

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 561 of 2014**

1. Vimal Patni S/o Late Shri Dharamchand Patni Aged About 65 Years R/o. 227/A.A.J.C. Bose Road, Infront Of Minto Park Gardiniya Building Flat No.02b Kolkata 700 020 (West Bengal)
2. Akash Patni S/o Shri Vimal Patni Aged About 35 Years R/o. 227/A.A.J.C. Bose Road, Infront Of Minto Park Gardiniya Building Flat No.02b Kolkata 700 020 (West Bengal)
3. Vikash Patni S/o Vimal Patni Aged About 38 Years R/o. 227/A.A.J.C. Bose Road, Infront Of Minto Park Gardiniya Building Flat No.02b Kolkata 700 020 (West Bengal)

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The Distt. Magistrate, Raipur, Tah. & Distt. Raipur (C.G.)
2. Deepak Kedia S/o Naresh Kedia Aged About 29 Years Kedia Steels, One Of The Director Of Kedia Steels, G N D Chambers, Agrasen Chowk, Raipur Chhattisgarh R/o House No. 320, Near Water Tank, Samta Colony, Police Station Sarasvati Nagar, Tah. And District Raipur Chhattisgarh.

---- Respondents

For the Petitioners	:	Shri Sourabh Sharma, Advocate.
For Respondent No.1/State	:	Shri Ashish Shukla, Government Advocate.
For Respondent No.2	:	Shri Aman Kesharwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****23.08.2017**

1. Heard.
2. This petition has been brought under Section 482 of the Code of Criminal Procedure with a prayer to quash the proceedings against the petitioners pending before the Court of Judicial Magistrate First Class, Raipur for trial of offence under Section 420 read with Section 34 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the petitioners are Directors/ Managing Directors of the Company - Vikas Smelters and Alloys Limited registered under the Companies Act, 1956. Respondent No.2 – Deepak Kedia is one of the Directors of Kedia Steels Private Limited, which is in production of M.S. Plate, I.S.M.C. and I.S.M.B. A purchase order was placed by the petitioners' company before respondent No.2 for purchase of M.S. Plate 10 mm, I.S.M.C. 150 mm and I.S.M.B. 200 mm, quantity of 60, 80 and 30 metric tonnes, respectively with a condition that the material be supplied alongwith test certificate within a period of seven days from the date of purchase order. A copy of this order is annexed as Annexure-P/5. Respondent No.2 supplied only one of the items i.e. M.S. plates after expiry of one month without any test certificate, the material supplied was inferior in quality and the supply was not made within seven days. The petitioners did not release the payment of the material supplied. Respondent No. 2 lodged various written complaints in Police Station, Saraswati Nagar, Raipur against the petitioners alleging that the petitioners have committed an offence of cheating and forgery. A notice was received from Police Station Saraswati Nagar, Raipur to the petitioners asking them to return the amount to the complainant otherwise the First Information Report would be registered against the petitioners, which was replied by them through counsel. Thereafter, FIR has been registered on 26.12.2013 against the petitioners for the offence under Section 420/ 34 of the IPC and charge-sheet has been filed. The petitioners' Company has already released an amount of Rs.2,44,000/- and Rs.1,00,000/- in favour of Kedia Steels. It is also submitted that the present is purely a civil dispute between two companies regarding the supply and payment for the supply made. There is no *mens* on the part of the petitioners for commission of offence, hence, filing of

complainant is abuse of process of law which cannot be allowed to continue by way of the criminal trial of the petitioners. Hence, it is prayed that the criminal proceedings against the petitioners be quashed.

4. Learned State counsel has opposed the submissions and the arguments made on behalf of the petitioners.

5. Learned counsel for respondent No.2 states that the petitioners had deliberately withheld the payment of the commodities supplied with an intention to defraud respondent No.2 and since the petitioners never intended to pay the amount to respondent No.2, their Act is covered under Section 420/34 of the IPC.

6. Perused the record.

7. Learned counsel for the petitioners placed reliance on the judgment passed in the Supreme Court in the case of **M/s Suryalakshmi Cotton Mills Ltd vs M/s Rajvir Industries Limited & Others** reported in **AIR 2008 SC 1683** in which fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage. Learned counsel for the petitioners submitted that similar view has also been by the Supreme Court in the case of **International Advanced Research Centre for Powder Metallurgy and new materials (ARCI) and Others vs. Nimra Cerglass Technics Private Limited and Anr.** reported in **(2016) 1 SCC 348**.

8. Reliance has also been placed on the judgments of **Paramjeet Batra vs. State of Uttarakhand and Others** reported in **2013(11) SCC 673**,

Binod Kumar and Others vs. State of Bihar and Another reported in **2014(10) SCC 663** and **Sarabjit Singh vs. State of Punjab and Others** reported in **(2013) 6 SCC 800**. It is submitted that the principles laid down in these judgments are clear that the Court has to consider at the initial stage of the case, the test to be applied in such matters is whether the allegations in the complaint disclose a criminal offence or not thereby the High Court may exercise inherent jurisdiction under Section 482 of the Code of Criminal Procedure, otherwise such jurisdiction should not be exercised to stifle a legitimate prosecution.

9. After due consideration and the submissions made on behalf of the petitioners on record, it is apparently clear that Annexure- P/5, the purchase order has been placed before respondent No.2 by petitioner No.3, the Director, with the conditions that delivery period was to be made within seven days and also the test certificate of material was to be submitted alongwith the supply/ bill.

10. The documents submitted regarding the supply are the tax invoice issued by the Kedia Steels dated 16.11.2011, transport booking memo dated 16.11.2011 and similar documents which are submitted dated 15.11.2011 and 16.11.2011. A letter was issued by Kedia Steels to the Company of the petitioners dated 23.3.2012 with respect to making the payment of the outstanding bill and a reminder was also sent to this effect on 10.3.2012 to the petitioners. In the complaint made to the Police Station, Saraswati Nagar, Raipur it was alleged by respondent No.2 that no payment was made by the Company of the petitioners and two months prior to the date of complaint, the petitioners have switched off their mobiles and email ID and

as such, no contact could be made with them. Payment of Rs.26,44,400/- was outstanding, to be paid by the petitioners thus, after having suffered lot of harassment, respondent No.2 was compelled to make the complaint against the petitioners.

11. On perusal of all the documents on record, it is found that not even a single document is there on record to show that the petitioners ever objected to the quality of the supply made by respondent No.2 and ever made any communication to this effect with respondent No.2 that the petitioners did not have any intention to cheat the respondents at the inception when the order was placed it is a matter which requires proof.

12. Respondents have placed reliance on the judgment of the Supreme Court in **Vijayander Kumar and Others vs. State of Rajasthan and Another** reported in **(2014) 3 SCC 389** in which it was held that when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Hence, this ground shall be available to the accused that the criminal proceedings against them are based on a civil ground and no interference shall be required under these circumstances. Similar view has also been taken by the Supreme Court in **Ajay Kumar Das vs. State of Jharkhand and Anr.** reported in **Criminal Appeal No.1735 of 2011** decided on 6.9.2011.

13. Reliance has also been placed by the Respondents on the judgment of the Supreme Court in the case of **R. Kalyani vs. Janak C. Mehta** reported in **2009(1) SCC 516** in which it was held that the High Court should

not ordinarily quash the criminal proceedings unless on reading of First Information Report, the face value of the allegations made if taken to be correct do not disclose any cognizable offence, and hence, the Court has to consider the material in entirety and interfere only in exceptional circumstances. Similar reliance has also been placed on the cases of **N. Soundaram vs. P.K. Pounraj and Another** reported in **(2014) 10 SCC 616** and **Mosiruddin Munshi vs. Mohd. Siraj and Anr.** reported in **(2014) 14 SCC 29**.

14. After due consideration, it appears that although it is a case of nonpayment of the commodities supplied by respondent No.2/ complainant, but looking to the complaint made by respondent No.2 and the materials placed by the prosecution, there is requirement of proof for the petitioners that they have not intended to cheat respondent No.2. The trial in the case has already commenced and the case is at the stage of framing of charge. The petitioners having opportunity to argue before the trial Court for discharge on the basis of the documents and the materials on record. Hence, under these circumstances, this does not appear to be an exceptional case in which the inherent jurisdiction of this Court should be exercised.

15. For the aforesaid reasons, this petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge