

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 3021 of 2004 & CRL.MA 10172/2004

Reserved on: 22nd January, 2008
Date of decision: 7th March, 2008

ANIL BHARGAVA & ORS. Petitioners
Through S/Shri Ramesh Gupta with
Manish Tiwari & Sumit Arora, Advocates.

versus

STATE & ANR. Respondent
Through Mr. M.N. Dudeja, APP for R-1/State.
Mr. Kuldeep Mansukhani, Advocate for R-2.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

JUDGEMENT

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of Complaint Case No. 458 of 2001 titled ***“Air Force Group Insurance Society (AFGIS) v. PAAM Pharmaceuticals Ltd. & Others”*** under Sections 120B read with 404/415/420/467/468/471/477A Indian Penal Code (IPC) pending in the Court of the learned Metropolitan Magistrate (MM), Delhi, in so far it concerns the three petitioners.

2. According to the Petitioners, on 1st December 1998 in respect of the dishonor of a cheque No. 283824 for a sum of Rs. 4.5 lakhs, the Respondent No.2 AFGIS instituted a complaint case against the

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Petitioner No.3 PAAM Pharmaceuticals (Delhi) Ltd. [‘Company’] and its Directors and senior management personnel under Section 138 of the Negotiable Instruments Act, 1881(‘NI Act’) and 415/420 IPC. Even before a summoning order could be issued in this complaint, the AFGIS instituted another complaint on 24th February 1999 against the same parties in respect of the dishonour of two cheques bearing Nos. 283825 for Rs. 4.5 lakhs and No. 283826 for Rs. One crore under Section 138 NI Act and 415/420 IPC.

3. A summoning order was passed on the second complaint on 23rd September 1999 by the learned MM. On the first complaint a separate summoning order was passed on 25th October 1999.

4. The AFGIS instituted a third complaint on 25th September 2000 in regard to the same set of transactions against the Company and its Directors for the offences and employees under Sections 405/420/467/468/471/477A/ 120B IPC. The third complaint, being CC No. 458 of 2001 did not advert to the fact of the pendency of the earlier two complaints. On 12th November 2003 a third summoning order was issued by the learned MM summoning the Petitioners for the offence under Sections 405/420/467/468/471/477A/ 120B IPC.

5. The complaint filed by AFGIS on 25th September 2000, CC No. 458 of 2001, in which the summoning order dated 12th November 2003 was passed, states that AFGIS made an investment of Rs. One crore with the Company for the subscription of non-convertible debentures (NCDs) of Rs. 100/- each earning a rate of 18 per cent per annum for a period of thirty-six months. It is stated that the Company pledged 5 lakh shares of the Company with the AFGIS as security till the debentures certificates

were handed over. It is stated that despite the assurances, the complainant was not handed over the debenture certificates. AFGIS then decided to sell the five lakh shares pledged with them. It transpired that the shares were issued from the promoters' quota and had a lock in period of three years and therefore could not be sold. Moreover, the value per share had also fallen. It is alleged that the accused also blocked the sale of the five lakh shares by not providing the current transfer deeds duly signed by the holders.

6. The contention of the learned counsel for the Petitioners is that in view of the judgment of the Supreme Court in ***G.Sagar Suri v. State of U.P. (2000) 2 SCC 636***, the subsequent complaint on the same set of facts was bad in law. He also relies upon the judgment in ***T.T. Antony v. State of Kerala 2001 II AD (Cr.) S.C. 513*** to the effect that if on the same transaction a second FIR could not be registered, then by the same analogy a third complaint also could not have been registered. It is further pointed out that in terms of clause 8(a)(ii) of the agreement entered into between the parties, the AFGIS was to be issued as security shares "out of promoters' quota in tradable shares". Therefore, the very basis of the third complaint was non-existent.

7. The ground on which the quashing is sought of the third complaint is that it is based on the same set of facts and it suppresses the fact that two earlier complaints have been filed by the same complainant. To examine this contention it is necessary to peruse each of the complaints filed earlier and the present complaint. The first complaint filed on 1st December 1998 is by the same complainant AFGIS and the accused is shown as the Company, Shri Anil Bhargava (Petitioner no.1 herein as its Chairman) and Arvind Bhargava (Petitioner No.2 herein as its Director). Para 3 of the complaint refers to the fact that the Company approached

AFGIS with a proposal inviting investment in privately placed NCDs of the Company for a sum of Rs. 5 crores for thirty-six months offering interest at 18 per cent per annum payable quarterly. Para 4 refers to the fact that the complainant invested a sum of Rs. 1 crore with the Company on 20th October 1995 for issuance of secured redeemable NCDs. It also refers to the fact that the cheques were issued by the Company towards interest on the said NCDs. The said complaint pertained to the dishonor of one cheque dated 30th September 1998 for the sum of Rs. 4.5 lakhs.

8. The second complaint filed on 24th February 1999 is on the same set of facts but in relation to the dishonor of the two cheques dated 31st December 1998 for a sum of Rs. 4.5 lakhs each. Neither of these complaints makes a reference to the fact that an agreement had been entered into between the Company and the AFGIS concerning latter's investment of Rs. 1 crore in the NCDs of the Company. They make no reference to the clauses of that agreement.

9. The third complaint CC No. 458 of 2001 filed by AFGIS on 25th September 2000 refers to the fact that a sum of Rs. One crore was invested in the Company for issuance of NCDs. This complaint is filed against the Company and the two Petitioners here as well as four others including one Director, and three senior management personnel and the Chartered Accountant of the Company. This time the complaint makes reference to the clauses of the agreement and to the fact that the NCD certificates were not issued. In para 15 a passing reference is made to the issuance of the cheques dated 31st December 1998 which stood dishonoured. However, there is no mention of the fact that the two complaints had earlier been filed in respect of the dishonor of the cheques.

10. There can be no manner of doubt on a conjoint reading of the three complaints that they relate to the same set of facts. There is absolutely no explanation as to why the first two complaints did not advert to the fact of the deposit of five lakh shares of the Company with AFGIS as security. There is likewise no explanation why in the third complaint no reference is made to the pendency of the two earlier complaints. The three complaints refer to the same set of facts but give an incomplete narration. Even the offences mentioned in the third complaint i.e. Sections 415 and 420 IPC are common to all the three complaints. The mere addition of a few more sections of the IPC in the third complaint on the same set of facts, cannot be legally justified.

11. In ***G. Sagar Suri v. State of UP***, the Supreme Court disapproved the tactic of filing a subsequent criminal case on the same set of allegations and termed that as an abuse of the process of the court. In para 14, the Supreme Court in ***G. Sagar Suri*** observed as under: (***SCC p. 645***)

“14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Section 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed which we do.”

Also, in ***T.T. Antony v. State of Kerala***, the Supreme Court disapproved the filing of a second criminal case on the same set of facts, in respect of which an FIR already stood registered.

12. On the facts of the present case, it is clear that the ratio of the aforementioned judgments of the Supreme Court would apply. The third complaint is certainly an abuse of the process of the court since it is based on the same set of facts on which the earlier two complaints were filed. To permit the complainant to pursue third complaint in the facts and circumstances of the case, would be impermissible in law.

13. For the aforementioned reasons, the complaint case CC No. 458 of 2001 titled ***“Air Force Group Insurance Society (AFGIS) v. PAAM Pharmaceuticals Ltd. & Others”*** and all proceedings consequent thereto including the summoning order dated 12th November 2003 hereby stand quashed.

14. The petition is allowed but in the circumstances with no order as to costs.

7th March, 2008
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(S.Muralidhar)
Judge