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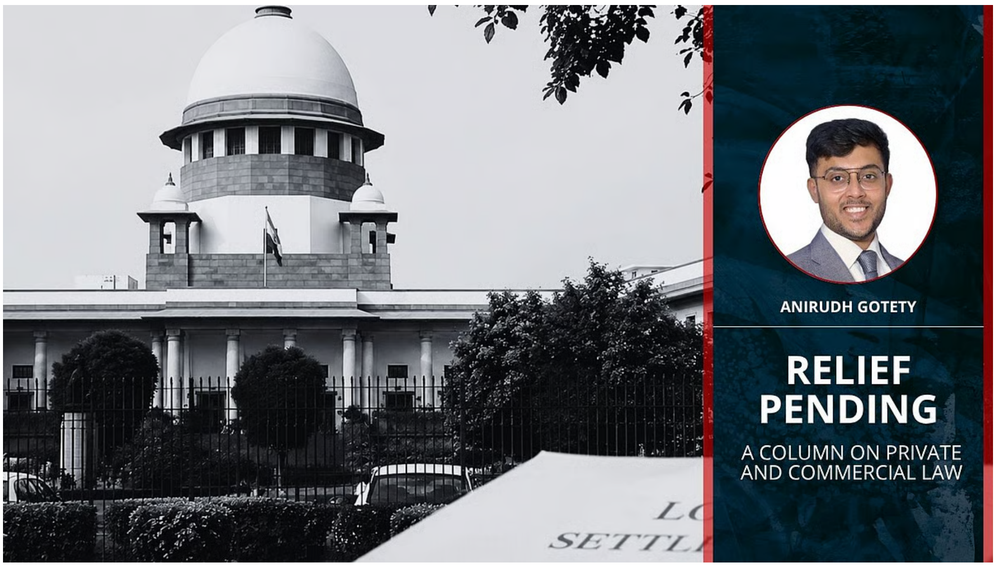
Supreme Court’s judgment in Vijay Kumar Kela: Is it time to make commercial dispute-adjacent offences compoundable?

A ruling by the top Court earlier this year affirms that criminal cases with an 'overwhelmingly civil flavour' stand on a different footing and ought to be quashed where a compromise is reached. As the legislature pursues a decriminalisation spree, it's time to expand the list of compoundable offences.



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WHEN A COMMERCIAL DISPUTE has been fully resolved, is there any justification for keeping criminal proceedings alive? Earlier this year, the Supreme Court of India in *Vijay Kumar Kela v. CBI* held that criminal proceedings under Sections 420 (cheating) and 471 (forgery) of the Indian Penal Code ('IPC') in relation to loans cannot be sustained after the loan account is compromised before the Debts Recovery Tribunal ('DRT') between the bank and the debtor.

The judgment is welcome inasmuch as it affirms a line of case law that holds that criminal cases having an "overwhelmingly and predominantly civil flavour" stand on a different footing and ought to be quashed by a High Court using its inherent powers under the Code of Criminal Procedure ('CrPC') when a compromise is reached notwithstanding the fact that some charges may not be compoundable under Section 320 of the CrPC.

How did the case come about?

Appellant No. 2, a proprietorship dealing in agricultural inputs, had a credit facility from UCO Bank that was progressively enhanced from ₽1.5 crore in 2006 to ₽8 crore by 2009, secured by its mortgaged properties. After the proprietorship's founder died in November 2009, his brother (Appellant No. 1) took over but its account fell into financial difficulty and was declared as a non-performing asset.

The Bank invoked SARFAESI proceedings. In March 2015, the Bank itself proposed and sanctioned a One-Time Settlement of Rs 4.25 crore against outstanding dues of Rs 6.49 crore, which was recorded before the DRT and the recovery proceedings were closed. More than two years after this settlement, the Bank lodged a complaint with the CBI alleging fraud by the Appellants in the scheme of the

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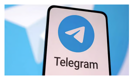

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alleging fraud by the Appellants in the scheme of the enhancement of the credit facilities. The Bank alleged that the Appellants swapped the mortgaged properties with encroached properties, and submitted forged audit reports. This led to a chargesheet under Sections 420 and 471 of the IPC and an order framing charges. Thereafter, the Chhattisgarh High Court declined to quash the proceedings under Section 482 of the CrPC, leading to the appeal before the Supreme Court.

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What the Supreme Court ruled

The Supreme Court noted that while offences under Section 420 of the IPC are compoundable, those under Section 471 are not. It framed the question as whether Sections 420 and 471 could be said to have been made out against the Appellants when the transaction(s) were related to banking and ultimately led to settlement with the competent authority of the Bank which was compromised before the DRT.

The Supreme Court, relying on *K. Bharthi Devi v. State of Telangana* (2024), held that the Bank's own settlement documents had certified there were no lapses or irregularities in the loan documentation and that the settlement amount complied with RBI policy guidelines on settlements of August 4, 2010. The belated fraud complaint, filed only after the Bank had already benefited from the OTS, was held to be a demonstration of bad faith.

The Court reasoned that permitting a criminal prosecution to proceed after a bank has voluntarily negotiated and obtained DRT-sanctioned satisfaction of its dues would be oppressive and an abuse of process, particularly since the dispute was a commercial/banking transaction of predominantly civil flavour where the possibility of conviction was remote and bleak. It added a policy justification that allowing such post-settlement prosecutions would undermine the sanctity of judicially approved settlements and discourage parties from resolving commercial disputes. On this basis, the appeal was allowed and the chargesheet and order framing charges were quashed.

What precedents did the Court rely on?

While arriving at its holding in *Vijay Kumar Kela*, the Supreme Court cited and quoted from a catena of judgments.

Nikhil Merchant v. CBI **(2008)**: In this case, the CBI filed charges under Sections 420, 467 (forgery of valuable securities, etc), and 468 (forgery for the purpose of cheating) of the IPC, against all accused as well as the Prevention of Corruption Act ('PC Act') against the accused Andhra Bank officials. The civil recovery suit was ultimately settled as a recorded compromise. Andhra Bank still opposed the discharge of the managing director of the borrower company, and alleged certain documents were forged to avail of the credit facilities beyond the permissible limit. The High Court refused to discharge the MD of the company despite the settlement of the loan account.

On appeal, the Supreme Court held that the elements of cheating were made out because the financial status of the company was misrepresented to avail of the credit facilities. However, it allowed the discharge stating that the dispute had overtones of a civil dispute with certain criminal facets. Further, although the forgery charges were not compoundable, the Supreme Court held that technicality should not come in the way of quashing because continuance of the same after compromise is arrived at would be a futile exercise.

Notably, this holding in *Nikhil Merchant* went even beyond the question framed in *Vijay Kumar Kela*. The Supreme Court endorsed quashing of settled loan accounts even where the offence of cheating was made out.

Gian Singh v. State of Punjab **(2012):** Here, an application for compounding as well as for quashing was filed after the accused had been convicted. The Supreme Court had the opportunity to consider whether a High Court should be allowed to quash proceedings under its inherent power under Section 482 of the CrPC, where the offender had settled his dispute with the victim. It held that the power of a criminal court under Section 320 of the CrPC to compound offences was different from that of the wide powers of the High Court under Section 482 of the CrPC which has no statutory limitation but has to be exercised to (i) secure the ends of justice or (ii) to prevent abuse of the process of court.

The Supreme Court held that no category of cases can be prescribed for quashing on the basis of a settlement between an offender and a victim and that it would depend on the facts and circumstances of each case. However, it noted that the High Court must have due regard to the nature and gravity of the crime. Heinous offences like murder, rape, dacoity or those under special statutes like PC Act or those committed by public servants could not be quashed (For instance, in *Anil Bhavarlal Jain v. The State of Maharashtra* (2024), the Supreme Court *did not allow* quashing of PC Act charges against accused bank officials despite settlement of the loan account).

However, a criminal case having an overwhelmingly and predominantly civil flavour are on a different footing such as those arising from commercial and matrimonial disputes. A those arising from commercial and matrimonial disputes. A High Court can quash such proceedings especially when they arise from commercial or matrimonial disputes. What must be taken into account is a settlement between the victim and offender, low possibility of conviction, and if continuation of proceedings would put the accused to great oppression and prejudice. The Supreme Court here held that *Nikhil Merchant* had been decided correctly.

Narinder Singh v. State of Punjab **(2014):** Here charges under Section 307 of the IPC (attempt to murder) were framed against the accused and a settlement was arrived at. The victim suffered a serious injury as per the medical opinion. The Supreme Court held that such offences are in the nature of heinous offences that ought not to be quashed despite settlement in line with the holding in *Gian Singh*.

Parbatbhai Aahir v. State of Gujarat **(2017):** Here, the Supreme Court reiterated *Gian Singh* but added an exception that economic offences involving the financial and economic wellbeing of the State and having implications that lie beyond the domain of disputes between private disputants ought not be quashed. In this case the accused were involved in the forgery and fabrication of documents and used them to effectuate the transfer of title before the registration authorities, thereby depriving rightful owners of title. The Supreme Court held that securing the probity of titles and interest in land was of vital societal interest. Therefore, such offences cannot be construed to be merely private for which quashing should be entertained.

K. Bharthi Devi v. State of Telangana ***(2024):*** Here, a criminal complaint was lodged only after recovery proceedings had been initiated before the DRT. At that stage, the accused persons approached Indian Bank for settlement and arrived at a settlement which was duly paid out. The High Court rejected the quashing, which the Supreme Court then allowed on appeal, citing *Gian Singh, Narinder Singh,* and *Nikhil Merchant*.

Conclusion and Bigger Questions

The Supreme Court's decision in *Vijay Kumar Kela* cannot be faulted. The criminal complaint was filed nearly two years after the loan account had been settled in accordance with RBI-prescribed procedures, and the likelihood of the appellants' conviction was, in any event, remote. In these circumstances, the continuation of the criminal proceedings would have served little purpose, making their quashing entirely justified.

> **These belated complaints are a part of a bigger problem. PSU bank officials file them fearing audits and corruption proceedings against them despite good faith settlements, which is an indictment of our public and criminal justice system.**

These belated complaints are a part of a bigger problem. PSU bank officials file them fearing audits and corruption proceedings against them despite good faith settlements, which is an indictment of our public and criminal justice system. The police also ought to be sensitised to not register such cases where settlements have taken place a long time ago.

The Supreme Court's policy justification in allowing the quashing was a welcome one—allowing post-settlement prosecutions would undermine the sanctity of judicially approved settlements and discourage parties from resolving commercial disputes. That's a noble objective and in line with the government's commitment to the ease of doing business.

There has been a long line of cases which have allowed the quashing of these economic offences where a settlement has been reached, notwithstanding the criminality being proved. Since these economic offences are not compoundable, trial courts are not empowered to dispose of such proceedings. The only recourse under the law is to approach a High Court for quashing which is an onerous, time consuming, and expensive exercise.

India's criminal laws were replaced in 2024 when the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam replaced the IPC, CrPC and the Indian Evidence Act respectively. The legislature could have taken a cue from the line of cases and expanded the categories of compoundable offences. However, that did not happen. The next best time is now. The government has been on a major decriminalisation spree with the Jan Vishwas laws with the stated goal of ease of living and doing business. The *Vijay Kumar Kela* case is another reminder that it may need to consider the treatment of economic and commercial dispute adjacent offences as compoundable.

Until next time.

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Catch 'Relief Pending', a monthly column on the state of adjudication in commercial and private law with advocate Anirudh Gotety, on the last weekend of each month.