

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 1167 of 2016

1. Prashant Kumar Goyal, S/o. Late Shivkaran Goyal, Aged About 33 Years, R/o. 411- A Samta Shopping Market, Samta Colony, Raipur Chhattisgarh.
2. Sanjay Kumar Agrawal, S/o. Late Madan Lal Agrawal, Aged About 45 Years, R/o. 301 Golden New Apartment, Near Kanka Durga Nursing Home, Maharani Petha, Vishakhapatnam (Andhra Pradesh)

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : Its Secretary, Department Of Home (Police) Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh.
2. The Station House Officer, Police Station -Bhupdevpur, District – Raigarh, Chhattisgarh.
3. M/s. S. K. S. Power Generation Com. Ltd., Darramuda, Binjkot, Raigarh, District -Raigarh, Chhattisgarh
4. Jai Prakash Wasan, S/o. Shri Jagdish Lal Wasan, Aged About 57 Years, R/o. J.P.W. Infra Tech Pvt. Ltd. A-1, Shyam Enclave, T.P. Nagar, Korba, Chhattisgarh.

-----Respondents

For Petitioners	: Mr. Ashish Surana, Advocate
For Respondent/State No.1 & 2	: Mr. Neeraj Sharma, Govt. Advocate
For Respondent No.3	: Mr. Ankit Singhal, Advocate
For Respondent No.4	: Mr. Prafull N. Bharat, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/07/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought with prayer to quash/set-aside the FIR bearing Crime No.115/2016, registered at Police Station- Bhupdevpur, District – Raigarh for the

offence under Section 420/34 of Indian Penal Code against the petitioners.

2. It is submitted by the counsel for petitioners that they are Directors of Konark Global Private Limited, Raipur and their companies are engaged in sale and purchase of TMT Bar and Angles. Order was placed by respondent No.3 for supply of 756.310 MT TMT Bar worth Rs. 2,46,72,177/-. On supply of the goods, respondent No.3 did not make any payment and it was orally communicated to the petitioners that supplied goods be transferred to respondent No.4 and billed accordingly. As per Annexure P/1 dated 01.03.2016, the supplied goods were transferred to respondent No.4. Respondent No.3 vide letter dated 21.03.2016 communicated that TMT Bar supplied are not as per specifications given, hence the supply has been rejected. On billing of petitioners, respondent No.4 has made payment of supplied goods of Rs.1,95,00,000/- on 08.04.2016 but it was informed by respondent No.4 to the petitioners that goods have not been supplied by respondent No.3. Petitioners lodged a written complaint in Police Station Ajad Chowk, Raipur against respondent No.3 alleging commission of offence of cheating and forgery on 01.09.2016. On the other hand on the basis of a false complaint made by respondent No.3, respondent No.2 has registered an FIR under Crime No.115/2016 against petitioners. Hence this petition.
3. It is submitted by counsel for the petitioners that respondent No.2 has registered FIR against the petitioners without making any proper enquiry. No offence is made out against petitioner No.2 as he has resigned from Konark Global Private Limited. The facts mentioned in the petition make it clear that it is the respondent No.3, who has

committed a misconduct and offence of forgery and cheating and forgery against petitioners. Hence prayed that criminal proceedings arising out of Crime No.115/2016, initiated against petitioners be quashed.

4. Reliance has been placed in the case law reported in **(2014) 3 SCC 389, Vijayander Kumar and Others Vs. State of Rajasthan and Another** and submits that a given set of facts may make out a civil wrong and also a criminal offence. It is only when allegation in complaint discloses commission of criminal offence that will be ground for entertaining the criminal complaint. Reliance has also been placed in the case law reported in **(2014) 10 SCC 616, N. Soundaram Vs. P.K. Pounraj and Another, (2014) 7 SCC 215, Rishipal Singh Vs. State of Uttar Pradesh & Another**. On this view and settled principle of law that High Court can exercise the power under Section 482 of Cr.P.C. to prevent the abuse of process of law.
5. Reliance has also been placed in the case law reported in **(2015) 8 SCC 293, Vesa Holdings Private Limited & Another Vs. State of Kerala & Others**, wherein at para 12 of this judgment, it is held that settled proposition of law is that in every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception placed at the very inception.
6. Perused the material on record. Annexure A/1, the letter dated 01.03.2016 was by the petitioner to respondent No.3, in which it was mentioned that the order for supply of TMT Bar was made and payment is pending and it is also mentioned that as per discussion between the parties that, the supplied material may be diverted to

respondent No.4. Receipt of and contents of this letter has not been admitted by any of the respondents parties. But this letter demonstrate that material was supplied to respondent No.3 before 01.03.2016 and it was requested by the petitioner to divert the material to respondent No.4.

7. Gate pass referred to by the petitioner is dated 24.03.2016 which shows that supplied material on that date was returned because the material was not in accordance with the specification ordered. Similar Annexure A/2 is dated 21.03.2016, another gate pass dated 22.03.2016, delivery challan dated 22.03.2016, debit note dated 22.03.2016, gate pass dated 22.03.2016, delivery challan dated 22.03.2016, debit note dated 24.03.2016, gate pass dated 24.03.2016, delivery challan dated 24.03.2016, deposit note dated 25.03.2016 are perused.
8. The complaint made by the respondent No.4 against the petitioner was registered in P.S. - Bhupdevpur as Crime No.115/2016 for offence U/s. 420/34 of Indian Penal Code, in which it was stated that an order was placed by respondent No.4 on 05.04.2016 with the petitioner for supply of TMT Bar, Angles, Channels etc. worth Rs.1,93,43,625/- and it was agreed that supplier, the petitioners shall deliver the goods in the premises of respondent No.3. Further on 08.04.2016, payment of Rs.1,95,00,000/- was transferred to the account of petitioners. Thereafter, the petitioners stalled in supplying goods and have cheated the respondent No.4. Taking into consideration the facts mentioned in the complaint, offence has been registered against the petitioners.
9. Petitioners though admit that they have received the payment but they claimed they have supplied the goods. If the statement in FIR is to be

taken as it is, then it appears to be clear that on 01.03.2016 the date of Annexure A/1, there had been no transaction between the petitioners and respondent No.4. Primarily this is a situation which the petitioner needs to explain before the Court. The denial of petitioners to the claim of respondent No.4 after receipt of payment without there being any proof of supply of goods to the respondent No.4 is a matter of evidence and it has to be taken up for consideration to find out the truth. Hence after due consideration, it is found that it is not possible to hold at this stage that FIR lodged against the petitioners does not disclose any commission of offence. Hence for these reasons, it is found that the FIR is needed to be investigated by the police agency.

10. In the result, the petition is found to be devoid of merit and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge