

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.3846 of 2017 &
Crl.M.P.Nos.2819 & 2820 of 2017

1.M/s.Elbex Couriers Pvt. Ltd.,
Rep. by its Managing Director,
P.Santhamurthy, New Siddapudur,
Coimbatore-46.

2.P.Santhamurthy, Managing Director,
M/s.Elbex Couriers Pvt. Ltd.

3.M.Sivakumar, Director,
M/s.Elbex Couriers Pvt. Ltd.

...Petitioners

Harakhchand Golecha,
Proprietor of Ariand Impex,
No.98, Choolai High Road,
Chennai-112.

Vs.

...Respondent

Criminal Original petition filed under Section 482 of Criminal Procedure code, to call for the records in C.C.3216 of 2015 and quash the same in pending on the file of the Metropolitan Magistrate (Fast Track Court-I), Egmore.

For Petitioners : Mr.S.Ravichandran

For Respondent : P.Govindarajan,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed challenging the proceedings in C.C.3216 of 2015 and to quash the same.

2.Heard both sides.

3.The main ground raised in this writ petition is that there is an Arbitration Clause, in the Memorandum of Understanding entered into between the complainant and the petitioners herein.

4.According to the learned counsel for the petitioners, the existence of Arbitration Clause will preclude the complainant to initiate proceedings under Section 138 without invoking the Arbitration Clause.

5.The law is well settled that the provisions of Clause for Arbitration cannot take out the criminal acts within the jurisdiction of law.

6. Similar view has been taken by the Hon'ble Supreme Court of India in *State of Orissa and others Versus Ujjal Kumar Burdhan* reported in **2012 4 SCC 547**. The relevant portion of the said order reads as follows:

“14. Further, the impugned order also notes that in view of the arbitration agreement between the agent and the Government, all the alleged violations fell within the purview of the Arbitration and Conciliation Act, 1996 and therefore, the respondent could not be held liable for any criminal offence. This observation is against the well-settled principle of law that the existence of an arbitration agreement cannot take the criminal acts out of the jurisdiction of the courts of law.

15. On this aspect, in S.W. Palanitkar v. State of Bihar, this Court has echoed the following views: (SCC p. 250, para 22)

“22. Looking to the complaint and the grievances made by the complainant therein and having regard to the agreement, it is clear that the dispute and grievances arise out of the said agreement. Clause 29 of the agreement provides for reference to arbitration in case of disputes or controversy between the parties and the said clause is wide enough to cover almost all sorts of disputes arising out of the agreement. As a matter of fact, it is also brought to our notice that the complainant issued a notice dated 3-10-1997 to the

appellants invoking this arbitration clause claiming Rs.15 lakhs. It is thereafter the present complaint was filed. For the alleged breach of the agreement in relation to commercial transaction, it is open to Respondent 2 to proceed against the appellants for his redressal for recovery of money by way of damages for the loss caused, if any. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie.””

7. In view of the settled provisions of law, I do not find any merits in the submission made by the learned counsel for the petitioners. Hence, this criminal original petition stands dismissed. Consequently the connected miscellaneous petitions are closed.

29.08.2017

abr/arr

Index : Yes

To

1. The Metropolitan Magistrate
(Fast Track Court-I), Egmore.

2. The Public Prosecutor,
High Court, Madras.

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M.S.RAMESH,J.

abr



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