, would not amount
 G to circumvention of the provisions of Section 320 of the Code
 the exercise of the power under Section 482 will always depend
 on the facts of each case. Furthermore, in the exercise of such
 power, the note of caution sounded in *Gian Singh* (supra) (para
 61) must be kept in mind. This, in our view, is the correct ratio
 H of the decision in *Gian Singh* (supra).

14. The aforesaid principle of law may now be applied to the facts of the present case. At the very outset a detailed narration of the charges against the accused-appellant has been made. The appellant has been charged with the offence of criminal conspiracy to commit the offence under Section 13(1)(d). He is also substantively charged under Section 420 (compoundable with the leave of the Court) and Section 471 (non-compoundable). A careful consideration of the facts of the case would indicate that unlike in *Nikhil Merchant* (supra) no conclusion can be reached that the substratum of the charges against the accused-appellant in the present case is one of cheating nor are the facts similar to those in *Narendra Lal Jain* (supra) where the accused was charged under Section 120-B read with Section 420 IPC only. 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 amounts 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 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) (para 61) 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. The appeal filed by the accused is, therefore, dismissed and the order dated 25.06.2013 of the High Court, is affirmed.

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Appeal dismissed.