

GAHC010119092020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./454/2020

JSVM PLYWOOD INDUSTRIES LTD.
HAVING ITS REGISTERED OFFICE AT 17TH MILE, STIWELL ROAD,
JAIRAMPUR, DIST. CHANGLANG, ARUNACHAL PRADESH AND
CORPORATE OFFICE AT KOLKATA, WEST BENGAL AND REP. BY ONE OF
ITS AUTHORIZED REPRESENTATIVE SRI RAHUL BAJAJ

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SANDEEP KHAITAN
RESOLUTION PROFESSIONAL FOR NATIONAL PLYWOOD INDUSTRIES
LTD. S/O SRI GOBIND PRASAD KHAITAN
SANMATI PLAZA
2ND FLOOR
CHRISTIAN BASTI
G.S. ROAD
KAMRUP (M)
GUWAHATI
ASSAM
PIN-78100

Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : MR. B .GOGOI(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER

Date : 31-08-2023

Heard Mr. D. Chakrabarty, learned counsel for the petitioner. Also

heard Mr. B. Gogoi, learned Additional Public Prosecutor for the State/respondent No.1 and Mr. A. Goenka, learned counsel for the respondent No. 2.

2. The petitioner has preferred the application under Section 482 Cr.P.C., praying for quashment of the FIR dated 27.04.2020 registered vide Margherita P.S. Case No. 0112/2020 (corresponding to G.R. Case No. 289/2020) under Section 406/419/420/34 IPC r/w Section 66 C and 66 D of Information and Technology Act, 2000 (herein after referred as I.T. Act).

3. The petitioner is the JSVM Plywood Industries Ltd. (JSVM) incorporated in the year 1975 and was previously known as Arunachal Saw & Veneer Mills Ltd. The respondent No. 2 herein is the Resolution Professional appointed by the National Company Law Tribunal(NCLT), Guwahati Bench vide order dated 26.08.2019 under the provision of Insolvency and Bankruptcy Code(IBC), 2016 for carrying out Corporate Insolvency Resolution Process (CIRP) against National Plywood Industries Ltd.(NPIL) against whom proceeding under the insolvency and bankruptcy code was drawn up before the NCLT, Guwahati Bench.

4. On 27.04.2020, the respondent No. 2 lodged an FIR before the Officer-in-Charge Margherita Police Station with regard to a net banking transaction dated 18.04.2020 for an amount of Rs.32.50 lakhs transferred to the bank account of the petitioner being No. 149905001306 maintained with ICICI Bank Ltd., Chandrasekarpur Branch, Bhubaneswar from the bank account No. 12850500155 of NPIL maintained with ICICI bank Ltd., Strand Road Branch, Kolkata.

The contention raised by the respondent No. 2 in the impugned FIR was that money was transferred to the petitioner through net banking transaction without any authorization. Since the respondent No. 2 had taken control of all the bank accounts of the NPIL after initiation of CIRP and the controlling powers including authority to put signatures were suspended in respect of the earlier board members and that the company is still under CIRP. The respondent No. 2 contended that he had received string of emails on 18.07.2019 intimating transfer of funds from NPIL to the petitioner company for a total amount of Rs.32,50,000/-. The respondent No. 2 further contended that on request being made to the concerned bank maintaining the account of NPIL to enquire into the matter, the bank confirmed about the transaction vide email to respondent No. 2 and provided therewith, a report of the transactions which was said to have been made by way of Corporate Internet Banking (CIB) facility.

5. The respondent No. 2 further added that the Bank maintaining the account of NPIL has ensured to recoup the money from all such accounts to which, the said sum of money was transferred. In the said FIR, the respondent No. 2 also alleged about another unauthorized transaction through net banking to some other bank account in the name of one M/s Plywood and Hardware which is not the matter of concern of the petitioner. The respondent No. 2 contended that one Mr. Piyush Periwal, who is the CMD of the suspended Board of NPIL has attempted to make unauthorized operations with malafide intention of duping the company by transferring major chunk of substantial funds to his own associate company.

6. In view of such alleged illegal transactions, the respondent No. 2 requested the police to seriously investigate the matter and take all necessary legal actions on the perpetrator for the alleged fraud of such high magnitude. Request was also made by respondent No. 2 to investigate over the lapses on the part of the ICICI Bank to let the transaction without the knowledge of respondent No. 2.

7. Pursuant to the FIR lodged by respondent No. 2, a case was registered vide Margherita P.S. Case No. 0112/2020 under Section 406/419/420/34 of IPC read with section 66 C and 66D of I.T. Act.

8. It is submitted by the learned counsel for the petitioner that the FIR lodged by the respondent No. 2 is not maintainable against the petitioner company or any of its directors. In the FIR, there is no direct allegation against either the petitioner or any of its directors. The allegation of unauthorized net banking transaction is upon one Mr. Piyush Periwal, the earlier CMD of the suspended board of NPIL. It has been alleged that Mr. Periwal has transferred the amount to the bank account of the petitioner company with the malafide intention of duping NPIL.

9. It is further submitted that the respondent No. 2 earlier filed an application before the NCLT, Guwahati Bench regarding the said transaction but in the said application, the petitioner company was not impleaded as party. Since the issue was brought to the notice of the NCLT, Guwahati, the respondent No. 2 had no authority to declare the said transaction as an unauthorized and fraudulent one until there was

an adjudication over the same by the appropriate forum.

10. It is further submitted that the impugned FIR has been lodged by the respondent No. 2 with malafide intention as an outburst to the complaint lodged against him before IBBI under Section 217 of IBC by the petitioner for professional misconduct as a resolution professional of NPIL.

11. Learned counsel for the petitioner also submitted that there is no ingredient of the offence of criminal breach of trust such as entrustment of property, dishonest misappropriation of the same, disposal of the said property in violation of any direction of law, thus causing other person to suffer which attracted the provision under Section 406/420 IPC.

12. It is also pointed out that with regard to Section 419 IPC dealing with punishment for cheating by personation, the same is also not attracted in respect of the petitioner in as much as the allegation of unauthorized net banking transaction is upon the earlier CMD of the suspended board of NPIL i.e. Mr. Piyush Periwal. The petitioner is only the transferee of the said amount which was due to the petitioner.

13. So far as Section 66 C and 66 D of I.T. Act are concerned, the learned counsel for the petitioner argued that those provisions are also not applicable to the petitioner as the contents of the FIR, the allegation to that is directed against the transferor of the amount, i.e., the earlier CMD of the suspended Board of NPIL, not against the petitioner. Under the aforesaid facts and circumstances, it is prayed

that this Court would be justified in invoking its power under Section 482 Cr.P.C. to quash the F.I.R. lodged against the Petitioner.

14. On the other hand, the learned counsel for the respondent No. 2 submitted an affidavit-in-opposition by stating that the stressed assets stabilization fund had filed an application for initiation of CIRP under Section 7 of the IBC against NPIL, the Corporate Debtor (CD), the same was admitted by the NCLT, Guwahati Bench and the respondent No. 2 was appointed as the resolution professional of the CD. Under Section 25(2)(a) of IBC, it is the duty of the resolution professional to take control and custody of overall assets of the CD.

15. It is also the submission of the learned counsel for the respondent No. 2 that on 18.04.2020, a member of the suspended board Mr. Piyush Periwal transferred a total sum of Rs.32.50 lakh to the petitioner by way of four transactions. The same was done by the CD without authorization. Knowing about the fact, the respondent No. 2 immediately took action by filing e-complaint alleging cyber-crime and secondly by filing an FIR dated 27.04.2020 as aforesaid, as the petitioner is the related party to the CD.

16. The learned counsel for the respondent No. 2 also submitted that filing of the petition by the petitioner under Section 482 Cr.P.C. is an attempt to stop criminal law in motion since the investigation is still underway and the charge-sheet is yet to be filed. The learned counsel for the respondent No. 2 also relied upon some case laws i.e. Kurukshetra University vs. State of Haryana, reported in 1977 vol. 4 SCC 451 and State of Haryana vs. Bhim Sain, JT 2000(10) SC 308. The

learned counsel for the respondent No. 2 also pointed out the case law of State of Haryana vs. Bhajan Lal, AIR 1992 SC 604, wherein the Hon'ble Apex Court laid down the principles to all the High Courts' to follow when it comes to its inherent power of quashing an FIR under Section 482 Cr.P.C.

17. The learned Additional Public Prosecutor for the State/respondent No. 1 also submitted in the similar tune with that of learned counsel for the respondent No. 2 that there is a prima facie case against the petitioner under Section 406/419/420/34 IPC r/w Section 66 C and 66 D of I.T. Act. The FIR cannot be quashed by this Court without taking into consideration the charge-sheet and the evidence collected by the police during the investigation which is underway and yet to be completed. The learned Additional Public Prosecutor and the learned counsel for the respondent No. 2 prayed for dismissal of the petition.

18. I have considered the submissions made by the learned counsel for the parties.

19. The power of the High Court under Section 482 of the Code to quash a criminal proceeding has been considered by the Hon'ble Supreme Court in several decisions starting from ***R.P. Kapur v. State of Punjab*** reported in ***1960 AIR 860***. In the case of R.P. Kapur (supra), the Hon'ble Supreme Court laid down three categories of cases where inherent power can be exercised to quash proceedings. Subsequently, the Supreme Court reiterated its view in ***State of Haryana v. Bhajan Lal (supra)*** and laid down the law more clearly

and in that decision seven illustrative categories were indicated by the Hon'ble Supreme Court where the High Court can exercise its power under Section 482 of the Code to quash a proceeding. It was also made clear in the said decision that these seven illustrations are not exhaustive and the High Court can exercise such power in appropriate cases, if there are materials to exercise such power. Subsequently, in many other decisions the same view was reiterated by the Supreme Court namely, ***State of Bihar v. P.P. Sharma***, reported in **1992 SCC (Cri) 192**; ***Rupan Deal Bajaj v. Kanwar Pal Singh Gill***, reported in **1995 SCC (Cri) 1059**; ***Rashmi Kumar v. Mahesh Kumar Bhada***, reported in **1997 SCC (Cri) 415**; ***Rajesh Bajaj v. State(N.C.T. Of Delhi)***, reported in **1999 SCC(Cri) 401**; ***State of Karnataka v. M. Devendrappa***, reported in **2002 SCC(Cri) 539**; ***M. Narayandas v. State of Karnataka***, reported in **2003 Supp(3)SCR 973**; ***State of A.P. v. Golconda Linga Swami***, reported in **2004 SCC(Cri) 1805** and also several other decisions including *State of M.P. v. Awadh Kishore Gupta* (supra).

20. In the aforesaid decisions, the principle of law was clearly laid down by the Supreme Court that the High Court while exercising its power under Section 482 of the Code must be very careful and should see that exercise of this power is based on sound principles. It was laid down by the Supreme Court that while exercising powers under this section, the Court does not function as a Court of Appeal or Revision. Inherent jurisdiction under the section though wide has to be exercised very sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the

section itself. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and cannot be seen in their true perspective without sufficient material.

21. Keeping in mind the above stated principles of law, a close scrutiny of the FIR which has been annexed with the petition makes it clear that the allegations made in the FIR without adding anything to it or subtracting anything from it and, if they are taken at their face value and accepted in their entirety, prima facie makes out elements of cognizable offence against the accused petitioner. The allegations in the FIR and other materials makes out a cognizable offence justifying investigation by police. The allegations in the FIR do constitute cognizable offence. The allegations made in the FIR cannot be regarded as absurd and inherently improbable. At this stage, I do not find any express legal bar engrafted in any of the provisions of the Code or Act concerned to the institution and continuance of the proceeding. The FIR at this stage does not reveal that the criminal proceeding is manifestly attended with malafides or the proceeding is maliciously instituted with ulterior motive for wreaking vengeance on

the accused/petitioner with a view to spite him due to private and personal grudge.

22. According to the learned counsel for the petitioner, the matter in question relates to the monetary transaction and the case is pending before the NCLT, Guwahati Bench which is of civil nature as such, the present criminal proceeding which amounts to abuse of the process of the court, therefore, the present FIR lodged against the petitioner is liable to be quashed.

23. The settled principle of law is that the pendency of the civil proceeding cannot be a ground to quash the criminal proceeding and there are several decisions of the Hon'ble Supreme Court on this point namely, ***M. Krishnan v. Vijay Singh and Anr. (supra)***, ***Kamaladevi Agarwal v. State of West Bengal and Ors. (supra)***, ***Maratt Rubber Ltd. v. J.K. Marattukalam (supra)***, ***Medchl Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd. and Ors. (supra)*** and ***Vitoori Pradeep Kumar v. Kaisula Dharmaiah*** reported in ***2004 SCC (Cri) 440***.

24. In the aforesaid decisions, the Hon'ble Supreme Court clearly laid down the law that, pendency of civil proceeding in any Court cannot be a bar to initiate criminal proceeding. Where factual foundation for the offence have been laid down in the complaint or FIR, the High Court should not hasten to quash criminal proceedings merely on the premises that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. ***In Maratt***

Rubber Ltd. v. J.K. Marattukalam reported in **(2000) vol.9 SCC 547**, it was held by the Hon'ble Supreme Court that--

“In a case instituted on complaint, the High Court was possibly not entitled to look to the several documents purported to have been filed by the accused in several civil proceedings and rely on some orders/observations made thereunder. A bare scrutiny of the impugned judgment would indicate that the High Court has thought, as if it is trying the case, and then after weighing the materials it has come to a conclusion one way or the other. This is certainly in excess of the jurisdiction conferred on the High Court under Section 482 of the Code of Criminal Procedure.”

25. ***In Kamaladevi Agarwal v. State of West Bengal and Ors.*** reported in **(2002) 1 SCC 555**, it was held by the Supreme Court that the quashing of criminal proceeding at initial stage merely on the ground that the very foundation of the criminal case, namely, forgery of document is under scrutiny by Supreme Court in a civil proceeding instituted by same person i.e. the complainant in the criminal case is not proper. The Supreme Court observed that pendency of civil action in different Court even though higher in status and authority cannot be made basis for quashing of the proceeding. Almost similar view was reiterated by the Hon'ble Supreme Court in *Medchl Chemicals & Pharma Pvt. Ltd. v. Biological E. Ltd. and Ors.* (supra) and *Vitoori Pradeep Kumar v. Kaisula Dharmaiah* (supra).

26. ***In M.L. Bhatt v. M.K. Pandita and Ors.*** reported in **JT 2002(3) SC 89**, it was held by the Supreme Court that when the

matter is under investigation, quashing of FIR by the High Court considering materials including statements under *Section 161* of the Code is bad. It was held by the Supreme Court that during the pendency of investigation in a case in which there is prayer for quashing of FIR, the High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of shifting the materials collected in course of investigation including the statement recorded under *Section 161* of the Code.

27. It is well-settled that power under *Section 482* of the Code to quash FIR or investigation should be exercised very sparingly and that too in the rarest of rare cases and at the initial stage of investigation where the FIR discloses cognizable offence, the Court cannot inquire about the reliability or genuineness or otherwise of the allegations made in the FIR. At this stage, the High Court cannot assess evidence like a Trial Court or Appellate Court and cannot make any enquiry relating to reliability or evidence and sustainability of accusation.

28. In the case in hand, it appears that both the parties have submitted sufficient documents to deal with the matter which are pending before the NCLT, Guwahati Bench and some other documents regarding transfer of money by the earlier CMD Mr. Piyush Periwal to the account of the present petitioner but the documents have not yet been tested or verified by the investigating officer and unless those are tested or verified and admitted by the parties in court at the time of trial, it cannot be said that the documents are admitted. After perusing the allegations in the FIR and the documents filed by the

parties showing the appointment of Resolution Professional by the NCLT, Guwahati Bench, it makes out a case that in the present matter investigation by police is necessary to reveal the truth.

29. In the present case, the FIR discloses cognizable case and the investigation is at the very threshold. At this stage, the FIR cannot be quashed and the investigation cannot be thwarted or stalled at the initial stage. Considering the allegations made in FIR and other materials available in the record, this Court is of the opinion that this is not a fit case where this Court should exercise its inherent power under *Section 482 Cr.P.C.* to quash the FIR and to stop the investigation. The investigation, if any, would be for the ends of justice and would reveal the truth. At this stage, this Court cannot look into all the papers and documents annexed with the case record as those were neither verified nor tested. Let the investigation be proceeded with and the investigating officer after completing investigation submit report in accordance with law.

30. With the above observations, the criminal petition stands dismissed and disposed of accordingly.

31. Interim order, if there be any, stands vacated.

JUDGE

Comparing Assistant