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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 949/2025 & CRL.M.A. 4401/2025**

M/S PRAGATI ELECTROCOM PVT LTD Petitioner

Through: Mr. Ramjee Pandey, Mr. Antariksh Singh, Mr. Aakash Singh and Mr. Shailendra Singh, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION & ANR.

.....Respondents

Through: Mr. Anupam S. Sharma, SPP for CBI with Ms. Harpreet, Mr. Prakash, Mr. Ripu Daman Sharma, Mr. Vashisht Rao and Mr. Syamantak Modgil, Advocates for CBI with Mr. Jitender Kumar, IO for CBI
Mr. Divyansh Hanu Rathi, Mr. Sumedha Sindhu and Mr. Ankit Kumar, Advocates for-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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12.02.2025

1. This petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking quashing of the FIR No. RC 2162024A0003 under Section 120B, 201, 420 of Indian Penal Code, 1860 ('IPC') and under Section 13(2) read with 13(1)(d) Prevention of Corruption Act, 1988 registered at Police Station AC-1 Delhi.
2. Learned counsel for the Petitioner states that the Petitioner seeks quashing of the subject FIR on the plea that all the allegations raised against



the Petitioner in the FIR emanates from the contract awarded by All India Radio ('AIR') to Respondent No. 2 for erection, testing and installation of 3 towers 50 m height for AIR at Udaipur (State of Tripura), Kolasib and Tuipang (both in the State of Mizoram) vide work orders dated 01.11.2010.

3. He states that the work order dated 01.11.2010 was further sub-contracted to the Petitioner by Respondent No. 2 in the form of purchase order dated 01.12.2010. He further states that the aforesaid purchase order issued to the Petitioner was withdrawn on 03.01.2014 and the Respondent No. 2 exercised its right to get the project work completed at the risk and cost of the Petitioner.

4. He states as per the subject FIR the first allegation against the Petitioner herein is that despite the non-completion of work mentioned in the purchase order dated 01.12.2010, Petitioner has been paid a sum of Rs. 53.73 lakhs, which is towards the 80% of the goods supplied. He states that however, the payment of the said materials is as per the purchase order and any dispute in this regard would have to be first determined in the arbitration proceedings as per the arbitration clause and cannot be the basis for initiating criminal proceedings.

5. He states that the second allegation against the Petitioner is that the Performance Bank Guarantee (PBG) of Rs. 13,26,689 furnished by the Petitioner lapsed in 2018 and the same was not renewed though the contract was incomplete. In this regard, he states that the work under the purchase order has been completed by the 3rd Contactor i.e. M/s Global Technologies INC in the year 2018 and therefore the lapse of the bank guarantee in 2018 cannot give any cause. He states that the lapse of the bank guarantee cannot be used as a basis for maintaining the subject FIR. He states that the



contention of the Respondent No. 2 that it has suffered losses in the construction cannot be the basis of initiating criminal proceedings and is a matter which should have been resolved through the adjudicatory process of arbitration.

6. Issue notice. Learned SPP accepts notice.

7. He states that the present petition is pre-mature. He states that the matter is still being investigated by the prosecution and incriminating evidence has already been found against the Petitioner, which shows criminal wrong doing by the Petitioner in the project.

8. He states that it appears to the prosecution that the present petition has been filed with the motive of garnering the extent of the evidence collected by the Respondent No. 1 against Petitioner. He states that any disclosure of the material collected at this stage to the Petitioner will compromise the investigation allowing the Petitioner to potentially tamper with the evidence. He states that he would therefore urge the Court to not entertain this petition as it would jeopardize the investigation.

9. He states that on a conjoint reading of Section 41(1)(b) read with Section 154 and 157 of Code of Criminal Procedure, 1973, the prosecution is entitled to investigate the subject FIR, as prima facie in these facts there exists a presumption pertaining to the commission of a cognizable offence.

10. He states that in the facts of this case, the losses suffered by the public exchequer are writ large.

11. He states that the Petitioner herein had clearly abandoned the project and the project was finally completed by a third agency, which escalated the cost to the exchequer three times. He states conspicuously the risk and cost clause was not included when this contract was re-tendered 3rd time to M/s



Global Technologies INC and this led to gains for the Petitioner herein.

12. He states, however, the issue is not pertaining to the cost escalation alone and the investigation has revealed serious wrong doing by the Government officials in connivance with the officers of the Petitioner. He emphasised on the fact that in the subject FIR, specific allegations have been levied against Narendra Singh Yadav and Atul Kumar Rastogi who were the employees of Respondent No. 2 for providing undue gains to the petitioner by deliberately not invoking the PBG¹ on account of Petitioner's failure to perform and instead in pursuance of the criminal conspiracy with the officials of the petitioner allowed the PBG to lapse.

13. He relies upon the judgement of the Supreme Court in **Trisuns Chemical Industry vs. Rajesh Agarwal and Others**² to contend that the existence of an arbitration clause in the agreement between Petitioner and Respondent No. 2 is not a bar for initiation of criminal proceedings wherein the nature of the allegations show clear criminal wrong doing. He relies upon paragraph '9' of the said judgement which reads as under: -

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal*.”

¹ Performance bank guarantee

² (1999) 8 SCC 686



14. He also relies upon the judgement of the Supreme Court in **State of Haryana and Others v. Bhajan Lal and Others**³ and more specifically, paragraphs 30, 31 and 32, which reads as under: -

“30. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a “cognizable offence” (as defined under Section 2(c) of the Code) if given orally (in which case it is to be reduced into writing) or in writing to “an officer incharge of a police station” (within the meaning of Section 2(o) of the Code) and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as “*First Information Report*” and which act of entering the information in the said form is known as registration of a crime or a case.”

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

³ 1992 Supp. (1) SCC 335



32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “*information*” without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, “*reasonable complaint*” and “*credible information*” are used. Evidently, the non-qualification of the word “*information*” in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word “*information*” without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that ‘*every complaint or information*’ preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that ‘*every complaint*’ preferred to an officer in charge of a police station shall be reduced in writing. The word ‘*complaint*’ which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word ‘*information*’ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.”

15. This Court has considered the submissions of the parties and perused the record.

16. In the facts of the present case, a perusal of the complaint, which forms the subject matter of the FIR if taken prima facie show that a cognizable offence has been committed by the officials of Respondent No. 2 in connivance with the Directors and Officials of the Petitioner company and therefore, they are not merely vague assertions. The allegations in the FIR



indicate criminal wrongdoing which is not limited to over-invoicing or recovery of outstanding dues. The FIR points to a greater criminal conspiracy conspired by officials of Respondent No. 2, with the knowledge and involvement of the Petitioner, who was also a beneficiary of the conspiracy.

17. The Petitioner received 80% of the material cost despite failing to complete the purchase order. Meanwhile, the officials of Respondent No. 2 neither ensured the renewal of the Performance Bank Guarantee (PBG) nor invoked the same despite the contractor's failure to perform. In furtherance of their conspiracy with the Directors and officials of the petitioner company, these officials excluded crucial requirement of it being at the risk and cost of the Petitioner, when the contract was tendered to M/s Global Technologies INC. This becomes evident as the Respondent no. 2 on 14.11.2013 while cancelling the purchase order of the Petitioner had awarded the same to M/s Rajender Singh & Bros at the risk and cost of the Petitioner.

18. It is a settled law that High Court should not assume the role of Trial Court and embark upon an inquiry as to the reliability of the evidence and sustainability of the accusation. The Supreme Court in the case of **State of Karnataka v. M Devendrappa**⁴ has opined that in the exercise of inherent powers this Court could only quash an FIR and proceedings emanating therefrom only in the case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive; or if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate. The relevant extract of the said Judgement reads as



under:

“9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. 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.** Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] , and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) **It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed.** It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. **If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be**

⁴ AIR 2002 SC 671



no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings”

(Emphasis Supplied)

19. In the considered opinion of this Court, in the facts of this case there are allegations made against the Petitioner company and its officials of criminal wrongdoing and not merely losses on account of breach of contract; moreover, the investigation is still going on and final report is yet to be prepared it cannot be said that the Petitioner has made out a case for quashing. None of the grounds as set out in the judgement of Supreme Court **Bhajan Lal (Supra)** are satisfied by the Petitioner.

20. This Court finds merit in the submission advanced by the learned SPP that existence of an arbitration clause would not automatically vitiate the criminal proceedings as arbitration clause is not a substitute to criminal trial. [Re: **Trisuns Chemical Industry (Supra)**] if the allegations are not merely of losses but criminal wrongdoing by the officers of the accused.

21. Accordingly, there is no merit in the submissions advanced by the learned counsel for the petitioner and for the reasons recorded above the petition stands disposed of along with all pending applications.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 12, 2025/rhc/akp/AKT