

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

Crl Petn. No.51 of 2022

M/S Orion Security Solution Pvt. Limited

.....Petitioner

_V_E_R_S_U_S_

The State of Tripura & Another

.....Respondents

For Petitioner(s) : Mr. P. K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

For Respondent(s) : Mr. S. Ghosh, Addl. P.P.
Mr. S. Lodh, Advocate.
Mr. S. Majumder, Advocate.

Whether fit for reporting : **YES**

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_J_U_D_G_M_E_N_T_

25.07.2024

Heard Mr. P. K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the petitioner also heard Mr. S. Ghosh, learned Addl. P.P. Mr. S. Lodh, learned counsel assisted by Mr. S. Majumder, learned counsel appearing for the respondents.

[2] The present petition has been filed under Section-482 of the Code of Criminal Procedure, 1973 for quashing the FIR dated 25.08.2021 registered vide Amtali P.S. Case No.2021 AMT 113 under Sections-120(B)/420 of the Indian Penal Code and the proceeding carried out by the investigating officer.

[3] The facts in brief are that the petitioner company had preferred the present petition under Section-482 of Cr. P.C. for quashing the FIR dated 25.08.2021 registered vide Amtali P.S. Case No.2021 AMT 113 under Sections-120(B)/420 of the IPC and the proceeding carried out by the investigating officer since no commission of offence has been established against the petitioners. The petitioner company after being a successful bidder had been awarded with the contract of supplying of manpower under the respondent No.2 and in continuation of the contract; the same had been terminated on the issue of collection of money from the recruitees during the recruitment process and also on the issue of non-payment of wages.

[4] The respondent No.2 in violation of clause-3.9 of the Contract had terminated the contract on giving undue indulgence to SOFED which is not registered under partnership Act or Companies Act. The respondent No.2 also did not refund the bank guarantee amount to the petitioner No.2 and when so requested, the respondent No.2 had filed a false, concocted FIR basis on false and fabricated allegations which has got no basis at all. The entire case falls within the ambit of civil procedure since the same relates to documentary evidence.

[5] Being aggrieved, the present petition is filed before this Court by the petitioner-company for quashing the FIR and the proceeding thereunder.

[6] Mr. P. K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the petitioner has submitted that the impugned FIR fails to make any specific allegation against the petitioner-company in relation to the offences alleged therein and in absence of any allegation of criminal conspiracy under Section-120(B) of IPC or in absence of any allegation of dishonestly inducing anyone under Section-420 of IPC.

[7] The impugned FIR fails to allege any intention to cheat or commit criminal conspiracy against anyone with regard to the petitioner-company. Since the petitioner-company has never collected money from any sources and since there is no specific allegation from any recruits regarding collection of money in the name of recruitment, there cannot arise any defaults committed by the petitioner-company. Since the un-controverted allegations contained in the impugned FIR fails to demonstrate the allegation of collection of money from the recruits in the recruitment process or non-payment of wages. He stated that there was no delay in making any wages paid and even during COVID in the absence of any attendance, full payments were made.

[8] It has been further contended that due to the delay on the part of JICA project, the salary was disbursed lately for which the petitioner-company cannot be held liable. The petitioner-company had timely paid the salary to the employees and there is no due of any wages. Petitioner-company provided professional training and also insured the employees and drawn attention of this Court to insurance premium paid and policy documents and therefore some deductions were made.

[9] The CEO and Project Director of Tripura JICA Project by its letter dated 29th June, 2021 with a deliberate intention had informed the petitioner-company for amendment of the terms and conditions of contract for supply of manpower by dropping the Clause No.3.9 of the Contract and since the petitioner-company had not agreed to amend the said clause, the termination of the Contract came into force following the impugned FIR.

[10] By letter dated 01.04.2022 the petitioner-company had requested the respondent No.2 to release the bank guarantee amount in connection with the contracts after submission of no-dues certificate from all outsourcing staffs. In spite of the above, the respondent No.2 has not released the bank guarantee amount. The respondent No.2 is liable to pay salary of six months to the personnel due to breach of this clause on grudge, the impugned FIR had been filed with *mala fide* intention and to delay the payments to the petitioner-company.

[11] The present FIR is bad in law and the continuation of criminal proceeding arising out of or in connection with the present FIR against the petitioner-company would amount to abuse of process as the petitioner-company would be gravely prejudiced on account of baseless and frivolous and scandalous allegations made by the respondent No.2. The complaint do not attracts an offence under Section-120B and he contended that the Section-415 of IPC in-order to punish under Section-420 of IPC and therefore prayed to quash the FIR.

[12] Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State has contended that the ingredients of the complaint made are suitable to register a case by taking cognizance under Sections-420 and 120 (B) of IPC. He also drawn attention of this Court to the relevant provisions of the agreement and also recorded the statement under Section-161 of Cr. P.C. of the employees during the course of investigation wherein it is stated that same amounts were collected from them. He also placed reliance on the judgment of Hon'ble Apex Court in A.M. Mohan v. The State represented by SHO and Another reported in (2024) 3 SCR 722 and submitted charge-sheet which is also filed recently and prayed to dismiss the present petition.

[13] Mr. S. Lodh, learned counsel appearing for the respondent No.2 adopted the arguments of the learned Addl. P.P.

[14] Heard both sides.

[15] As per the argument of Mr. P. K. Biswas learned senior counsel the ingredients required under Section-415 of the IPC have not been made out and a fair reading of the complaint do not indicate that the respondent police authority to initiate an FIR and to take steps for punishing the petitioner under Section-420 of IPC. In support of his contention he placed reliance upon the agreement entered between both i.e. the petitioner and the respondent No.2. The role of the petitioner is that he is a service provider and has to provide trained manual assistance by recruiting the people and provide their services in terms of the contract. That being so, the petitioner performed his obligatory duties and accordingly recruited people and provide them training by engaging the services of expert from various parts of the country and thus, men were recruited accordingly.

[16] As per the agreement periodically as and when bills were paid and accordingly, without any delay, payments were disbursed with the respective employees. He also submitted even as per the statement of the payments made its clearly evident that even without obtaining statements of attendance registers and also during the COVID period even though the employees did not serve he has disbursed full salaries.

[17] A medical insurance was also provided to the entire employees under the Group Medical Insurance Scheme which was valid from May 2021 to May 2022 and payment of Rs. 2,81,097/- paid for sum insured Rs.3,00,00,000.00 (Rupees Three crore) and the names of the employees were also enclosed accordingly. Reliance has also been placed upon the final settlement of each employee and payments were also made in April 2022. That apart, learned senior counsel appearing for the petitioner has relied upon **2024 3 SCR 722 A. M. Mohan v. The State represented by SHO and Another** and prayed before this Court to set aside the FIR and also the consequential charge sheet which is said to have been filed recently as stated by the learned Addl. P.P.

[18] At the threshold to take the cognizance of the complaint and register an FIR under Section-120(B) and 420 of IPC the copy of the complaint is accordingly extracted hereunder:

“.....
To

The Officer-in-Charge,
Amtali Police Station, West Tripura.

Sub:- Complaint in respect of allegation of collection of money by M/S Orion Security Solutions Pvt. Ltd. in the name of recruitment of personnel and also allegation of non-payment of due wages.

Ref.No.F.2-2(5)/JICA/SCATFORM/Estt/Group-X/Part-III/2021/6918-919
dt.21/08/2021

Sir,

This is to inform you that the complaint in respect of allegation of collection of money by M/S Orion Security Solutions Pvt. Ltd. in the name of recruitment of personnel and also allegation of non-payment of due wages was sent to the officer in charge, Airport Police Station, Narshinghar, West Tripura since the office of Project Management Unit, Tripura JICA Project is located in its jurisdiction. However, the Officer in charge personally visited this office on 23.08.2021 and advised to file the complaint is Amtali Police Station since the office of M/S Orion Security Solution Pvt. Ltd. is located in the jurisdiction of Amtali Police Station.

Therefore, the said complaint with the enclosures received back from officer in charge Airport Police Station is enclosed herewith with the request to kindly register FIR under appropriate section against M/S Orion Security Solutions Pvt. Ltd. and their officials and take necessary further action in accordance with law.

.....”

[19] A fair reading of the complaint indicates two grievances pointing out against the petitioner and the same is extracted hereunder:

“(i) complaint in respect of allegation of collection of money by M/S Orion Security Solutions Pvt. Ltd. in the name of recruitment of personnel and also (ii)allegation of non-payment of due wages was sent to the officer in charge, Airport Police Station, Narshinghar, West Tripura since the office of Project Management Unit, Tripura JICA Project is located in its jurisdiction.”

[20] In the said complaint grievance No.1 is allegation of collection of money by M/S Orion Security Solutions Pvt. Ltd. in the name of recruitment of personnel (ii) allegation of non-payment of due wages was sent to the officer in charge of Airport P.S., Narshinghar. On the strength of the complaint made, the SHO, Amtali P.S. within whose jurisdiction the matter falls has registered an FIR being FIR No. 2021 AMT 113 dated 25.08.2021 under Sections-120(B)/420 of the Indian Penal Code.

[21] In the accused column it is shown as M/S Orion Security Solutions Pvt. Ltd. Since the copy of the complaint does not indicate any specific overt-act and specific grievances of the individuals obviously it is understood that at the

stage of investigation some information is sufficient to take cognizance and to proceed with the matter against the accused person. As many as 19 statements recorded under Section-161 Cr. P.C. are placed before this Court and almost all are on the same lines. One of such which has been read-over by the learned Addl. P.P. before this Court which is extracted hereunder:

“Statement of Sri Suman Shil(36) S/O Sri Ajit Kumar Shil of Madhya Pratapgarh, Near New Jewels Clubs, PS AD Nagar M-9774134656, recorded U/S 161 CrPC in connection with Amtali PS Case No 2021 AMT 113 Dated 25/08/2021 U/S-120 B/420 IPC.

Myself Sri Suman Shil, on Dt-20/04/2020 through M/S Orion Security Solution Pvt. Ltd I have joined as Accountant Salary and Taxes at Project for Sustainable Catchment Project Management in Tripura (SCATFORM) under Tripura JICA Project. Actual salary of the said post is Rs-25,000/- but M/S Orion Security Solution Pvt. Ltd used to pay me Rs-20497/- I was recruited by the officer of M/S Orion Security Solution Pvt. Ltd Sri-Niraj Kumar Jha. Our salary used to be drawn from the account of M/S Orion Security Solution Pvt. Ltd. From my salary, as a provident fund Rs-3600/- and P.Tax Rs-208 used to be deducted, even then still I used to get paid Rs-695/- less from Rs-25,000/-. Regarding this matter whenever I asked to Niraj Kumar Jha he never replied nor explain me. He also used to say that Rs-700/- has been deducted for the purpose of health insurance. But he never gave me any document in related to health insurance. When during Job offer cash Rs-12,000/- was taken from me. We used to get our salary only after dated-07 of any day. In this way Niraj Kumar Jha cheated me.

Sd.
Sujit Barman
Inptr. Of Amtali Police Station
C/Tripura JICA Project
Prakriti Bhawan, Hatipara, Gandhi Gram
Date 28/01/2022”

[22] A fair reading of the complaint made by the Project Manager Tripura JICA Project signed by Shivanand S. Talawar, Director Administration & Finance PMU, Tripura JICA Project where, it has been alleged in the said complaint about collection of money by M/S Orion Security Solutions Pvt. Ltd. in the name of recruitment of personnel.

[23] Now, dealing with the said allegation the 161 statement of Mr. Suman Shil as stated that during his job offer cash of Rs.12,000/- was taken from him. Insofar as the second allegation that non-payment of due wages, it is indicated in the complaint that payment was made only after 7th of any date and in this way Mr. Niraj Kumar Jha cheated me. It is to be seen that from all the statements recorded under Section-161 Cr. P.C. invariably the person who gave

their statement before the IO under Section-161 Cr. P.C. everyone has stated “in this way that Niraj Kumar Jha cheated me”.

[24] Now, it falls for consideration of this Court whether there is any specific allegation against the accused person/petitioner herein i.e. M/S Orion Security Solutions Pvt. Ltd. As seen from the complaint made by the complainant/respondent No.2 and the statement recorded under Section-161, there is no express and specific overt-act made by the employees against M/S Orion Security Solutions Pvt. Ltd regarding collection of money before offering the job.

[25] It is also not indicated in the said 161 statement as to what for this amount i.e. Rs.12,000/- was received at the time of offering job. Making the payment of wages after 7th is one of the allegation and the same needs to be tested whether it attracts Section-120(B) and Section-420 of IPC for the said appreciation of the legal position whether the said facts would fixed into the Section-415 of IPC and Section-120(B) of IPC in-order to punish under Section-420. For the purpose of reference, Sections-120(B), 420 and 415 are extracted hereunder:

“120-B : Punishment of criminal conspiracy- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six month, or with fine or with both.

Section-415. Cheating-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Section-420. Cheating and dishonestly inducing delivery of property-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

[26] Viewed from any angle since the complaint itself is not specific and the investigation made by the officers by recording statement under Section-161 of the so called employees who were yet to have been aggrieved, it do not indicate that M/S Orion Security Solutions Pvt. Ltd. in any way have cheated the employees to attract Section-415 of IPC as the ingredients are not justified. This Court also considers the judgment of the Hon'ble Apex Court in *A.M. Mohan v. The State represented by SHO and Another*, reported in (2024) 3 SCR 722 wherein, it has been categorically stated thus:

“9. The law with regard to exercise of jurisdiction under Section 482 of Cr.P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of *Indian Oil Corporation v. NEPC India Limited and Others*¹ after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 :

1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] .

The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a (2006) 6 SCC 736 : 2006 INSC 452 meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated

with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise

their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

10. The Court has also noted the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that this is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. The Court, relying on the law laid down by it in the case of *G. Sagar Suri and Another v. State of U.P. and Others*² held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution (2000) 2 SCC 636 : 2000 INSC 34 should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

11. This Court, in the case of *Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another*³ has culled out the ingredients to constitute the offence under Sections 415 and 420 of IPC, as under:

“15. Section 415 of the Penal Code reads thus:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

18. Section 420 of the Penal Code reads thus:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

20. The dishonest inducement is the sine qua non to attract the provisions of Sections 415 and 420 of IPC. In our considered view, the same is totally lacking qua the present appellant. In that view of the matter, we find that continuation of the criminal proceedings against the present appellant would be nothing else but amount to abuse of process of law resulting in miscarriage of justice.”

[27] Insofar as making the payment after the due date, it cannot be considered under the definition of cheating. There is no specific allegation that M/S Orion Security Solutions Pvt. Ltd. have cheated but it is stated in all 161 statements that 'Niraj Kumar Jha cheated'. There is an inconsistency between the copy of the complaint and the 161 statements.

[28] It is to be seen that any criminal case specific overt-act against a specific person needs to be indicated if not in the complaint at least in the process of investigation the same should be reflected. In the complaint there is no whisper about Mr. Niraj Kumar Jha and in the 161 Statement there is no specific allegation against M/S Orion Security Solutions Pvt. Ltd. In the FIR, M/S Orion Security Solutions Pvt. Ltd. has been shown as the accused person but not Mr. Niraj Kumar Jha.

[29] Since, the ingredients under Section-415 and 120-B of IPC have not been made out *prima facie*, this Court is of the opinion that the FIR fails to stand to the test of Section-415 and 120-B of IPC and accordingly, they are not punishable under Section-420 of IPC and the FIR is liable to be quashed. Accordingly the FIR No. 2021 AMT 113 dated 25.08.2021 registered vide Amtali P.S. stands quashed.

[30] In view of the above, the present petition stands allowed and thus, disposed of. As a sequel, miscellaneous application pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A. Ghosh

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