



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 245 OF 2020

Manoj Gokulchand Seksaria
R/o. 33, Maheshwar Niketan,
5-B, Peddar Road,
Mumbai – 400026.

... Petitioner

V/s.

1. The State of Maharashtra
Through Public Prosecutor.

2. C. B. I., BS & FC, Mumbai

... Respondents

WITH
CRIMINAL WRIT PETITION NO. 730 OF 2020

Manojdev Gokulchand Seksaria
R/o. 33, Maheshwar Niketan,
5-B, Peddar Road,
Mumbai – 400026.

... Petitioner

V/s.

1. The State of Maharashtra

2. C. B. I., BS & FC, Mumbai,
Central Bureau Investigation,
Mumbai – 400 032.

... Respondents

Mr. Aabad Ponda, Senior Advocate a/w Mr. Jugal Kanani a/w Mr. Rahul Pandey i/by Mr. Alok Singh, Advocate for Petitioner.
Smt. M. M. Deshmukh, Public Prosecutor a/w Mr. Vinod Chate, APP for the Respondent No.1 – State.
Mr. Kuldeep Patil, Advocate for Respondent No.2 – CBI.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 15th SEPTEMBER 2025

PRONOUNCED ON : 14th NOVEMBER 2025

JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

1) By way of these Petitions, filed under Article 227 of Constitution of India and Section 482 of the Criminal Procedure Code, 1973, the Petitioner seeks to quash and set aside criminal proceedings i.e impugned Order dated 19th March 2008 in respect of FIR No. RC 3(E)/2006/BS&FC/ Mumbai dated 20th February 2006 in Special Case No. 47 of 2007 alongwith chargesheet dated 2nd March 2009 and impugned Order dated 10th March 2008 in respect of FIR No. RC 4(E)/2006/BS&FC/Mumbai dated 20th February 2006 in Sessions Court Special Case No.48 of 2007 alongwith chargesheet dated 2nd March 2009, both registered under Section 120-B r/w. read with section 420, 467, 468, 471 of Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 68-A of the Companies Act, 1956.

Facts :

2) The Securities and Exchange Board of India (SEBI), addressed a complaint letter to the Central Bureau of Investigation (CBI/Respondent No.2), giving information in respect of certain illegal acts/offences which had been committed in respect of the Initial Public Offerings (IPO's) of Yes Bank

Limited (YBL) and Infrastructure Development Finance Corporation (IDFC). Pursuant to the complaints, CBI registered two criminal complaints Criminal Case No. RC 3(E) / 2006 / BS&FC / Mumbai and Criminal Case No. RC 4(E) /2006 /BS & FC / Mumbai. The Petitioner is an accused in both complaints. The case of the prosecution is that, the accused including the Petitioner pursuant to a criminal conspiracy, opened Bank and Demat accounts in the name of fictitious persons and applied for shares, in the said fictitious names in the retail investor category (RII) i.e shares meant for retail investors, predatory cornered the shares meant for genuine retail investors. The said illegally cornered shares were then transferred to the accounts of some the accused including the Petitioner and then sold in the market at substantial higher prices. The said illegal acts ensured unjust profit and wrongful gain for the Petitioner and other accused. This was done and achieved at the cost of the retail investors and by abusing the IPO process/system. The entire game plan was masterminded, designed and executed by the accused including the Petitioner with the help of public servants/bank employees of PSU banks. The complaint proceeds on the basis that the acts of the accused including the Petitioner are not only detrimental to the orderly development of the securities market but also criminal in nature as forged documents were used and genuine retail investors at large were deprived of the legitimate allotment of shares through the IPO process.

3) The CBI/Respondent No.2 registered, Criminal Case No. RC

3(E)/2006/BS&FC/Mumbai and RC 4(E)/2006/BS&FC/Mumbai, in respect of the illegalities committed by the accused including the Petitioner in respect of the IPO's of YBL and IDFC respectively. Criminal prosecutions were under Section 120-B r/w. read with section 420, 467, 468, 471 of Indian Penal Code and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 and Section 68-A of the Companies Act, 1956.

4) SEBI issued to the Petitioner, Show Cause Notices under Section 11B and 11(4) of SEBI Act, 1992. The WTM, SEBI passed ad-interim ex parte Orders dated 12th January, 2006 and 27th April, 2006 under sections 11 and 11B of the SEBI Act, 1992. Notice dated 7th June, 2006 was issued, to the Petitioner, under the SEBI (Procedure for holding Inquiry and Imposing penalties by Adjudicating Officer) Rules, 1995, No. A & E/BS/68771/2006.

5) Criminal Case No. RC 3(E)/2006/BS&FC/Mumbai is registered against 19 accused persons. On 19th October, 2007, a chargesheet was filed, in Criminal Case No. RC 3(E)/2006/BS&FC/Mumbai, after completion of Investigations vide Special Case No 48 of 2007, against 16 accused including the Petitioner. A supplementary chargesheet was filed in Criminal Case No RC 3(E)/2006/BS&FC/Mumbai which was numbered as Special Case No 22 of 2014 and further 9 accused persons were added with the original 16 accused, totaling to 25 accused.

6) Criminal Case No RC 4(E)/2006/BS&FC/Mumbai is registered against 26 accused persons including the Petitioner. On 29th July 2007, a

chargesheet was filed, in Criminal Case No RC 4(E)/2006/BS&FC/Mumbai, after completion of investigation, vide Special Case No 47 of 2007 against 22 accused. A supplementary chargesheet was filed in Criminal Case No RC 4(E)/2006/BS&FC/Mumbai which was numbered as Special Case No74 of 2014 and further 21 accused persons were added with the original 22 accused, totaling to 43 accused.

7) SEBI introduced a consent procedure, whereby, the entity/person, against whom SEBI had initiated proceedings under the securities laws including 11B and 11(4) proceedings, adjudicatory proceedings etc, could approach SEBI, for amicable settling the proceedings, by filing a consent application. SEBI made the consent procedure applicable to enforcement actions i.e. Administrative and or Civil/under civil laws. The consent procedure, provided that, compounding of Offence may cover appropriate prosecution cases filed by SEBI before the criminal courts. The said consent application, if approved by the High Powered Committee is further processed and consent orders are passed by the Whole Time Member, SEBI.

8) SEBI by its Circular dated 20th April, 2007 bearing No. EFD/ED/Cir-1/2007, issued guidelines for consent orders and for considering request of composition of offences under SEBI Act, SCRA Act, and Depositories Act. The Circular interalia provides for the process of filing a consent application, the cases in which consent application may be filed, the consent procedure which is to be undertaken, factors to be considered for consent, waivers,

consequences for non- acceptance etc.

9) Petitioner, vide application dated 5th November, 2008 (Exh.E/Pg 119 in Criminal Writ Petition No.245/2020 and Exh.F/Pg 185 in Criminal Writ Petition No.730/2020), filed his consent applications in both the proceedings. The Petitioner, in point no 11 in the applications under the heading “Case Pending with SEBI/SAT/Court:” (Page No.121 in Criminal Writ Petition No.245/2020 and Page No.186 Criminal Writ Petition No.730/2020) has after referring to Show cause Notices Under Section 11B and 11(4) of SEBI Act, Order dated 12th January, 2006, bearing No WTM/GA/43/ISD/01/06; Notice under Rule SEBI (Procedure for holding Inquiry and Imposing penalties by Adjudicating Officer) Rules, 1995, No. A & E/BS/68771/2006 dated 7th June, 2006 has also referred to the present criminal prosecutions i.e RC 3(E)/ 2006/BS&FC/Mumbai and RC 4(E)/ 2006/BS&FC/ Mumbai. Petitioner, in point 19 of the Consent Application, sought to be exonerated from all the proceeding adopted against him by SEBI or at the behest of SEBI.

10) Petitioners consent application No.1041/2008, was considered by the High Powered Advisory Committee, of SEBI, and recommended for settlement. Petitioner was directed to disgorge an amount of Rs.2,05,18,968/- (Rupees Two Crore Five Lakh Eighteen Thousand Nine Hundred and Sixty Eight Only) being the unjust profits made and also pay a sum of Rs.20,51,897/- (Rupees Twenty Lakh Fifty One Thousand Eight Hundred and Ninety Seven Only) being 20% of the disgorged amount towards settlement

charges to SEBI.

11) On 7th December, 2009, the Whole Time Member, SEBI, accepted the recommendations of the High Powered Committee, and passed the Consent Order. The WTM, SEBI referred, to the ad interim ex-parte orders dated 12th January, 2006 and 27th April, 2006, passed by SEBI under sections 11 and 11B of the SEBI Act, 1992, adjudication proceedings under Chapter VI A of the Act and proposed initiation of prosecution under section 24 of the Act against the Petitioner. The Petitioner without admitting or denying the charges, remitted a sum of Rs.2,25,70,864/- (Rupees two crore twenty five lakh seventy thousand eight hundred and sixty four only). The Consent Order dated 7th December, 2009, specifically records that the consent Order disposes of the pending proceedings under section 11(4) and 11B of the SEBI Act, 1992, the adjudication proceedings and the proposed prosecution against the Petitioner in the matter of irregularities relating to Initial Public Offerings.

12) Petitioner armed with the Consent Order dated 7th December, 2009, approached this Hon'ble Court, by filing Writ Petition No.406 of 2018 under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, for quashing the criminal proceedings and charge-sheet filed pursuant to FIR bearing No. RC 3 (E)/2006/BS & FC/Mumbai and RC 4 (E)/2006/BS & FC/Mumbai dated 21.02.2016. This Hon'ble Court, by its Order dated 27th February, 2018 was pleased to dismiss the said writ petition.

13) Aggrieved by the Order dated 27th February, 2018, Petitioner filed Special Leave Petition (Crl.) Nos.3495 of 2018. The Hon'ble Supreme Court vide Order dated 7th January, 2020, granted the Petitioner liberty to withdraw the Petition and to raise the question as to the effect and legal consequences of Order dated 7th December, 2009 passed by the SEBI before this Court. Accordingly, the Special Leave Petition was dismissed as withdrawn with liberty as prayed for being granted.

14) The Petitioner, thereafter filed Writ Petition No.245 of 2020 and Writ Petition No.730 of 2020 and sought to challenge the Order of cognizance and issuing process dated 10th March, 2008 and 19th March, 2008 in Special CBI Case No.47 of 2007 and 48 of 2007 arising out of FIR Nos. RC 3 (E)/2006 /BS & FC/Mumbai and RC 4 (E)/2006/BS & FC/Mumbai respectively. As there was no challenge to the FIR/Charge-sheet in Writ Petition No.245 of 2020 and Writ Petition No.730 of 2020, and challenge only pertained to the Order of taking cognizance, the Petitions were placed before the learned Single Judge of this Court. After hearing the parties, this Court by Order dated 05th January, 2022 was pleased to allow the Petition and held that, the continuation of the proceedings in Special CBI Case No. 47 of 2007 and Special CBI Case No. 48 of 2007 pending on the files of the Special Judge (CBI), Greater Mumbai, qua the Petitioner would be an abuse of process of Court and in Order to meet the ends of justice, the same were quashed and set aside.

15) The Order dated 05th January, 2022, was challenged, by the CBI/ Respondent No.2 before the Hon'ble Supreme Court by filing Special Leave Petition Nos. 12344 and 12345 of 2022. The Hon'ble Supreme Court, by its Order dated 22nd August, 2024, after considering the submission of the learned counsels for the parties, was please to dispose off the Special Leave Petition with the following observation as recorded in Paragraph No.23 of the said Order:

“23. As to whether the respondent had made out a case for quashing the proceedings will be independently decided by the Division Bench which will now hear the matter on remand. The Division Bench will not be influenced by the observations of the previous Division Bench in Writ Petition 406 of 2018, the Order of this Court dated 07.10.2020, the Order of the Single Judge in Writ Petition No. 245 of 2020 and Writ Petition No. 730 of 2020 and also by the present Order which we have now passed. The Division Bench will independently decide the matter on its own merits and in accordance with law.”

16) Pursuant to the said Order dated 22nd August, 2024, these Petitions were listed for hearing before this Court on 18th October, 2024. The learned Advocate for the Petitioner, sought leave to amend the Petition, to incorporate additional pleadings and prayer clauses. As the said request was made at belated stage, particularly when the Hon'ble Supreme Court had not granted any such liberty, this Hon'ble Court had expressed its doubt about granting such a request. The Petitioner requested for time, to seek a

clarification from the Hon'ble Supreme Court. By an Order dated 08.11.2024, the Hon'ble Supreme Court permitted the Petitioner to approach this Court for considering the request for amendment of the Petition. Directions were passed to dispose off present petitions within 3 months.

17) On 17th May, 2025, the Hon'ble Supreme Court was pleased to extend time to dispose of the present proceeding for the period of 6 months. The Hon'ble Supreme Court granted interim stay of further proceeding in Special Case No.47 of 2007 and 48 of 2007 pending before the learned Special Judge (CBI), Greater Mumbai.

18) In the aforesaid background and the directions of the Hon'ble Supreme Court, the petitions are placed before this Court for hearing. We have heard Mr Aabad Ponda, learned Senior Counsel appearing for the Petitioner and Mr Kuldeep Patil learned Advocate for the Respondent No2. We have perused Petitions and all the relevant documents.

19) The questions, which arise for our consideration, are as follows:-

(i) What is the effect and legal consequences of the Consent Order dated 7th December, 2009, passed by the Whole Time Member, SEBI, on the criminal prosecution, registered by CBI being Criminal Case No. RC 3(E)/2006/BS&FC/ Mumbai and RC 4(E)/2006/BS&FC/Mumbai both under Section 120-B r/w. read with section 420, 467, 468, 471 of Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 68-A of the Companies Act, 1956?

(ii) Whether after considering the allegations in the present criminal prosecutions and the Consent Order dated 7th December 2009, can the criminal proceedings registered by the CBI being Criminal Case No. RC 3(E)/2006/BS&FC/Mumbai and RC 4(E)/2006/BS&FC/Mumbai be quashed?

Petitioner's Submissions:

20) Mr. Aabad Ponda learned Senior Counsel appearing for the Petitioner submits that SEBI had filed the present complaint with the CBI. Initially, CBI after investigating complaint had not charge-sheeted the Petitioner. In March 2009, upon a protest petition being filed by SEBI, the name of present petitioner was included in both the criminal prosecutions as an accused.

20.1) Mr. Ponda referred to Clause (v) of the chargesheet, (@ page 54 of Writ Petition No 245 of 2020) to submit that, the allegations against the present petitioner in Criminal Case No. RC 3(E)/2006/BS&FC/Mumbai is that the Petitioner, a sub broker of KSBL, while doing business in his individual capacity, put in 192 IPO applications in fictitious names in the IPO of YBL, thereby cornered 14,000 shares and earned profit of Rs.1,98,000/-. He further referred to Clause (iv) of the chargesheet (@ Page 76 of Writ Petition No 245 of 2020) to submit that, the allegation in RC No.4 (E)/2006/BS&FC/Mumbai is that the Petitioner, a sub broker of the KSBL, while doing business in his individual capacity, put in 2000 IPO applications in fictitious names in the IPO of IDFC, thereby cornered 5,30,304 shares and earned profit of

Rs.1,64,00,000/-

20.2) Mr. Ponda referred to Circular dated 20th April, 2007 bearing No. EFD/ED/Cir-1/2007 issued by SEBI, relating to guidelines of consent Order, in respect of composition of offences under the SEBI Act, SCRA Act and Depositories Act. Mr. Ponda, submits that, SEBI has issued guidelines for the consent/settlement procedure under which the person/entity desirous of the settling the matter can apply for settlement. That, the Securities laws permit composition of offences. That, under section 24A of the SEBI Act, composition of offences is permitted. That, Clause 7 of the Circular, allows compounding of an offence after filing criminal complaint by SEBI.

20.3) Mr. Ponda submits that, in clause 11 of the Circular, various factors which are considered by SEBI in deciding the consent application are mentioned. Mr. Ponda, submits that, under clause 14 of the Circular, if the Committee believes that the proposal of consent is not commensurate with the violation or the factors mentioned in clause 11 are not satisfied or the waivers are not given, it may decline to consider the proposal of the party. In such an event, the Board and the party will both be free to resort to legal recourse as may be available to them under the law. That, under clause 17 of the Circular, the Court may, if found fit, pass an Order in terms of the consent terms and subject to such further terms as the Court may find appropriate in the facts and circumstances of the case. That, the Petitioner in the consent application dated 5th November, 2008, at point no 11 under the caption "Case pending

with SEBI/SAT/Court” refers to and includes both the current prosecutions. A pray was also made, by the Petitioner, that he be exonerated from all the above proceeding adopted against the Petitioner by SEBI or at the behest of SEBI.

20.4) Mr. Ponda submits that, under the Consent Order dated 07.12.2009, the Petitioner has been directed to disgorge an amount of Rs.2,05,18,897/- being unjust profit made by the Petitioner and pay Rs.20,51,897/- being 20% of the disgorged amount towards settlement charges to SEBI.

20.5) Mr. Ponda submits that, vide Order dated 22nd August, 2024, the Hon'ble Supreme Court has permitted Petitioner to raise the question of the effect of legal consequences of the consent Order dated 07.12.2009 passed by the SEBI on the pending criminal prosecutions. Mr. Ponda, submits that the Hon'ble Supreme Court in the case of *Prakash Gupta Vs. SEBI reported in (2021) 17 Supreme Court Cases 451*, in Para No.104, has suggested guidelines for compounding under section 24A of the SEBI Act. That, the said guidelines be considered by this Court.

20.6) Mr. Ponda submits that, the Petitioner has already paid an amount of Rs.2,25,70,794/- in the form of disgorgement and settlement fees to SEBI. That, SEBI, the expert body after considering various aspects of the matter, accepted the consent application vide its Order dated 7th December, 2009. He submits that, the Petitioners case is covered by the judgment and

Order of the Hon'ble Supreme Court in the matters of K Bharthi Devi and another V/s State of Telangana and another reported in (2024) 10 SCC 384 and *Central Bureau of Investigation, SPE, SIU(X), New Delhi V/s. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 Supreme Court Cases 591.*

20.7) Mr Ponda submits that, continuation of the proceedings would be an abuse of the process of law as SEBI being the complainant has imposed a penalty and penal consequences on the Petitioner. That, the issues/disputes between the Petitioner and SEBI have been set to rest on the basis of the Consent terms. That, SEBI does not have any claim against the Petitioner and no individual complaint has been filed. That, proceeding with the trial/complaint would be an exercise in futility.

20.8) The sum and substance of the arguments, advanced on behalf of the Petitioner is that:-(i) under the Consent Order, an amount of Rs 2,25,70,794/- has been paid in the form of disgorgement and settlement fees to SEBI, (ii) that all other civil matters have been settled. (iii) pursuing the present matters/prosecutions, will serve no useful purpose; (iv) the SEBI has settled the matter; (v) it is only in the interest of justice, that present criminal proceedings be quashed and set aside.

Respondent No.2/CBI's Submissions:

21) Per Contra, Mr. Kuldeep Patil, Advocate for appearing for Respondent No.2-CBI submits that, the complaint and the investigation by the CBI have revealed that the offences alleged against the accused including the

Petitioner are wrongdoings and offences against retail investors i.e general public, the State and the economy of the country. Mr. Kuldeep Patil, while referring to the record i.e chargesheet (Pg 68 onwards in Writ Petition No.245 of 2020), submits that pursuant to a conspiracy, the Petitioner opened bank accounts and Demat accounts in fictitious names by extensively using as genuine forged documents. By using the said fictitious bank and Demat accounts, accused persons including petitioner put in applications in fictitious names in the IPO's of YBL and IDFC and predatorily cornered in fictitious names, the shares meant for retail/small investors and then transferred such cornered share to their own accounts and for their own unjust benefit/profit. That, accused including the Petitioner by illegal means deprived the small/retail investors of their legitimate entitlement. That, in these criminal acts the accused persons, were knowingly aided and abetted by the certain bank officials/public servants and officials of Depository Participants. That, the acts of the accused persons, including petitioner are criminal acts and offences against the society. That, the role of the Petitioner is specifically mentioned in Clause 4 (iv), 27, 28 read with Clause 5,6,7,10 and 14 of the charges. That, the accused are charged with offences under section 120B read with section 420, 467, 468, 471 of Indian Penal Code and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 68-A of the Companies Act, 1956.

21.1) Mr. Kuldeep Patil sought to rely upon the Judgments of the

Hon'ble Supreme Court in the following cases (i) *State of Maharashtra, Through Central Bureau of Investigation V/s. Vikram Anantrai Doshi & Ors., reported in (2014) 15 Supreme Court Cases 29*; (ii) *Central Bureau of Investigation V/s. Maninder Singh (2016) 1 Supreme Court Cases 389*; (iii) *Parbatbhai Aahir Alias Parbatbhai Bhimsinghbhai Karmur & Ors V/s. State of Gujarat & Anr. Reported in (2017) 9 Supreme Court Cases, 641*; (iv) *State of M. P V/s. Laxmi Narayan & Ors. reported in (2019) 5 SCC 688*, to submit that, permitting the quashing of criminal complaint would be permissible depending on the facts and circumstances of the each case. That, one needs to see whether the criminal complaint, of which quashing is sought, is an offence against the society or against an individual alone. The seriousness, gravity and nature of the crime have to be considered. That, in heinous, serious offences and offences against the society, quashing ought not to be permitted.

21.2) Mr. Kuldeep Patil submits that, in the case in hand, there is a conspiracy involving cornering of shares meant for retail/small investors, manipulation of security market, earning unjust profit/wrongful gain and thereby causing wrongful loss to the retail investors in the market. That, fabricated the documents have been utilized. That, there is active participation of the Petitioner. That, all the accused have conspired against the Initial Public Offering process. The investigation is completed and chargesheets have been filed. That, the offences in the present case are under Section 120-B r/w. read with section 420, 467, 468, 471 of Indian Penal Code and Section 13(2)

r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 68-A of the Companies Act, 1956. That bank employees being public servants are involved in the conspiracy. That, in the present case the offences are crimes against the society and the public at large. That, the present case cannot be quashed only because the Petitioner has paid monies to SEBI under the consent procedure.

21.3) Mr. Kuldeep Patil relied upon the Judgment of the Hon'ble Supreme Court in *Rumi Dhar V/s. State of West Bengal & Anr., reported in (2009) 6 Supreme Court Cases, 364*, to submit that, an Order of civil proceeding which is rendered on the basis of settlement, would not be of much relevance in a criminal proceeding. He placed reliance on section Section 43 of the Indian Evidence Act. He submitted that, the consent Order dated 7th December, 2009, considers only the proceedings under section 11 and 11(B) of the SEBI Act, the adjudicating proceeding under chapter 6A of SEBI Act and the proposed criminal action under the SEBI Act. That, there is no reference to CBI's present criminal prosecutions, as being settled or compromised, in the consent Order dated 7th December, 2009. He submitted that, the Consent Order can have no effect on the present criminal prosecutions, which are an independent prosecution. He submits that, the mere mentioning of or referring to the CBI criminal prosecutions in the Petitioners consent application, does not mean that SEBI has agreed to compound or settle the present criminal proceedings. That SEBI has not

considered the chargesheet and the fact that it has been filed against a large number of accused. That, when the Consent Order dated 7th December, 2009, was passed, the present prosecutions were already initiated and the cognizance thereof was taken as early as 19th March, 2008. That the judgment in the matter Prakash Gupta (Supra) is on a different issue and does not pertain to quashing of the criminal proceeding.

Petitioner's Rejoinder Arguments :

22) Mr. Ponda Senior Counsel in rejoinder submits that, the arguments of CBI that the charge-sheet is filed etc are all covered by the judgment of *K Bharathi Devi V/s State of Telangana*. He refers to paragraph 7 of the judgement of *K Bharathi Devi* (Supra), to submit that even the said case the chargesheet was filed and even the sections/offences alleged were similar. That, in the said case there was a settlement with the bank, an OTS was entered into. Mr. Ponda submits that, the case in hand cannot be compared or equated with other matters of quashing, in as much as the petitioner, after making consent application and SEBI after considering various facts, the consent application, has been directed by SEBI to disgorge the amount of Rs.2,05,18,897/- and pay Rs.20,51,897/- towards settlement charges to SEBI.

22.1) Mr. Ponda submits that, in the present case the prosecution was initiated i.e. Section 120-B, 420, 467, 468, 471 of Indian Penal Code which is similar to that of the case of *K Bharathi Devi (Supra)*. That in *K Bharathi Devi* (Supra) even though offence of cheating is prima facie constituted, the

Hon'ble Supreme Court quashed the complaint. That the Hon'ble Supreme Court has taken into consideration various facts, i.e the time lapse i.e complaint was filed in the year 1987, the bank has chosen not to continue with the prosecution, the claim of the bank was satisfied etc. In view thereof the Hon'ble Supreme Court had permitted the quashing of the Complaint in the case of K Bharathi Devi (Supra). Mr. Ponda further submits that, the statement that this offence is against the society or economy of the country or against the public money, is not correct, as the petitioner has used his own money and no public money is involved.

22.2) Mr. Ponda relied upon the case of *Central Bureau of Investigation, SPE, SIU(X), New Delhi V/s. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 Supreme Court Cases 591*, to submit that, in the said case the Hon'ble Supreme Court held that even when an offence of cheating is prima facie constituted, a compromise decree in a suit would amount to compounding of the offence of cheating.

22.3) Mr. Ponda further relied upon the case of *Nikhil Merchant V/s. Central Bureau of Investigation and Anr. Reported in (2008) 9 Supreme Court Cases 677*, and submitted that the Hon'ble Supreme Court quashed non compoundable offences when a compromise was entered into between the company (borrower) and the bank. That, even the said case the offences were similar to the present case i.e case was registered under Sections 120-B r/w. 420, 467, 468, and 471 of Indian Penal Code read with Section 5(2) and 5(1)

(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. That, the Hon'ble Supreme Court in the said Judgment held that, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them where under the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. The dispute involved herein has overtones of a civil dispute with certain criminal facets.

22.4) Mr. Ponda relied upon the case of *Central Bureau of Investigation, ACB, Mumbai V/s. Narendra Lal Jain & Ors. Reported in (2014) 5 Supreme Court Cases 364* and submitted that, the present case was in respect of alleged conspiracy of the accused and the conspiracy of the bank official and had projected inflated figures of the creditworthiness of the companies represented by them and in this manner had secured more advances/loans from the bank than they were entitled to. That, accused persons compromised the suits with the bank in terms of consent term and upon receipt of monies the suits were dispose off. That, the High Court has right to invoke its power under Section 482 of Cr. P. C. quashing the complaint as continuance of a criminal proceeding which is likely to become oppressive or may partake the character of a lame prosecution.

23) As stated above, the matter has been remanded back by the Hon'ble Supreme Court with direction to consider the matter independently

and to decide as to whether the Petitioner has made out case of quashing the proceedings. The effect of the consent Order dated 9th December 2009 is also required to be considered.

Reasons:

SEBI ACT

24) The object and purpose of the SEBI Act is to provide for the establishment of a Board to protect the interest of the investors in securities and to promote the development of, and to regulate, the securities market by such measures as it thinks fit. The main object of SEBI, is to promote orderly and healthy growth of the securities market and for protecting the interest of the investors. The SEBI Act is a social welfare legislation, seeking to regulate the securities market and protect the interest of the common man/general public who are small investors. SEBI has enacted various rules and regulations to ensure that the participants in the securities market abide by the same and act in an orderly manner. SEBI, issues various orders and direction to ensure that the securities law are complied with and abided by the all participants and intermediaries. SEBI takes administrative, regulatory action and or adjudicatory action in cases of violation of the securities laws. In cases of serious malpractice or acts akin to criminal offences or any unfair fraudulent practice having far reaching consequences SEBI initiates criminal action/prosecution.

24.1) Section 24 of the SEBI Act deals with Offences and Section 24A

provides for composition of certain offences punishable under the SEBI Act.

The sections read as under:-

24. Offences.—(1) Without prejudice to any award of penalty by the adjudicating officer [or the Board] under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].

(2) If any person fails to pay the penalty imposed by the adjudicating officer [or the Board] or fails to comply with any directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both.]

24A. Composition of certain offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

24.2) A perusal of section 24A of the SEBI Act, gives us some insight on the intention and purpose behind this section. The section begins with a non obstante clause and deals with composition of certain offences and not all offences. Further from a bare reading of the section it is clear that, for offences punishable under SEBI Act, composition of the offence is linked with or related to the consequences/punishment for the offence. It is to an extent indicative of and throws light upon the nature of offences that may be

compounded under the SEBI Act, 1992. Section 24A of the SEBI Act, applies to offence, only where fine is in the alternative to imprisonment. In offences of which the punishment, is imprisonment or imprisonment and/or fine the section does not apply. In our opinion, this is an important aspect of the matter. SEBI in its parent statute i.e. Securities and Exchange Board of India Act, 1992 has consciously provided for compounding of only certain offence i.e offences only where fine is an alternative to imprisonment, thereby implying that Section 24A does not apply to the offence, which is punishable with imprisonment or imprisonment with fine. The distinction would imply that an offence which is grave and serious in nature is not compounded.

24.3) We find that such an object or intention of the SEBI, is further fortified in its Circular dated 25th May, 2012, by which the Circular dated 20th April, 2007, was amended, and certain new guidelines were issued in relation to the Consent Orders. In the said Circular, SEBI has provided that compounding should not be permitted in serious, fraudulent and unfair trade practices which in the opinion of the Board caused substantial losses to investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors. A conjoint reading, of the Consent Circulars, Consent Order and Section 24A of SEBI Act, make it very clear that SEBI does not take within the purview of Consent Order, the offences which are grievous, serious, fraudulent and/or amount to unfair trade practices, which, in the opinion of the Board,

causes substantial losses to investors, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors.

25) As far as the issue of compounding of offence, the Hon'ble Supreme Court in the Judgment of *Prakash Gupta* (Supra) in Paragraph No.63 and 64 has observed that;

“63 . Analyzing the above decisions, it is evident that legislative sanction for compounding of offences is based upon two contrasting principles: first, that private parties should be allowed to settle a dispute between them at any stage (with or without the permission of the Court, depending on the offence), even of a criminal nature, if proper restitution has been made to the aggrieved party; and second, that, however, this should not extend to situations where the offence committed is of a public nature, even when it may have directly affected the aggrieved party. The first of these principles is crucial so as to allow for amicable resolution of disputes between parties without the adversarial role of Courts, and also to ease the burden of cases coming before the Courts. However, the second principle is equally important because even an offence committed against a private party may affect the fabric of society at large. Non-prosecution of such an offence may affect the limits of conduct which is acceptable in the society. The Courts play an important role in setting these limits through their adjudication and by prescribing punishment in proportion to how far away from these limits was the offence which was committed. As such, in deciding on whether to compound an offence, a Court does not just have to understand its effect on the parties before it but also consider the effect it will have on the public. Hence, societal interest in the prosecution of crime which has a wider social dimension must be borne in mind.

64. This formulation of this principle is also in alignment with the position under English common law, where in a judgment of

the Queen's Bench in Keir vs F Leeman and Pearson, Lord Denman CJ held 16:

"We shall probably be safe in laying it down that the law will permit a compromise of all offences, though made the subject of a criminal prosecution, for which offences the injured party might sue and recover damages in an action. It is often the only manner in which he can obtain redress. But, if the offence is of a public nature, no agreement can be valid that is founded on the consideration of stifling a prosecution for it."

Emphasis supplied"

25.1) The Hon'ble Supreme Court in *Prakash Gupta V/s. Securities and Exchange Board of India*, (supra) laid down the guidelines for compounding the offence 24A of the SEBI Act. the Hon'ble Supreme Court, has observed as as under;

"104.1..... They should consider the factors enumerated in SEBI's Circular dated 20 April 2007 and the accompanying FAQs, while deciding whether to allow an application for a consent Order or an application for compounding. These factors, which are non-exhaustive, are:

"Following factors, which are only indicative, may be taken into consideration for the purpose of passing Consent Orders and also in the context of compounding of offences under the respective statute:

- 1. Whether violation is intentional.*
- 2. Party's conduct in the investigation and disclosure of full facts.*
- 3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading.*
- 4. to 14*
- 15. Any other factors necessary in the facts and circumstances of the case.*

104.2. According to the Circular dated 20 April 2007 and the accompanying FAQs, an accused while filing their application for compounding has to also submit a copy to SEBI, so it can be placed before the HPAC. The recommendation of the HPAC is then filed before the SAT or the Court, as the case may be. As such, the SAT or the Court must give due deference to such opinion. As mentioned above, the opinion of HPAC and SEBI indicates their position on the effect of non-prosecution on maintainability of market structures. Hence, the SAT or the Court must have cogent reasons to differ from the opinion provided and should only do so when it believes the reasons provided by SEBI/HPAC are mala fide or manifestly arbitrary;

104.3. The SAT or Court should ensure that the proceedings under Section 24A do not mirror a proceeding for quashing the criminal complaint under Section 482 of the CrPC, thereby providing the accused a second bite at the cherry. The principle behind compounding, as noted before in this judgment, is that the aggrieved party has been restituted by the accused and it consents to end the dispute. Since the aggrieved party is not present before the SAT or the Court and most of the offences are of a public character, it should be circumspect in its role. In the generality of instances, it should rely on the SEBI's opinion as to whether such restitution has taken place; and

104.4. Finally, the SAT or the Court should consider whether the offence committed by the party submitting the application under Section 24A is private in nature, or it is of a public character, the non-prosecution of which will affect others at large. As such, the latter should not be compounded, even if restitution has taken

place.”

25.2) We may also note here, that the issues before the Hon'ble Supreme Court in the matter of *Prakash Gupta* (Supra) were as follows (i) Firstly, whether consent of SEBI under section 24-A of the SEBI Act, while deciding application for compounding an offence under Section 24(1) of the SEBI Act, is mandatory ? (ii) Secondly, whether SEBI does not have a veto in regard to compounding of offence and whether SAT or a court must obtain the views of SEBI for furnishing guidance to its ultimate decision? and (iii) Thirdly whether gravity of offences needs to be kept in mind while exercising powers of compounding under section 24-A of the SEBI Act? In the said matter, while answering the issues, the Hon'ble Supreme Court held that: (i) the consent of SEBI was not mandatory before SAT or any court; (ii) the views of SEBI may be sought in a matter of compounding under section 24A of the SEBI Act and (iii) the court must be conscious of the gravity of the offences that the accused is prosecuted for and that serious acts which impinged upon the protection of investors and the stability of the securities market must not be compounded. We have also noted the fact that, the Hon'ble Supreme Court, after considering the nature of the allegations in the said matter observed that:

“... Finally, SAT or the court should consider whether the offence committed by the party submitting the application under Section 24-A is

private in nature, or it is of a public character, non-prosecution of which will affect others at large. As such, the latter should not be compounded, even if restitution has taken place.”

We have noted the observations of the Hon’ble Supreme Court and the fact that the Supreme Court has concluded that in the said matter the nature of the allegations were such so as to preclude a decision to compound the offences. The allegations being serious, did not warrant compounding.

Consent Order and SEBI Circular:

26) A perusal of the Circular dated 20th April, 2007, would indicate that under the securities laws, SEBI may pursue two streams of enforcement actions i.e. Administrative/Civil action or Criminal action. The Administrative /civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal courts. SEBI’s power to pass consent orders appears to be in respect of administrative and civil actions or in respect of proposed criminal prosecutions which have not been instituted. As regards the criminal prosecutions, the power to compound is interalia recognized under section 24A of the SEBI Act. The scope and reach of the power of SEBI, or the guiding principles, as one may call it, are set out in Circular dated 20th April 2007 and

clarified in Circular dated 25th May 2012. SEBI possess the power and right to proceed for appropriate action if it cannot achieve its objectives through a consent Order. Clause 5 of the Circular, specifically refers to and states that all appropriate administrative or civil actions and other civil matters pending before Securities Appellate Tribunal (SAT)/courts may be settled between SEBI and a person (party) who may prima facie be found to have violated the securities laws or against whom administrative or civil action has been commenced for such violation.

26.1) Under clause 7, SEBI has the discretion to pass Consent Orders at any stage however, in the event of a serious and intentional violation, the process is not completed till the fact finding process is completed whether by way of investigation or otherwise. It provides that compounding of offence can take place after filing criminal complaint by SEBI. Clause 9 provides for the procedure for consent, in other cases, where any person/party who is notified or who has reasonable grounds to believe that a civil/administrative proceeding may or will be instituted against him/her, or any party to a proceeding already instituted, may, at any time, propose in writing for an offer of consent. Further if any person/party is notified or who has reasonable ground to believe that a criminal proceeding may or will be instituted against it, may, before filing a criminal complaint by SEBI before any criminal court, propose in writing for an offer of consent. The Committee considers the proposal of consent, requisite waivers by the

party, facts and circumstances of the case, material available on record and takes into account the factors and guidance as set out in clause 11 thereof. The Committee may in cases if it finds that the terms for passing a consent Order are inadequate, ask the party to revise the consent terms. If the Committee agrees with the proposal, suitable consent terms shall be recommended to a panel of two Whole Time Members, who may pass a suitable Order in view of the recommendation of the Committee.

26.2) Under clause 15, depending upon the facts and circumstances of the case, gravity of violation/offence, interest of investors and the securities market and deterrent effect, settlement/compounding charges have to be paid by the party including legal expenses incurred by SEBI. Clause 17 provides for Settlement before Securities Appellate Tribunal (SAT)/Courts. Clause 19, provides for Composition of Offences under the SEBI Act, SCRA and the Depositories Act, 1996, wherever applicable.

26.3) SEBI by its Circular dated 25th May, 2012, amended the Circular dated 20th April, 2007 and issued certain new guidelines in relation to the consent orders and also provided a list of offences and inter alia also provided list of offences, which SEBI shall not settled. The relevant provisions reads as under;

“ii. Serious fraudulent and unfair trade practices which, in the opinion of the Board, cause substantial losses to investors and/or affects their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes

good the losses due to the investors;”

26.4) A perusal of the both the circulars, is indicative of the fact that, SEBI has after giving some thought to the consent process and considering its experiences, thought it appropriate to qualify the consent process in as much as it excluded serious offences, fraudulent and unfair trade practices which, cause substantial losses to investors and/or affect their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors. The exception is to serious and fraudulent offences, which cause substantial losses or affects rights or have a market wide impact. According to the Circular, what is considered is the fact that the rights of retail investors are affected. We have noted that, the Circular, for excluding offences from the scope of compounding, is not solely based on, monetary/financial quantifiable losses, but goes on to include, what seems to be of paramount importance, and rightly so, the adverse effect on rights of the small investors, the market wide impact, the orderly development of the capital markets or a wide market impact. The adverse impact, is not kept limited, to monetary loss or quantifiable loss. The adverse effect on rights of the small investors and market impact is also taken into consideration to exclude offences from the scope of compounding. Even in the present case, the rights of the retail investors have been adversely affected, in as much as the opportunity of retail investors to participate in the IPO under the category of RII's was impaired

and possibility of getting an allotment of shares in the IPO was impaired or in some cases may be wiped out. The acts of the Petitioner and other accused have adversely affected the market mechanism, the IPO process, the rights of retail investors and had a wide market impact also. At least that was the case of the SEBI in its complaint. This, surely is not good for the orderly development and protection of the securities market.

27) A perusal of the circulars and the guidelines, makes it clear, and there can be no doubt of the fact that the Consent Order may settle all issues or reserve an issue or claim. What is important, that the consent Order or initial approval must precisely state what issues or claims are settled and/or covered under the Consent Order and which are left out. Non-mentioning of a particular claim would mean that the same has been left out and not within the scope and ambit of the Consent Order. We note that, there is no reference to the present criminal prosecutions in the consent Order dated 7th December, 2009. The Consent Order, does not state that the present criminal proceeding have been compromised or permitted to be compromised or being dealt with or even referred to. We find that except the unilateral reference made by the Petitioner in his consent application, to the present criminal prosecution, there is no discussion or reference of the present criminal prosecutions in the Consent Order. More importantly, the Consent Order specifically records that, the consent Order disposed of only, the pending proceedings under section 11(4) and 11B of the SEBI Act, 1992, the adjudication proceedings and the

proposed prosecution against the applicant in the matter of irregularities relating to initial public offerings. The Consent Order settled only the said issues. It precisely states what issues or claims were settled.

27.1) We have also noted that the Consent Order dated 7th December, 2009 was passed, after the cognizance of the present criminal complaints was already taken on 19th March, 2008. Therefore, the reference of the proposed prosecution, appearing in paragraph No.5 of the consent Order obviously cannot refer to or mean to make a reference to the present criminal prosecutions filed by the CBI. It is not clear as to which further proposed criminal proceeding SEBI was in the process of initiating. As noted above, the said reference cannot be to the present criminal proceedings as they are prior in time, chargesheets have been filed and cognizance also taken.

27.2) As regards the contention that, the present criminal complaints are included in the consent process as in Clause 11 of consent application dated 5th November, 2008 the present Petitioner has made a reference to them, is of no legal consequences. That, in our view is a unilateral reference. The same appears to be deliberate or intentionally made to take undue advantage of the consent process. As noted above, the Consent Order dated 7th December, 2009 does not even refer to the present criminal proceedings. It would, at the highest refer the prosecution, which would be proposed as of the date of approval of High Power Committee or as of 7th December, 2009 when the consent Order was passed and not to a prosecution prior to that

date. We find that the Consent Order is only in respect of administrative and civil proceeding. The Consent Order does not refer to or deal with the present pending criminal proceedings. The present investigation is an independent investigation and the consent Order can have no effect or impact on the investigation. The Consent Order therefore does not affect the present criminal prosecutions.

Law laid down by the Hon'ble Supreme Court:

28) As regards the question of quashing the present criminal prosecutions, one needs to first consider the law as laid down by the Hon'ble Supreme Court for the parameters of exercise of power under section 482 of the Code of Criminal Procedure, 1973 in normal cases so also cases in which settlements/compromises have been arrived.

28.1) the Hon'ble Supreme Court in case of *State of Haryana v. Bhajan Lal* reported in 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, at paragraph 102, laid down illustrative categories where quashing of proceedings is justified. These are:

“(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 Section 156(1) of the Code except

under an Order of a Magistrate within the purview of Section 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 Section 155(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 Act concerned (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 Act concerned, 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.”

28.2) In the case of *Manik B Vs. Kadapala Sreyes Reddy*, reported in *2023 LiveLaw (SC) 642* the Hon'ble Supreme Court has held that, the scope

of interference while quashing the proceedings under Section 482 of Cr.P.C. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. the Hon'ble Supreme Court observed that it is not permissible for the Court to go into correctness or otherwise of the material placed by the prosecution in the chargesheet.

28.3) In the case of *Iqbal @ Bala and Ors. vs. State of U.P. and Ors.*, (2023 SCC Online SC 949), the Hon'ble Apex Court declined to interfere in the Order of the High Court rejecting the petition filed for quashing of the FIR, taking note of the fact that, the investigation had been completed and chargesheet is required to be filed. The view taken by the Apex Court is that the Trial Court should be allowed to look into materials which the investigation officer might have collected forming part of the chargesheet, despite the observation of the Apex Court that the allegation leveled in the FIR did not inspire any confidence.

28.4) The Hon'ble Supreme Court in the cases of (i) *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, AIR 1992 SC 604, (ii) *Rajeev Kourav vs. Baisahab & others*, (2020) 3 SCC 317 and (iii) *Kaptan Singh vs. State of Uttar Pradesh and others*, (2021) 9 SCC 35, has held that, exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. Appreciation of evidence is not permissible at the stage of quashing of

proceedings in exercise of powers under Section 482 of Cr.PC.

28.5) Similarly in the case of *State of Odisha vs. Pratima Mohanty and others*, (2022) 16 SCC 703, the Hon'ble Supreme Court has held that once the charge-sheet is filed, the High Court should be reluctant to quash the complaint. Paragraph no.8.2 of the Judgment reads as under :

“8.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this court the powers under section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts all onerous and more diligent duty on the Court.

28.6) The Hon'ble Supreme Court in the matter of *Chilakamarthi Venkateswarlu & Anr. V/s. State of Andhra Pradesh & Anr* reported in (2020) 17 SCC 595, once again reiterated with approval the pronouncement in the matter of *State of Haryana V/s Bhajanlal* and in paragraph 23 observed that :-

“23. In this case, the High Court rightly refused to quash the criminal complaint, observing that it can exercise power under Section 482 of the CrPC only in rare cases. The power to quash the

proceedings is generally exercised when there is no material to proceed against the Petitioners even if the allegations in the complaint are prima facie accepted as true. The High Court in effect found, and rightly, that the allegations in the complaint coupled with the statements recorded by the learned Magistrate had the necessary ingredients of offences under Sections 307, 323, 427, 447 and 506(2) read with Section 34 of the IPC.”

28.7) In the case of *Iqbal @ Bala & Ors. vs. State of U. P & Ors* (supra) in its judgment and Order dated 8th August, 2023, the Hon'ble Supreme Court has held that;

“7. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the Trial Court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge sheet is ready to be filed before the competent court. In such circumstances, the Trial Court should be allowed to look into the materials which the investigation officer might have collected forming part of the charge sheet. If any such discharge application is filed, the Trial Court shall look into the materials and take a call whether any case for discharge is made out or not.”

28.8) The general principle of law which emerges from the aforesaid case law is that a court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 should be careful and it must be exercised sparingly. It would be the duty of the High Court to intervene when extraordinary circumstances arise and if the continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and there is no criminal intent in the said case. The criminality involved is required to be examined.

29) The law as laid down by the Hon'ble Supreme Court for exercise of power under section 482 of the Code of Criminal Procedure, 1973, when matters are settled/compromised is as under:-

29.1) The Hon'ble Supreme Court in the matter of *Gian Singh Vs. State of Punjab & Anr reported in (2012 10 SCC 303)*, in Para No.58, 60 and 61 observed that;

“58. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all.”...

60. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia, Dharampal, Arun Shankar Shukla, Ishwar Singh, Rumi Dhar (Smt.). and C Ashok Sadarangan. The principle propounded in Simrikhia that the

inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal, the Court observed the same thing that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla. In Ishwar Singh, the accused was alleged to have committed an offence punishable under Section 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable under Section 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.) although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences under Section 120-B, 420, 467, 468, 471 of the IPC along with the bank officers who were being prosecuted under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani was again a case where the accused persons were charged of having committed offences under Sections 120-B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but

inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B. S. Joshi, Nikhi Merchant and Manoj Sharma and it was held that B.S. Joshi and Nikhil Merchant dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

61. *The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. 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 Fl.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominatingly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

29.2) In the matter of *Sushil Suri V/s. Central Bureau of Investigation & Ors. reported in (2011) 5 Supreme Court Cases 708*, the Hon'ble Supreme Court has held that,

“..when more than sufficient circumstances exist suggesting hatching of a criminal conspiracy, forgery of documents, having regard to the modus operandi adopted by the accused as depicted in the chargesheet and when an offence is a serious offence against the society mere repayment to the bank cannot exonerate the accused from a criminal liability.”

In para 16,19, 25 and 32 it has been further held that;

“16. Section 482 of the Cr.PC. itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely (i) to give effect to an Order under the Cr.PC.; (ii) to prevent an abuse of the process of Court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 of the Cr.PC. Though it is emphasized that exercise of inherent powers would depend on the facts and circumstances of each case, but, the common thread which runs through all the decisions on the subject

is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the Complaint or Chargesheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged.

19. Recently, this Court in *A. Ravishankar Prasad & Ors. (supra)*, relied upon by learned counsel for the CBI, referring to several earlier decisions on the point, including *R. P. Kapur (supra)*; *State of Haryana & Ors. Vs. Bhajan Lal & Ors.*, *Janata Dal Vs. H. s. Chowdhary & Ors.*; *B. S. Joshi & Ors (supra)*; *Nikhil Merchant (supra)* etc. has reiterated that the exercise of inherent powers would entirely depend on the facts and circumstances of each case.

20. It has been further observed that: (*A. Ravishankar Prasad case, SCC pp. 357-58, para 23*)

“23. The inherent powers should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.”

25. The essential ingredient of the offence of "criminal conspiracy", defined in Section 120A IPC, is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event, unless the Statute so requires, no overt act is necessary to be proved by the prosecution because in such a fact-situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with

regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A IPC, then in that event mere proof of an agreement between the accused for commission of such crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. (See: Suresh Chandra Bahri Vs. State of Bihar).

32. *It needs little emphasis that even one additional or different fact may make a world of difference between the conclusions in two cases and blindly placing reliance on a decision is never proper. It is trite that while applying ratio, the Court may not pick out a word or sentence from the judgment divorced from the context in which the said question arose for consideration. (See: Zee Telefilms Ltd. & Anr. Vs. Union of India & Anr). In this regard, the following words of Lord Denning, quoted in Haryana Financial Corporation & Anr. Vs. Jagdamba Oil Mills & An., are also quite apt: (SCC p. 509, Para 22).*

"22. 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'"

29.3) In the matter of *State of Maharashtra, CBI Vs. Vikram Anantrai Doshi & Ors.* reported in 2014 (15) SCC 29, in Paragraph Nos.25 and 26 it is held that;

“25. In this context, we may usefully refer to a two-Judge Bench decision in Central Bureau of Investigation V. Jagjit Singh [14] 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 documents as genuine. Proceeding further the Court opined as follows:- (SCC P. 692 Para 15)

“15..... 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.

26. 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 expositis 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 predominantly

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.”

29.4) In the matter of *Narinder Singh & Ors. Vs. State of Punjab & Anr*, (2014) 6 SCC 466, the Hon'ble Supreme Court has held that in case of heinous and serious offences, which are generally to be treated as crime against society, it is the duty the of the state to punish the offender. Hence even when there is a settlement, the view of the offender and the victim will not prevail since it is the interest of society that the offender should be punished to deter others from committing similar crimes.

29.5) the Hon'ble Supreme Court in the matter of *Central Bureau of Investigation Vs. Maninder Sing* (AIR 2015 Supreme Court 3657), in Paragraph 11 and 12 it is observed that;

“ 17. 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 expositis 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 expositis 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 predominantinglly 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”.

29.6) In the case of *Daxaben Vs. State of Gujarat and Others* reported in 2022 *LiveLaw (SC)* 642 wherein it has been observed in para No. 41 that;

“41. In Gian Singh V. State of Punjab MANU/SC/0781/2012: (2012) 10 SCC 303, this Court discussed the circumstances in which the High Court quashes criminal proceedings in case of a non-compoundable offence, when there is a settlement between the parties and enunciated the following principles:-

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of

Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed”.

29.7) The Hon'ble Supreme Court in the matter of *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujrat & Anr. Reported in (2017) 9 SCC 641*, wherein it has been observed in Para No.13 and 15;

“13. The same principle was followed in Central Bureau of Investigation v Maninder Singh by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the

bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

"...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 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."

15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) ...

(ii) ...

(iii) ...

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High

Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or

economic system will weigh in the balance.”

29.8) In the case of *The State of Madhya Pradesh Vs. Laxmi Narayan & Ors (2019) 5 SCC 688* the ratio of *Gian Singh, Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur , Narinder Singh & Ors.* has been reiterated. the Hon'ble Supreme Court observed that;

“the quashing of criminal complaint would permissible depending on the facts and circumstances of the each case. That, it needs to be seen whether the criminal complaint, of which quashing is sought, is an offence against the society or against the individual alone. That, the kind of dispute, seriousness and nature of the crime is required to be seen.”

29.9) the Hon'ble Supreme Court in the matter of *Anil Bhavarlal Jain & Anr. Vs. The State of Maharashtra & Ors.* reported in 2024 SCC OnLine 3823 in Para Nos. 14, 16, 17 and 18 has observed as under:

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

(supra) categorically made an observation that:

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

16. Another reference can be made to the judgment of this Court in Parbatbhai Aahir vs State of Gujrat and Anr. wherein it was observed that, economic offenses involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.

17. A profitable reference in this regard can be made to the judgment in State vs. R Vasanthi Stanley wherein this Court declined to quash the proceedings in a case involving alleged abuse of the financial system. It was observed as under:

“15. A grave criminal offence or serious economic offence or for that matter the offence that has the

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

18. In the instant case, it is on record that consent terms were submitted by the parties before the DRT. It is admitted that the bank had suffered losses to the tune of Rs. 6.13 Crores approximately. Hence, a substantial injury was caused to the public exchequer and consequently it can be said that public interest has been hampered. Keeping in view the fact that in the present case a special statute i.e. PC Act has been invoked, we are of the view that quashing of offences under the said Act would have a grave and substantial impact not just on the parties involved, but also on the society at large. As such the High Court committed no error in declining to exercise its inherent powers in the present case, thereby refusing to quash the criminal proceedings.”

29.10) The Hon'ble Supreme Court in the matter of *Dinesh Sharma V/s. Emgee Cables and Communications Ltd. & Anr* reported in (2025 *LiveLaw* (SC) 492), in Para No.18 and 23 it is observed that;

“18. Though the High Court has unfettered powers conferred by the CrPC for exercising its inherent jurisdiction under Section 482,

the same is expected to be used very sparingly and only in exceptional circumstances. There cannot be any straight jacket formula as to when the High Court would be justified to exercise jurisdiction under Section 482 of CrPC and each case is required to be dealt with on its own merits.

23. *A profitable reference can be made to the case of Parbatbhai Ahir v. State of Gujrat and Anr wherein it was observed that economic offences by their very nature lie beyond the domain of mere dispute between private parties and the High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications. They constitute a class apart. Economic offences affect the economy of the country as a whole and pose a serious threat to the financial health of the country. If such offences are viewed lightly, the confidence and trust of the public will be shaken.”*

Role of Petitioner:

30) Having considered the law as laid down by the Hon'ble Supreme Court, it is necessary to consider the facts of the present case, the allegations in SEBI's complaint and the role attributed to the Petitioner to see if a case for quashing the criminal prosecutions can be made out.

31) Perusal of the record in both the complaints i.e C. R. No. RC 3(E)/2006/ BS & FC / Mumbai and RC 4(E)/2006/ BS&FC/Mumbai, would

indicate that SEBI's complaints pertain to illegal predatory cornering of shares, in the IPO's by the accused persons including the Petitioner, which were meant to be allotted to the genuine retail investors (RII). From the year 2009 onwards, a general trend of the primary capital market was that shares of the companies allotted to the investors in IPO at issue price on listing commended a huge premium in the secondary capital market. The accused persons including the Petitioner by observing the said general trend, in pursuance of a well-designed and well-planned conspiracy, opened bank and Demat accounts, both in fictitious names by extensively using forged documents as genuine and cornering shares, legitimately meant for genuine RII/small individual investors. Names of fictitious persons were used to open the bank and Demat accounts, forged documents were created and used. Some accused, who were public servants in the employment of the Indian Overseas Bank, a Public Sector Bank have assisted and aided the accused. The investigations allege that the between the period 2003 to 2004, the accused entered into criminal conspiracy and illegally cornered the shares of Yes Bank Limited (YBL) and Infrastructure Development Finance Corporations (IDFC) that were legitimately meant for allotment to genuine RII's. The illegal acts of the accused deprived the genuine RII's an opportunity to invest in and be a part of the Initial Public Offer process. The accused abused the IPO process, acted to the detriment of the orderly development of the capital markets.

32) Based on the investigations carried out by the CBI, specific

roles/acts have been attributed to each of the accused persons, including the Petitioner which are referred to in detail in the charge sheet. The role attributed to the Petitioner is that, the Petitioner in the issue of YBL submitted 192 applications in names of fictitious individuals, in whose names Demat accounts were opened by him with the Depository Participant (PSLV/Accused No.15). This was done by forging the signatures of the said fictitious applicants. The said applications were examined and processed by KCPL/Accused No.13 and out of 192 fictitious Demat accounts, shares numbering 13200 were allotted to 88 fictitious accounts operated by the Petitioner. Similarly, 1,69,150 cornered shares were transferred to the fictitious Demat accounts operated by Mr P G Budhwani/accused No. 4 held with Depository Participant (PSLV/Accused No.15) and other DP's. Then, the said illegally cornered shares, allotted to the fictitious Demat accounts operated by the Petitioner and Mr P G Budhwani/Accused No 4 with Depository Participant (PSLV/Accused No.15), were allowed to be transferred by accused No.14 to the genuine Demat account of the Petitioner/Accused No.5 and Mr P G Budhwani/accused No.4 by irregularly issuing single delivery instruction slips without keeping any record for the same as required as per the guidelines issued by the Depositories. The Petitioner, then sold/liquidated the said cornered shares at a substantial premium and is said to have earned unjust/illegal pecuniary gain of Rs 1,98,000/- at the cost of the genuine retail investors.

33) Similarly in the IPO of IDFC, the Petitioner/Accused No 4, put in 2000 IPO applications in fictitious names and cornered 5,30,304 shares and is said to have earned a profit of Rs 1.64 crores. The Petitioner opened fictitious bank accounts in HDFC Bank and 2000 fictitious Demat accounts with DP KCL by forging signatures. The Petitioner submitted 2000 applications in names of fictitious persons in whose names bank and Demat accounts were opened. The Petitioner availed loan from KCL, Hydrebad by forging the signatures. Each application submitted by the Petitioner was allotted 266 shares and the same got credited to the fictitious accounts opened and operated by the Petitioner. By using forged transfer slips , the Petitioner got transferred 5,30,304 illegally cornered shares into his own Demat Account and made a profit of Rs 1,64,00,000/-. In the IPO of IDFC, the Petitioner, Accused Nos.1 to 3 were aided and abetted by Accused No 12,13,16, officials of KCL/Accused No.20 wherein KCL funded the fictitious IPO Applications put in by the Petitioner and Accused Nos. 1 to 3. The conspiracy with the officials of KCL/Accused No.20, is heightened by the fact that as NBFC, one of their entities financed the fictitious applications even when KCL/Accused No 20 did not have sufficient funds in their account. A single out stationed cheque of Hyderabad for Rs 51.90/- crores, was sent towards subscription money for 10,900 fictitious applications, to the Escrow Bank Account of the IDFC issue, operated at ICICI Bank Mumbai. This was done with a dishonest intention, as KCL was aware that; an outstation cheque cannot be entertained for subscription,

cheques cannot be entertained in a IPO beyond the closing date of the issue, and that cheques cannot be issued from an account having insufficient funds. In bidding process, local cheques were not annexed, bidding for the shares in fictitious names was done when funds were not available. Credit for the factious applications was made available on 30th July 2005 i.e 8 days after closure of the issue. In reply to a Show Cause Notice, issued by SEBI, one of the accused gave imaginary cheques numbers to SEBI.

Conclusion :

34) Considering the facts of the matter, the complaint by SEBI and specific role attributed to the Petitioner after the investigations, we are of the opinion, that the present case deals with and pertains to intelligent and clever persons, who employed devious, dishonest and sinister means to make unjust profits at the cost of the securities market, the IPO process and small retail investors. The accused including the Petitioner have sought to enrich themselves by depriving the small investors of their opportunity to invest in the IPO. A separate category is created by the name Retail Investors (RII's), in which category only small individual investors, can apply for shares in the IPO. The number of shares which an individual can apply for, in the category, is restricted and in case of an over subscription of the IPO the same is altered proportionately. The acts of the accused including the Petitioner have adversely affected this right of a small investor and had a market wide adverse impact. The acts of the accused are actual public wrongs or offences

committed against society. The gravity and magnitude attached to these offences is concentrated at the public at large. The hit appears to have been taken by small retail investors/the RII's category as a whole. We find that in the present case there is a clear element of criminality, illegal self-gratification at the cost of the small investor/public, done by way of a planned conspiracy to defeat the system, the IPO mechanism. Most pertinently it is conspiracy aided and assisted by public servants/bank employees of PSU banks. Fictitious loan applications were made, monies availed and used. There is a total disregard to the law. There is prima facie material against the accused including the Petitioner and the acts committed i.e making fictitious applications, opening fictitious bank and Demat accounts, illegally cornering shares legitimately meant for retail investors, depriving the retail investors of their chance for participating in an IPO offering and arranging and procuring loans by illegal means are all acts which indicate the existence of criminality or the criminal intent right from the inception. The progress of and participation of RII's in the securities market was adversely hampered, illegally altered and impacted by using illegally means. This in our opinion is a crime against the society and societal well-being.

35) The facts of the present case amount to and are akin to a financial/economic fraud and fall within the ambit of social wrong and having an adverse societal impact. The present case, cannot be quashed because the Petitioner has paid the money under a Consent Order. The facts of the present

case, surely make out a prima facie case for the offences as alleged against the Petitioner. The role attributed to the petitioner cannot be put in the category of an individual or personal wrong. Prima facie, it is a conspiracy, to get personal gain at the cost of society, the victim being the small retail investor who lost their opportunity to invest in an IPO. The implications of this crime are serious, far reaching and bring in doubt, the robustness, security and integrity of the system. We also note that the investigation is over and the Chargesheet/Supplementary Chargesheets have been filed.

36) We are conscious of the fact, that the Petitioner has under the Consent Order paid monies i.e disgorgement amount and settlement fees to SEBI. At the same time, we are also reminded of and cannot lose sight of the fact, that the Petitioner along with other accused misused the market mechanism, the IPO process, adversely affected and harmed the retail investors and entire eco-system of the securities market and consequently the financial market. According to us, the offences were a part of well-crafted criminal conspiracy executed with precision, after a lot of thought and keeping in mind only one thing i.e the personal profit and personal illegal enrichment at the cost of the small investor. This was at the cost of the society. We are of the firm view that only because money has been paid, an accused cannot be exonerated from the criminal liability. To quash the criminal proceedings, exonerating the Petitioner from the criminal liability, on the ground that monies have been paid to the SEBI, under a consent Order, would

be misplaced and set wrong precedent. This cannot and should not be allowed. We are of the view that, in the facts and circumstances of the present case, not allowing a quashing of criminal proceedings, would be in the interest of justice. Permitting quashing of proceedings, in matters, in which the offence is against society, would be a mockery of the process of law and the criminal justice system. It would erode the faith of the common man/general public in the criminal justice system and give rise to the perception that an accused can get away with a serious prima facie charge/offence by settling the matter or making payments to the regulator. This for sure is not the objective of SEBI and also that of the criminal justice system.

37) The power under section 482, is an inherent power of wide plenitude with no statutory limitation, exercise of which has to be with restraint and in accordance with the guiding principles engrafted in the power itself i.e to secure the ends of justice or to prevent abuse of the process of any Court. The exercise of the power depends on the facts of each case and no category or straight jacket formula can be prescribed. Under section 482 of the Code of Criminal Procedure, 1973 this court is required to consider the material available on the record to see if any case is made out for quashing a criminal offence/proceeding. Based on this material, one could decide if as to whether the ends of justice would justify such exercise of power or not. If securing the ends of justice is the guiding principle, the court needs to factor in the said principle for both the accused and the victim/society. In crimes or

wrongful acts which have adverse effect on the general public, are wrong doings which seriously affect and threaten the interest and well-being of society or against the society at large, cannot be given a go by to only because the accused and an institution have arrived at a settlement. It is well settled that in serious and grievous offences or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, or serious financial/economic offences against the financial system, a settlement between offender and victim can have no legal sanction at all. The present case also invokes certain sections of the Prevention of Corruption Act and sections of the Indian Penal Code including section 120B i.e criminal conspiracy.

38) We are of view that, broadly, a criminal prosecution can be classified into 2 categories/types i.e first category/type is in which a criminal prosecution subsequently arises out of a pure civil dispute/civil litigation or a civil transaction and the second category/type is an act or conduct which is a criminal offence having the criminality or criminal intent since its inception. The present case, according to us, clearly falls in the second category. Criminal prosecutions coming in second category and based on facts like the present complaints ought not to be quashed. In addition, the present prosecutions are acts/offences against the society/societal wrongs.

39) We are also aware of and have taken note of the fact that, the

Hon'ble Supreme Court in some matters, has quashed criminal prosecutions on the basis of a settlement. We are of the view, that facts of each case have to be assessed and analyzed independently. Some cases cited by the advocate for the Petitioner though have similar sections referred to, but are distinct and different in facts and factual situations. The nature of the transactions is different. In some case civil transactions/disputes are subsequently given the colour of criminality. They were disputes primarily with a civil flavor. According to us, the present case, falls in the second category/type, as the acts and conduct of the Petitioner and other accused bring out the criminality and the criminal intent right since the inception. The facts of the case, the intent, criminality, the nature and gravity of the crime are all aspects which need to be considered. Heinous/serious offences, offences against the society, economic offences against the financial system cannot be quashed even if there is a settlement or a victim has been compensated. It cannot be that we are swayed away by the fact that a consent Order is passed and amounts are paid to SEBI. We also need to keep in mind the society at large and the impact thereon. The acts have been committed with a deliberate design with an eye of personal profit/unjust enrichment regardless of consequence of the same on the society at large. To quash the proceeding merely because payments are made to SEBI would be nothing short of unwarranted and misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved. Quashing the present

criminal prosecutions would in fact tantamount to an absolute abuse of process of law.

40) As regards the general proposition, that the possibility of conviction is remote or bleak or no useful purpose will be served by continuing the criminal proceedings or that the continuation of criminal case would put accused to great oppression/prejudice and extreme injustice would be caused to the accused despite the settlement and compromise with an institution, we are of the firm opinion that the same cannot take precedence over the harm to and adverse impact on the society or in a offence which is against the society/public or the system as a whole. In serious and grave offences, economic offences, offences against the financial markets or serious economic frauds the said argument cannot hold good. The said contentions, when contrasted, with the facts of the present case, are of no consequences and ought not to even be considered.

41) Taking an overall view thereof, we hold that, in the facts of the present case, the Consent Order dated 7th December, 2009 and the payments made by the Petitioner thereunder towards disgorgement and/or settlement charges do not in any manner whatsoever affect or impact the present criminal prosecution/proceedings. Payment to an institution, in an offence against a society/societal interest ought not to be considered as a ground for quashing a criminal prosecution.

42) We are of the opinion that the charges are serious, the offenses

as alleged have been prima facie made out, the offences affect the rights and interests of retail investors, the economy, are against the orderly development of the security market and protection of retail investors. The charges, as against some accused pertain to offences under the Prevention and Corruption Act in as much as bank officials of PSU have aided, abetted and assisted the accused including the Petitioner to plan and execute the entire conspiracy. It is a conspiracy against the securities market mechanism, the financial system and in a manner against the economy of the country.

43) In view thereof, both the Petitions deserve to be dismissed and are accordingly dismissed. Rule is discharged.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)