IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1072 of 2018
With
CRIMINAL MISC.APPLICATION (FOR JOINING PARTY) NO. 1 of 2018
In
R/SPECIAL CRIMINAL APPLICATION NO. 1072 of 2018
With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 2 of 2018
In
R/SPECIAL CRIMINAL APPLICATION NO. 1072 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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MEHUL CHINUBHAI CHOKSI & 1 other(s)
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:
MR SALIL M THAKORE(5821) for the Applicant(s) No. 1,2
MR PARAM R BUCH(5625) for the Respondent(s) No. 2
MR CHINTAN DAVE, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 11/10/2023

CAV ORDER

1. Present petition is filed with a prayer to quash and set aside impugned FIR being C.R.No.I-31 of 2017 registered with DCB Police Station, Ahmedabad, on 3.4.2017 for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code. Present petitioners are accused Nos.2 and 4.

2. Brief facts of the case are that on 15.9.2013, the complainant and her husband had gone to M/s. Gitanjali Jewellers for making purchases and that in the bill given to them, M/s. Divyanirman Jewels, Shop No.6, Isckon Centre, Shivranjani Crossroads, Satellite, Ahmedabad was written. It is alleged that the persons working in the said showroom informed them about diamond/gold monthly installment schemes and that one installment would be borne by the company. Upon the complainant finding the scheme to be good, the complainant and her husband discussed about investing Rs.5000/- per month in the gold coin scheme for 12 months. Thereupon, a person came to their residence and gave them "Tamanna" card and took Rs. 10,000/- (Rs.5,000/- x 2) towards two schemes. Thereafter, till 25.5.2014, a person used to come to the complainant's residence and take Rs.10,000 towards the installments. In July, 2014, the complainant received a telephone call from Gitanjali Jewellers informing that the franchisee has been terminated. Thereupon, the complainant and her husband went to the

store and offered to deposit the remaining three installments and inquired if they could get gold coins. Thereupon, they were informed that no gold coins are available but that they can purchase diamonds. The complainant declined to purchase the diamonds and asked for gold coins or return of the installment money. Thereafter, the complainant addressed communications on different e-mail addresses of Gitanjali Group with relevant details of the amount invested by them but these communications were not replied to. Upon further inquiry, it was learnt that the showroom had closed down. It was learnt that the owner of the franchisee M/s. Divyanirman Jewels was one Digvijaysinh Jadeja, however, upon inquiring about him, the complainant did not get any satisfactory answer. It is alleged that the complainant made investment in the scheme on being told that she would get financial benefits from the same. It is alleged that by not giving gold coins and by not returning the investment, the offences of criminal breach of trust and cheating have been committed. The accused are Accused No.1-Digvijay Jadeja (franchisee owner of M/s. Divyanirman Jewellers), Accused No.2 Mehul Chinubhai Choksi (described as Managing Director of Gitanjali Group), Accused No. 3 Aniyath Shivraman Nair (described as Director of Gitanjali Group) and Accused No.4 Chetna Jayantilal Zhaveri (described as Director of Gitanjali Group). The F.I.R. is essentially a

recovery proceeding in the form of a criminal complaint and is filed for offences under Sections 406, 420 and 34 of the Indian Penal Code. The contents of this paragraph are the allegations made in the F.I.R.

2.1 The petitioners state that Ahmedabad stores referred to in the FIR was run by M/s. Divyanirman Jewels (owned and managed by Accused No.1-Digvijaysinh Jadeja), franchisee of Gitanjali Jewellery Retail Limited (GJRL) (company of Gitanjali Group that manages the franchisee business). No investment stated to have been made by the complainant has ever been passed over by M/s.Divyanirman Jewels to Gitanjali Jewellery Retail Limited. In fact, the franchisee owner Mr. Digvijaysinh Jadeja has not returned jewellery belonging to GJRL and not forwarded sale proceeds, etc. to GJRL. GJRL has filed Special Civil Suit No.433 of 2014 before the Senior Civil Judge, Vadodara, against M/s. Divyanirman Jewels inter alia challenging some fraudulent documents, praying for return of pieces of jewellery, sales proceeds, etc. and damages. M/s.Divyanirman Jewels has also filed a suit against GJRL and others. Both proceedings are pending.

2.2 It is also stated that the matter has been settled between the petitioners and the complainant. As stated by the complainant in her letter dated 25.8.2017, the

complainant has waived her claims and does not wish to pursue the criminal proceedings.

2.3 Being aggrieved by impugned complaint, the petitioners have filed present petition.

3. Heard learned advocate, Mr.Salil Thakore for the petitioners and Mr.Param Buch for the original complainant and Mr.Vishal Anandjiwala and Mr.Kathan Gandhi for the applicant of Criminal Misc. Application No.1 of 2018, i.e. original accused no.1, and Mr.Dhawan Jayswal, learned APP for the respondent-State.

4. Mr.Salil Thakore, learned advocate for the petitioners has submitted that *prima facie* no offence is made out from the contents of the impugned complaint against the present petitioners. He has submitted that no ingredients of the offences as alleged in the FIR are satisfied qua the present petitioners. He has submitted that the accused persons are Directors of the company and no vicarious liability can be fastened on the Directors, unless there is specific role attributed to them. He has further submitted that considering the offences as alleged against the petitioners, at the best, it can be said that there is breach of contract which is arising from the sale of goods and, therefore, there is absence of

mens rea and no offence can be attributed to present petitioners. In support of his submissions, he has relied upon following decisions:-

(i) **Lavesh v. State (Govt Of NCT Of Delhi)** reported in **2012 (8) SCC 730**;
(ii) **Gold Quest International Private Limited v. State of Tamil Nadu and Others** reported in **(2014) 15 SCC 235**,
(iii) **Thermax Limited and Others v. K.M.Johny and Others** reported in **2011 (13) SCC 412**;
(iv) **HDFC Securities Limited and Others v. State of Maharashtra and Another** reported in **2017 (1) SCC 640**.

4.1 In view of above, he submits that present petition is required to be allowed as no *prima facie* case is made out against present petitioners.

4.2 Learned APP has drawn my attention to the fact that accused No.1-Mehul Choksi is not cooperating in the investigation and he has absconded and now he has settled in a foreign country, therefore, discretion may not be exercise in his favour.

4.3 In view of the above fact learned advocate, Mr Salil Thakore has submitted that if this Court is not inclined to

consider the case of petitioner no.1, he is not pressing this petition qua petitioner No.1 and he is pressing this petition only for petition No.2, who is a Director of the company and who has joined the company after the alleged incident. He has submitted that petitioner no.1 has not played any role in commission of offence and, therefore, in view of the decision of Honourable Apex Court in the case of **State of Haryana V/ s Bhajan Lal** reported in **AIR 1992 SC 604**, this petition may be allowed qua petitioner no.2. He has further submitted that no offence is made out under Sections 406 and 420 of IPC against petitioner no.2 as there is no entrustment of the property neither there is an intention to cheat right from the very inception.

5. *Per contra*, learned advocate Mr.Vishal Anandjiwala appearing for original accused no.1 in the impugned FIR, being a franchisee holder, has strongly opposed the submissions made at bar by learned advocate, Mr.Salil Thakore. He has submitted that petitioner no.1 herein has duped the citizens across the country and now he has fled out of India, with a view to avoid the prosecution therefore, his case may not be considered. He has submitted that so far as petitioner no.2 is concerned, she is the Director of Gitanjali Gems with whom his client has business transactions, being the franchisee holder of Gitanjali Gems

and, therefore, his client is unnecessarily facing the criminal trial. He has submitted that it is the Gitanjali Gems and its Directors, who have not fulfilled their promises given to the customers. He has further submitted that attractive schemes were offered to the customers by the company and, thereafter, the company has not acted upon their promises given through various outlets and present petitioners being Directors of the company are responsible for such act.

5.1 Learned advocate, Mr.Anandjiwala has submitted that present petitioners and other accused, through their company Gitanjali Gems, have floated attractive schemes/ offers to attract the customers and they have not acted upon their promises and, therefore, thousands of customers are cheated by Gitanjali Gems and present petitioners, who are the Directors of the company. He has submitted that role of individual Director is also required to be examined at the time of trial, and it cannot be presumed that none of the Director is responsible for the affairs of the company. On the contrary considering the capital of the company, the Directors who are holding key post in the company cannot be said to be ignorant about the development of business and policy of the company. He submitted that on bare reading of the complaint *prima facie* it can be said that the petitioners are equally responsible for the affairs of the company and they

have also participated in the commission of the offence as alleged, therefore, they are required to face trial. Therefore, he prays to dismiss this petition by considering the judgment in the case of **Neeharika Infrastructure Pvt. Ltd. versus State of Maharashtra and Others** reported in **2021 SCC OnLine SC 315**, and in the case of **CBI v. Maninder Singh** reported in **2016 (1) SCC 389**.

6. Learned APP, Mr.Dhawan Jaiswal has also supported the submissions made by learned advocate Mr.Anandjiwala and has furnished a report wherein it is stated that petitioner no.1-Mehul Chinubhai Choksi has fled away and in view of the protection granted by this Court, petitioner no.2 could not be arrested and, therefore, the investigation is not carried further. He has submitted that, whatever investigation is carried out, suggest that a *prima facie* offence is made out against the accused persons and this Court may not exercise its powers under Section 482 of Criminal Procedure Code, which are required to be exercised very sparingly in view of various decisions of Honourable the Apex Court. Accordingly, he prays to dismiss present petition.

7. Learned advocate, Mr.Param Buch appearing for the complainant has submitted that during the pendency of this petition original complainant Ms.Mita Hemant Mankad has

expired and, therefore, he has submitted that this Court may pass appropriate order by considering the contents of the complaint and other material available on record.

8. I have considered rival submissions made at the bar. I have also considered the tenor of the FIR, which clearly indicates that there are specific schemes named as Diamond Saving Scheme as well as Gold Saving Scheme floated by M/s.Divyanirman Jewels. It seems that the premises from where the complainant has purchased the ornament is a franchisee of Gitanjali Gems, and petitioner Nos.1 and 2 are the directors of this company. It is clear that petitioner no.1-Mr.Mehul Choksi has left the country long ago and he is not cooperating with any prosecution, though various complaints are filed against Gitanjali Gems as well as in his individual capacity. Therefore, considering the conduct of petitioner no.1, present petition is not entertained qua petitioner no.1, as he do not have any respect towards the process of law and such accused cannot be considered for any equitable relief.

9. Since the petition is argued for quashing of the proceedings qua petitioner no.2, before proceeding further, this Court may refer to the observations of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** (supra), wherein the Hon'ble Supreme Court has illustrated

the cases wherein inherent powers under Section 482 of the Criminal Procedure Code could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice and observed as under:-

> *"In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Art.226 or the inherent powers under sec.482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against*

the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under sec. 156(1) of the Code except under an order of a Magistrate within the purview of sec. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 156(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In the case of **Neeharika Infrastructure Pvt. Ltd. versus State of Maharashtra and Others** reported in **2021 SCC OnLine SC 315**, the Hon'ble Apex Court has held as under:-

"80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.PC and/or

under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/ chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in casese no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly

with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and

the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be

more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay

of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to herein above, the High Court has to give brief reasons why

such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

11. Petitioner no.2 is claiming to have been admitted as a Director in the company after the alleged incident, however, it is not denied that she is the Director of the company. Now considering the scheme of the company giving various options of investment in gold and diamond, various persons have invested their money in such schemes. Since such schemes are closed suddenly and deposited amount is not refunded to the persons who have invested their money, it is clear that such persons are cheated. At this stage, this Court may refer to the relevant provisions under which offences are alleged against the petitioners.

"405. Criminal breach of trust.

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

……..

415. Cheating.

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any

person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

.....

420. Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

12. *Prima facie,* ingredients of the alleged offences are satisfied and the complaint is required to be proceeded further. *Prima facie*, it is found that after giving false promises through their franchisee, such showrooms are closed down and the customers who have invested their money are

cheated. It is found that the showrooms of the company in the respective cities are closed down. It is not the case that at one or two places such incidents have occurred but wherever Gitanjali Gems were having their franchisee, at all such places, such incidents have occurred and people, who have invested their money, are cheated. Due to such fraudulent act and closure of the showrooms, money invested by the investors is not refunded and it can be said that a huge scam is committed. Therefore, the ultimate liability can be fastened on the shoulders of the persons responsible for the affairs of Gitanjali Gems and present petitioners being the Directors and actively involved in the management of the company cannot shirk their responsibility. It is true that merely being Directors, they cannot be held responsible for the criminal act but looking to the nature of the allegations in the present case, as there is a large scale scam committed by Gitanjali Gems across the country, the petitioners cannot escape their liability at this stage. The contention raised by learned advocate, Mr.Salil Thakore that the petitioner no.2 is appointed as a Director subsequent to the transactions in question has no relevance at this stage. It is required to be considered at the time of trial, after leading of proper and cogent evidence.

13. Since *prima facie* case is made out against present petitioners and charge sheet is also filed, no case is made out by applicants to exercise powers of this Court under Section 482 of the Criminal Procedure Code. The applicants can raise all the contentions as their defence at the time of trial. Looking to the facts and circumstances of the present case, it cannot be said that there is no entrustment of the property or there is no intention to deceive the people by fraudulent act. On the contrary, considering the material available on record and more particularly going through the allegations levelled in the FIR, *prima facie*, offence is made out and the petitioners are required to face the trial. Considering the scale at which the offence is committed, it can be said that it is a huge scam and an offence against the society. At this stage, it is relevant to refer to the judgment in the case of **CBI v. Maninder Singh** reported in **2016 (1) SCC 389**, wherein it is observed as under:-

> "*14. Placing reliance upon Nikhil Merchant's case, the High Court quashed the criminal proceedings qua the respondent on the ground that the respondent has settled the matter with the bank. In Nikhil Merchant's case the dispute between the company and the bank which was set at rest on the basis of compromise arrived at by them and dues of the bank have been cleared. In Nikhil Merchant's case*

certain documents were alleged to have been forged by the respondent thereon in order to avail credit facilities beyond the limit to which the company was entitled.

"15. The case at hand is clearly distinguishable on facts. The chargesheet referred to number of transactions based on such forged documents bank money was credited to the accounts of firms of the respondent. For instance, respondent Maninder Singh and Suresh Kumar Puri are said to have submitted the forged documents of shipment for bill purchased on 27.11.1986. These documents included Bill of Lading and invoices which were found forged and according to the prosecution no consignment was sent by the respondent to foreign companies. It is further alleged that the Bill of Lading and G.R. Form and Shipping Bill also contained forged signatures of customs officers.

16. The allegation against the respondent is 'forgery' for the purpose of cheating and use of forged documents as genuine in order to embezzle the public money. After facing such serious charges of forgery, the respondent wants the proceedings to be quashed on account of settlement with the bank. The development in means of communication, science & technology etc. have led to an enormous increase in economic crimes viz. phishing, ATM frauds etc. which are being committed by intelligent but devious individuals involving huge sums of public or government money. These

are actually public wrongs or crimes committed against society and the gravity and magnitude attached to these offences is concentrated at public at large.

17. The inherent power of the High Court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is a well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

18. In recent decision in Vikram Anantrai Doshi (supra), this Court distinguished Nikhil Merchant's case and Narendra Lal Jain's case where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each other. After referring to various case

laws under subject in Vikram Anantrai Doshi's case, this Court observed that cheating by bank exposits fiscal impurity and such financial fraud is an offence against society at large in para (23), this Court held as under:-

> *"26. …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 proceedings 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".

19. In this case, the High Court while exercising its inherent power ignored all the facts viz. the impact of the offence, the use of the State machinery to keep the matter pending for so many years coupled with the fraudulent conduct of the respondent. Considering the facts and circumstances of the case at hand in the light of the decision in Vikram Anantrai Doshi's case, the order of the High Court cannot be sustained."

13.1 It is also relevant to refer to the judgment of Honourable Apex Court in the case of **Indo Asian Limited v. State of**

Uttarakhand reported in **2014 (3) SCC 191**, wherein it is observed as under:-

> *"4. The Appellant submitted that during the period between 4.7.2008 to November, 2008, the Appellant entrusted in total copper rods weighing 39,689 kgs. for processing and out of that the accused returned only 33,440.10 kgs. of copper wire to the Appellant Company. Copper weighing 26.87 kgs. was used in processing, and as such, the copper rods weighing 6,222.04 kgs. remained with the accused-Respondent No.2 which, according to the Appellant, was misappropriated and converted to his own use and the said copper was never returned to the Appellant. Few correspondences were exchanged between the parties, including few meetings as well. According to the Appellant, even though the accused had undertaken to return the copper rods, the same was not done. Consequently, the Appellant preferred a complaint which was registered as Crime Case No.24 of 2010 registered at PS Rampur, Haridwar under Section 406 IPC.*
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> *5. The investigating officer initially filed a report on 30.4.2010. Again there was further investigation under Section 173(8) of the Criminal Procedure Code and, after due investigation, a charge-sheet was filed on 13.12.2010 against the accused under Section 306 Cr.P.C. Respondent then*

preferred Writ Petition No.224 of 2010 before the High Court for quashing the FIR and not to arrest him. While the Writ Petition was pending, the Additional Chief Judicial Magistrate took cognizance of the case vide his order dated 23.12.2010, and issued summons. Those proceedings were challenged before the High Court and, as already stated, the High Court quashed those proceedings, against which this appeal has been preferred.

6. We have gone through the FIR as well as various invoices produced before us. On going though the allegations raised in the FIR as well as the documents, we are of the view that the High Court, at the threshold, should not have quashed the complaint and the summons issued by the Criminal Court. In the circumstances, we are inclined to allow this appeal and set aside the order of the High Court and leave it to the Criminal Court to proceed with the case in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case and leave it entirely for the Criminal Court to decide the case on the basis of the evidence adduced by the parties. Ordered accordingly."

13.2 It is also relevant to refer to the judgment in the case of **Mosiruddin Munshi v. Mohd.Siraj and Another** reported in **(2014) 14 SCC 29**, wherein it is observed as under:-

"8. In the present case the complaint does make averments so as to infer fraudulent or dishonest inducement having been made by Respondent No.1 herein and accused No.2 pursuant to which the appellant parted with money. It is the case of the appellant that Respondent No.2 does not have title over the property since the settlement deed was not a registered one and Respondent No.1 herein and accused No.2 had entered into criminal conspiracy and they fraudulently induced the appellant to deliver a sum of Rs.5,00,001/- with no intention to complete the sale deal. The averments in the complaint would prima facie make out a case for investigation by the authority.

9. In the decisions relied on by the learned counsel for the respondent No.1, cited supra, this Court on the facts therein held that the allegations in the complaint read as a whole prima facie did not disclose commission of offences alleged and quashed the criminal proceedings. Those decisions do not apply to the fact situation of the present case.

10. The High Court has adopted a strictly hypertechnical approach and such an endeavour may be justified during a trial, but certainly not during the stage of investigation. At any rate it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a civil transaction wherein no semblance of criminal offence is

involved.

11. The appellant, is therefore right in contending that the First Information Report should not have been quashed in this case and the investigation should have been allowed to proceed. We, therefore, allow this appeal and set aside the impugned order."

13.3 It is also relevant to refer to the judgment in the case of **State of Tamil Nadu v. R. Vasanthi Stanely and Another** reported in **2016 (1) SCC 376**, wherein it is observed as under:-

"13. Testing the present controversy on the anvil of the aforesaid principles, we are disposed to think that the High Court has been erroneously guided by the ambit and sweep of power under Section 482 CrPC for quashing the proceedings. It has absolutely fallaciously opined that the continuance of the proceeding will be the abuse of the process of the Court. It has been categorically held in Janta Dal v. H.S. Chowdhary[(1992) 4 SCC 305], that the inherent power under Section 482 CrPC though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In Inder Mohan Goswami (supra), it has been emphasised that inherent powers have to be exercised sparingly, carefully and with great caution.

14. We will be failing in our duty unless we advert to the proponements propounded with regard to other aspects. They are really matters of concern and deserve to be addressed. The submission as put forth is that the first respondent is a lady and she was following the command of her husband and signed the documents without being aware about the transactions entered into by the husband and nature of the business. The allegation in the chargesheet is that she has signed the pronotes. That apart, as further alleged, she is a co-applicant in two cases and guarantor in other two cases. She was an Assistant Commissioner of Commercial Taxes and after taking voluntary retirement she has joined the public life, and became a member of the 'Rajya Sabha'. Emphasis is also laid that she is a lady and there is no warrant to continue the criminal proceeding when she has paid the dues of the banks, and if anything further is due that shall be made good. The assertions as regards the ignorance are a mere pretence and sans substance given the facts. Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. State, Rep. By Inspector of Police Central Crime Branch Vs. R. Vasanthi Stanley & Anr. True it is, there are certain provisions in CrPC relating to exercise of jurisdiction under Section 437, etc. therein but that

altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score.

15. As far as the load on the criminal justice dispensation system is concerned it has an insegragable nexus with speedy trial. 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 load on the system. That can never be an acceptable 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. Such a situation should never be conceived of."

14. In view of above observations and considering the facts of present case, in my opinion, as *prima facie* case is made out against the accused, thus, no case is made out to exercise inherent powers of this Court under Section 482 of Criminal Procedure Code. Accordingly, I do not find any

merit in the present petition and no case is made out to exercise power under Section 482 of Criminal Procedure Code. Accordingly, present petition is dismissed. Notice is discharged. Interim relief stands vacated.

15. In view of above order, Criminal Misc. Application Nos.1 and 2 of 2018 does not survive and the same are disposed of accordingly.

Sd/-
(SANDEEP N. BHATT,J)

Further Order:-

Learned advocate, Mr.Salil Thakore, for the applicants pray for extension of interim relief granted by this Court earlier, qua applicant no.2. As present petition is pending since 2018, this Court is of the opinion that investigation is required to be completed and, subsequent proceedings are also required to be proceeded further. As granting of interim relief will delay further proceedings pursuant to impugned F.I.R., request for extension of interim relief is rejected.

Sd/-
(SANDEEP N. BHATT,J)

R.S. MALEK