

Reserved on:- 04.10.2023**Delivered on:-** 06.12.2023**Court No. - 12****Case :-** APPLICATION U/S 482 No. - 782 of 2023**Applicant :-** Petr Novotny And 5 Others**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Home Dept. Home Civil Secrett. Lko. And Another**Counsel for Applicant :-** Nadeem Murtaza, Abhineet Jaiswal, Aditya Vikram Singh, Gaurav Mehrotra, Pranjal Krishna**Counsel for Opposite Party :-** G.A., Purnendu Chakravarty**Hon'ble Rajeev Singh, J.**

1. Judgement was reserved after perusing the record and hearing Sri Siddharth Luthra, learned Senior Advocate assisted by Sri Nadeem Murtaza, Sri Gaurav Mehrotra, Smt. Shwetha Ravishankar, Shri Pranjal Krishna, Sri Aditya Vikram Singh, Sri Ankur Singh, Sri Sheezan Hashmi, Sri Abhineet Jaiswal, learned counsel for the applicants, Sri Purnendu Chakravarty, learned counsel for the opposite party no.2 and learned A.G.A. for the State.

2. The present application is moved by applicants for quashing the entire proceeding of Case No.122651 of 2022 (***State vs. Petr Novotny and others***) arising out of Case Crime No.492 of 2020 as well as summoning order dated 17.12.2022 passed by learned Special Chief Judicial Magistrate, Lucknow whereby applicants were summoned U/s 406, 420, 506, 120-B, 436 I.P.C. and charge-sheet dated 10.12.2022 filed in the aforesaid sections in relation to Case Crime/F.I.R. No.492 of 2020.

3. Submission of Sri Siddharth Luthra, learned Senior Advocate is that M/s Scania Commercial Vehicles India Pvt. Ltd. (hereinafter referred as '*Scania Company*') is a wholly owned subsidiary of M/s Scania CVAB, a Sweden based holding company belonging to Volkswagen Group; Scania's

Group has its business in more than hundred countries and lakhs of buses, and trucks manufactured by it are plying worldwide. Scania Company has invested more than Rs.1,000 crores and doing its business/operations in India for more than a decade.

4. Sri Siddharth Luthra, learned Senior Advocate submitted that applicant no.1 joined as Managing Director on 15.11.2018, applicant no.2 joined as Service Director on 01.02.2018, applicant no.3 joined as Chief Financial Officer on 01.06.2019, applicant no.4 joined as Workshop Deputy Manager, Lucknow on 17.06.2019 and applicant no.5 joined as Senior Manager of Sustainable Transport Solutions on 03.07.2017 in the Scania Company.

5. Submission of Sri Luthra, learned Senior Advocate is that the buses in question were delivered to opposite party no.2 on his purchase in between the period of 17.09.2015 to 10.10.2017 before the joining of all applicants in the Scania Company. Informant of the present case/opposite party no.2 runs travel agencies in the name of M/s Eagle Travels & M/s Falcon Bus Lines Pvt. Ltd. M/s Eagle Travels is a proprietary concern of Mrs. Mittal Hardik who is wife of Mr. Hardik Kotak/informant of the present case, which is engaged in the business of providing high-end buses to various state road transport undertakings on contract basis for inter-city travel and inter-state travel service, whereas, M/s Falcon Bus Lines Pvt. Ltd. is a private company which is also engaged in the business of travel services to its customers. It is pertinent to note that opposite party no.2 is Managing Director of M/s Falcon Bus Lines, who is also responsible for day-to-day affairs of both the aforesaid firms.

6. Sri Luthra, learned Senior Advocate further submitted that fleet of 14 buses were purchased from Scania Company by informant/opposite party no.2 in the name of aforesaid concerns/firms. It has further been

submitted that after full satisfaction, a sum of Rs.16,36,85,500/- was paid for purchasing the above buses and discount of Rs.32,00,500/- was given by Scania Company.

7. The details of above-mentioned 14 buses purchased by both M/s Falcon Bus Lines Pvt. Ltd. and M/s Eagle Travel Agency respectively are given here-in-below:-

Sr. No.	Company	Registration Number	Date of Delivery	Financier
1.	M/s Falcon	RJ27PB9997	17.09.2015	HDFC
2.	M/s Falcon	RJ27PB9993	17.09.2015	HDFC
3.	M/s Falcon	GJ36T9777	20.01.2016	Kotak
4.	M/s Falcon	GJ36T9888	20.01.2016	Kotak
5.	M/s Falcon	GJ36T9963	06.03.2017	HDFC
6.	M/s Falcon	GJ36T9936	06.03.2017	HDFC
7.	M/s Eagle Travel	UP41AT4693	14.07.2017	Orix
8.	M/s Eagle Travel	UP41AT4692	14.07.2017	Orix
9.	M/s Eagle Travel	UP41AT4689	14.07.2017	Orix
10.	M/s Eagle Travel	UP41AT4690	14.07.2017	Orix
11.	M/s Eagle Travel	UP41AT4691	22.07.2017	Indo Star
12.	M/s Eagle Travel	HP63A5227	10.10.2017	VWFS
13.	M/s Eagle Travel	HP63A5228	10.10.2017	VWFS
14.	M/s Eagle Travel	HP63A5230	10.10.2017	VWFS

After sales in the aforesaid regard, services were also provided by Scania Company in relation to the aforesaid buses in terms of industrial

standards. It has further been submitted that subsequent to the aforesaid purchase of buses, three different Repair and Maintenance Contracts (hereinafter referred as "*the R.M.C.*") were executed between Scania Company and opposite party no.2.

8. The detail of three R.M.C.s is as under:-

(i) R.M.C. dated 19.01.2018 in respect of 5 buses of M/s Eagle Travels,

(ii) R.M.C. dated 27.04.2018 in respect of 3 buses of M/s Eagle Travels and

(iii) R.M.C. dated 22.05.2018 in respect of 6 buses of to M/s Falcon.

9. Sri Siddharth Luthra, learned Senior Advocate further submitted that the aforesaid Repair and Maintenance Contracts are self explanatory document provided for a dispute redressal mechanism. As per Clause 9 of aforesaid R.M.C.s, it was indicated that any dispute arose between parties would be referred for arbitration under the provisions of Arbitration and Conciliation Act, 1996 and the venue of arbitration would be at Bangalore, Karnataka. It has further been submitted that repair and maintenance work of aforesaid buses was done by Scania Company that was time and again acknowledged by opposite party no.2.

10. Sri Luthra, learned Senior Advocate further submitted that despite proper after-sales services provided by Scania Company, opposite party no.2 started making continuous defaults in payment for the services availed in terms of the buses registered in the name of two firms, namely, M/s Falcon and M/s Eagle Travels which resulted in accumulation of huge outstanding dues. In this connection, Scania Company was constrained to inform informant/opposite party no.2 to clear the dues of both the

concerns i.e. sum of Rs.37,18,093/-. Scania Company agreed to provide the discount in the form of credit note and rest of the amount was to be cleared by opposite party no.2 in 06 monthly equal installments i.e. of Rs.6,19,682/- per month; this schedule was to be started from September, 2019 to February, 2020. Opposite party no.2 was under obligation to give postdated cheque and each cheque will be of any date between 1st to 7th of the respective month. It has further been submitted that opposite party no.2 failed to comply the terms of mode and manner of payments as agreed upon the deposit of the said post-dated cheques, all the cheques were dishonoured; after the company's follow-up, opposite party no.2 made certain payments through R.T.G.S. In respect of three cheques, no payment was made which resulted in issuance of demand notices under the provisions of Negotiable Instruments Act, 1881.

11. Sri Siddharth Luthra, learned Senior Advocate further submitted that as per Repair and Maintenance Contracts, the buses ought to be serviced on credit basis with a term that within a period of 10 days of service to pay the dues, however, opposite party no.2 made continuous defaults in making the payment against the invoices raised by company in respect of service, repairs and maintenance of the buses. It has further been submitted that time and again, the due dates were extended but opposite party no.2 made no payments, therefore, Scania Company was compelled to terminate the Repair and Maintenance Contracts of both the concerns vide notice dated 13.01.2020 (annexed as Annexure No.06 to the application).

12. Sri Siddharth Luthra, learned Senior Advocate further submitted that after receiving the aforesaid notice, opposite party no.2 started pressurizing for taking back the termination notice by stating that the dues would be cleared in September, 2019, he also requested from the officials of Scania Company to provide services on a non contractual basis.

13. Sri Siddharth Luthra, learned Senior Advocate further submitted that three buses bearing registration Nos. UP41AT4691, UP41AT4692 & UP41AT 4693 were sent to workshop of Scania Company at Lucknow on 05.01.2020, 15.03.2020 & 09.03.2020 respectively, opposite party no.2 failed to give approval for the work which was required for service of aforesaid 03 buses. On the pretext of personal meeting, opposite party no.2 along with other persons who were claimed to be police officials from Gujarat, came to Scania Company at Kolar, State of Karnataka and officials of Scania Company were detained by them and forced to sign some documents. Thereafter, applicant no.6, Service Director of Scania Company filed a complaint which was registered as F.I.R. No.145 of 2020 dated 04.07.2020 U/s 34, 120-B, 419, 420, 448, 465, 463, 464, 506 I.P.C. against opposite no.2 for illegal acts committed on 13.03.2020. Opposite party no.2 filed anticipatory bail application, in which, he admitted that he visited office of Scania Company on 13.03.2020 along with purported officials of Gujarat Police, subsequently, he filed Special Civil Suit No.385 of 2021 before Principal Civil Judge (S.D.), Ahmedabad invoking specific performance of agreement dated 13.03.2020. Opposite party no.2 was informed vide E-mails dated 10.06.2020, 16.06.2020 & 19.06.2020 to take back the buses while making it clear that Scania Company or its personnel would not be responsible for safety and security of buses which were parked outside (aforesaid e-mails are annexed to the application as Annexure No.17 page 460-463).

14. Sri Siddharth Luthra, learned Senior Advocate further submitted that after 06 months, aforesaid three buses parked outside the workshop caught fire and when this fact came into the notice then officials of Scania Company informed authorities about the said incident, but opposite party no.2 lodged false F.I.R. of the case in question regarding the alleged fire incident on 19.12.2020 at Banthara Police Station, Lucknow as Case Crime No.492 of 2020 U/s 420, 406, 506, 435, 120-B I.P.C. It has further

been submitted that applicants preferred Writ Petition No.645 of 2021 (MB) before this Court seeking relief by quashing F.I.R./Case Crime No.492 of 2020, in which, interim order was passed on 19.01.2021, thereafter, the petition was disposed of on 05.10.2021 with the direction that applicants would not be arrested till the submission of police report U/s 173(2) of Cr.P.C. The aforesaid order was challenged before Hon'ble Apex Court in Special Leave to Appeal (Crl.) No.9587 of 2021, in which, interim order was passed on 17.12.2021 after issuing notice, thereafter, the aforesaid S.L.P. was allowed vide judgement and order dated 30.03.2022 by setting aside the order of Hon'ble High Court dated 05.10.2021 and the petition was registered at its original number. In the meantime, charge-sheet was submitted by Investigating Officer in the most mechanical manner, hence, the present petition/application was moved.

15. Sri Siddharth Luthra, learned Senior Advocate further submitted that in Repair and Maintenance Contracts dated 19.01.2018, 27.04.2018 and 22.05.2018 for the respective vehicle, Clause 09 of the said R.M.C.s clearly depicted that if any dispute arose between the parties, it would be the subject matter of arbitration. It has further been submitted that opposite party no.2 was deliberately avoiding the arbitration clause and initiated the criminal prosecution on the basis of incorrect facts against the Scania Company for the purpose of non compliance of Repair and Maintenance Contracts, one Civil Suit was also been filed by opposite party no.2 which is pending before the learned Civil Judge (S.D.), Ahmedabad. It has further been submitted that after going through the entire evidence collected by Investigating Officer, no offense U/s 436 I.P.C. was made out.

16. Relying on the decision of Hon'ble High Court, Lucknow Bench in the case of *Babu Lal vs. State* reported in *1951 SCC OnLine All 67, paragraph No.15*, Sri Siddharth Luthra, learned Senior Advocate

submitted that the buses were burnt at roadside, therefore, no offense U/s 436 I.P.C. is made out.

17. Sri Siddharth Luthra, learned Senior Advocate further submitted that Section 406 & 420 I.P.C. could not co-exist. Relying on the decision of Hon'ble High Court of Delhi in the case of ***Wolfgang Reim & others vs. State*** reported in ***2012 SCC Online Del 3341***, he further submitted that a person cannot be charged with the offense of cheating and criminal breach of trust simultaneously.

18. It has further been submitted that in the present case, opposite party no.2 failed to pay the dues as the cheques were also dishonoured. It has further been submitted that it is undisputed fact that opposite party no.2 was not present at the time of alleged incident; applicant nos.1 to 3 being foreigner came to India on employment visa for specific time to work in Scania Company situated at Kolar, Karnataka and on the date of incident, applicant no.1 was in Maldives, applicant no.2 was in Bangalore, applicant no.3 was in South Africa and applicant nos. 5 & 6 were also in Bangalore but all these facts were not investigated by Investigating Officer. It has further been submitted that in the criminal justice system, no vicarious liability was provided under Indian Penal Code and also relied on the decisions of Hon'ble Apex Court in the cases of ***Maksud Saiyed vs. State of Gujarat*** reported in ***(2008) 5 SCC 668***, ***Shiv Kumar Jatia vs. State (N.C.T. of Delhi)*** reported in ***(2019) 17 SCC 193***, ***paragraph nos. 21 & 22***.

19. Submission of Sri Siddharth Luthra, learned Senior Advocate is that only with the intention to settle the civil dispute, criminal prosecution is not a remedy specially in the circumstances when there is an arbitration clause in the agreement. He also relied on the decision of Hon'ble Apex Court in the case of ***Abhishek vs. State of M.P.*** reported in ***2023 SCC***

OnLine SC 1083, paragraph nos.11, 12, 16, 17 & 22 as well as ***State of Haryana vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***. It has, thus, been submitted that learned trial court issued summoning order against the applicants in the most mechanical manner, hence, the impugned proceedings are liable to be quashed.

20. Sri Purnendu Chakravarty, learned counsel for opposite party no.2 submitted that the evidence collected by Investigating Officer cannot be evaluated at this stage. He relied on the decisions of Hon'ble Apex Court in the following cases:-

"(i) ***State of U.P. and another vs. Akhil Sharda and other*** reported in ***2022 SCC OnLine SC 820***,

(ii) ***Kaptan Singh vs. State of U.P. and other*** reported in ***LL 2021 SC 379***,

(iii) ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra*** reported in ***2019 18 SCC 191*** and

(iv) ***C.B.I vs. Arvind Khanna*** reported in ***(2019) 10 SCC 686***."

It has further been submitted that in the present case, principles laid by Hon'ble Apex Court in the case of ***State of Haryana vs. Bhajan Lal and others*** reported in ***(1992) SCC (Crl.) 426*** are not applicable.

21. Learned A.G.A. submitted that after detail investigation, charge-sheet was filed by Investigating Officer and all these defense of the accused cannot be considered at this stage.

22. Learned A.G.A. as well as learned counsel for opposite party no.2 did not dispute this fact that informant/opposite party no.2 was not present at the time of the said incident and he came to Lucknow on 19.12.2020

after 2 days from the date incident i.e. 17.12.2020 then lodged F.I.R. on the basis of presumption that vehicles were put to fire on the initiation of officials of Scania Company only to avoid the liability of the agreement.

23. Considering the submissions of learned counsel for the applicants, learned A.G.A. for the State, learned counsel for the opposite party no.2 and going through the contents of application, other relevant documents, counter affidavit, rejoinder affidavit, written submissions of the parties; it is evident that applicants are officials of M/s Scania Commercial Vehicles India Pvt. Ltd. and opposite party no.2 is proprietor of M/s Eagle Travels and Director of M/s Falcon Bus Lines Pvt. Ltd. It is further evident that opposite party no.2 purchased the buses from Scania Company in the name of M/s Eagle Travels and M/s Falcon Bus Lines Pvt. Ltd. In regard to the regular after-sales services of these buses, 3 afore-mentioned separate Repair and Maintenance Contracts were executed. It is also evident from the said R.M.C.s that there is one Clause 09 which provides for the arbitration clause, in case, any disputes arose between the parties.

It is undisputed fact that some dispute was arisen between the parties related to service work, in this regard, Scania Company terminated the Repair Maintenance Contracts in terms of termination clause in agreement due to outstanding liability of Rs.14,47,544/- of M/s Eagle Travels and Rs.18,79,359/- of M/s Falcon. Thereafter, opposite party no.2 filed complaint dated 31.01.2020 and lodged F.I.R. No.11191048200192 dated 29.02.2020 U/s 420, 406, 114 I.P.C. against applicants at Police Station- Sarkhej, Ahmedabad. After termination of aforesaid Repair and Maintenance Contracts by Scania Company vide notice dated 13.01.2020, 03 buses in question were sent by opposite party no.2 to avail the services on 05.01.2020, 15.03.2020 and 09.03.2020; the officials of M/s Scania Company informed that service related works would be done in the mode of cash payment but the approval was not given by opposite party no.2,

hence, applicant no.6 filed F.I.R. No.145 of 2020 dated 04.07.2020 U/s 34, 120-B, 419, 420, 448, 465, 463, 464, 506 I.P.C. against opposite party no.2 for illegal acts committed on 13.03.2020 by taking signature forcibly with the association of police personnel of Gujarat. Thereafter, opposite party no.2 moved an anticipatory bail application and in his bail application, he accepted this fact that he visited the office of Scania Company on 13.03.2020 along with purported officials of Gujarat Police; he filed Special Civil Suit No.385 of 2021 before learned Principal Civil Judge (S.D.), Ahmedabad invoking specific performance of agreement which was allegedly taken from the officials of Scania Company on 13.03.2020 under duress with the association of Gujarat Police.

It is further evident from the record that certain E-mails dated 10.06.2020, 16.06.2020, 19.06.2020 were sent by officials of M/s Scania Company to opposite party no.2 to take back the buses as the company would not be responsible for safety and security of the said buses which were parked outside. On 17.12.2020, 03 buses parked outside the workshop caught fire.

It is further evident from the record that some amount in relation of after-sale service was due on the opposite party no.2 in lieu of same, some post-dated cheques were issued but some cheques were dishonoured. As opposite party no.2 purchased the buses of Scania Company and there might be a deficiency in after-sale service or violation in the Repair and Maintenance Contracts for handling such circumstances, there is statutory provision in Act No.35 of 2019 i.e. the Consumer Protection Act, 2019, but in place of taking appropriate steps as per the aforesaid Act, two F.I.R.s were lodged by opposite party no.2.

It is also evident that the alleged incident does not fulfill the ingredients of Section 436 I.P.C. as well as 506 I.P.C. and Sections 406 &

420 I.P.C. are also not made out because it is not disputed that amount in question was due on opposite party no.2. As in the case of *Abhishek vs. State of M.P. (supra)*, Hon'ble Apex Court categorically observed that criminal proceedings cannot be initiated only with the intention to settle the civil dispute. Therefore, the impugned proceedings are sheer abuse of legal provisions.

24. With the above observations, the present application U/s 482 Cr.P.C. is **allowed** and the entire proceedings of Case No.122651 of 2022 (*State vs. Petr Novotny and others*) arising out of Case Crime No.492 of 2020 as well as summoning order dated 17.12.2022 passed by learned Special Chief Judicial Magistrate, Lucknow whereby applicants were summoned U/s 406, 420, 506, 120-B, 436 I.P.C. and charge-sheet dated 10.12.2022 filed in the aforesaid sections in relation to Case Crime/F.I.R. No.492 of 2020 are hereby **quashed**.

25. Office is directed to communicate this order to trial court, forthwith.

Order Date :- December 6, 2023

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