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

+ W.P.(CRL) 807/2013

DINESH KUMAR & ANR.

..... Petitioners

Through: Mr. Abhimanue Shrestha, Advocate.

versus

STATE & ANR.

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
and Mr. Jamal Akhtar & Mr. Tushar
Sannu, Advocates along with SI
Hawa Singh, PS-Madhu Vihar, for the
State.
Mr. Sudhir Naagar, Mr. Vijay Kasana
& Mr. Prashant Khatana, Advocates
for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

17.01.2017

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1. The petitioners have preferred the present petition to seek quashing of the FIR No.255/2012 registered at PS – Madhu Vihar under Sections 420/ 463/ 465/ 468/ 471/ 120B IPC against the petitioners on the complaint of respondent No.2.

2. The petition, as originally filed, is premised on a settlement arrived at between the petitioners on the one hand, and respondent No.2 on the other

hand. Under the said settlement, the petitioners and respondent No.2 had agreed to the quashing of the FIR and the proceedings arising therefrom in consideration of Rs.44 Lakhs with 8% interest to be paid by the petitioners to the complainant/ respondent No.2. Though the said agreement provides that the amount of Rs.44 Lakhs plus 8% interest has to come from the amount due from M/s Webel Technology Limited, clause 11 of the said agreement also provides that if the company of the petitioners, namely M/s August Infocom Pvt. Ltd. is unable to pay the said amount within 30 months of the settlement in question, on account of non-receipt of such payment from M/s Webel Technology Limited, the second party, i.e. the petitioner No.1 shall pay the said amount to the respondent No.2 herein. The agreement also records the cheques issued by the petitioner No.1 to respondent No.2 in respect of the said obligation. The petitioner also executed a surety bond in respect of the said obligation undertaking to make payment to respondent No.2 of the amount due if the said amount is not paid by M/s August Infocom Pvt. Ltd. by 20.03.2015.

3. This petition has remained pending and during pendency of the petition, the said period of thirty months has already expired and the obligation of the petitioner No.1 to make payment of Rs.44 Lakhs plus 8% interest has already matured.

4. The submission of learned counsel for the respondent No.2, therefore, is that the respondent No.2/ complainant is willing to the quashing of the FIR and the proceedings arising therefrom provided petitioner No.1 abides by his undertaking.

5. On the other hand, the submission of learned counsel for the petitioners is that it was first the obligation of respondent No.2 to get the FIR and the proceedings arising therefrom quashed within fifteen days of the settlement, as provided in clause 5 of the settlement. Since the respondent No.2 has not complied with that obligation, the obligation to make payment of Rs.44 Lakhs with interest @ 8% per annum is not fructified.

6. I do not find any merit in this submission of the petitioner. The pendency of the FIR and the proceedings arising therefrom has in no manner, placed the petitioners to any disadvantage qua its claim against M/s Webel Technology Limited, which is pending in arbitration. According to respondent No.2, respondent No.2 had not agreed to the quashing of the FIR and the proceedings arising therefrom at the initial stage since the petitioners had not complied with their obligation contained in clauses 1 and 6 of the MOU. This position is disputed by the petitioners.

7. Be that as it may, as noticed above, the petition has remained pending without any prejudice being suffered by the petitioners since in the meantime further investigation has not been undertaken. Since the petitioner is not ready & willing to comply with his own obligation as of date on the ground that the amount has not been received from M/s Webel Technology Limited, this petition cannot be allowed on the basis of the settlement dated 20.09.2012.

8. Learned counsel for the petitioners has then argued that even a plain reading of the FIR does not disclose commission of a cognizable offence. Learned counsel has taken the Court through the FIR in question.

9. On a plain reading of the FIR, it cannot be said that no cognizable offence is made out. The FIR has come to be registered on the orders being passed by the learned ACMM in the application preferred by respondent No.2 under Section 156(3) Cr.P.C. The relevant extract from the FIR reads as follows:

“16. That the accused persons had further filed a false and frivolous complaint in the aforesaid case pending before the company law board just to create and fabricate false evidence against the complainant by alleging that the accused No.2 behalf of accused no.1 had made a complaint to the SHO Ps Madhu Vihar, Delhi on 16.7.2010 showing the forged and fabricated acknowledgement of Ps Madhu Vihar, Delhi but the said complaint was never received/ acknowledged in Ps Madhu Vihar, Delhi as per the report of PS Madhu Vihar, Delhi received in RTI application filed by the complainant.

17. That the accused persons had further filed false and concocted registered AD receipts before the company law board alleging therein that they had issued notices of board meetings to the complainant vide registered AD receipts dated 22.10.2010, 15.1.2010 and 10.02.2011 from Malkaganj Post office, Delhi and had filed the aforesaid forged and fabricated postal receipts whereas the report on the RTI application dated 25.1.2012 filed by the complainant with the department of Post India, has clearly established that the postal receipts filed by the accused persons are forged and fabricated as the department of post, India has in its reply to the aforesaid RTI application stated “... the registered letter serial No.1193 dated 22.10.2010, 2474 dated 15.1.2011 and 4372 dated 10.02.2011 have not been booked from Malkaganj PO. The booking of registered letter is computerized in Malkaganj PO with effect from 1998 onwards”.”

10. The respondent No.2/ complainant sought registration of the FIR under Sections 420/ 463/ 465/ 468/ 471/ 120B IPC.

11. The submission of learned counsel for the petitioners is that according to the complainant, the said allegedly forged and fabricated documents were used in Court proceedings and, therefore, no Court can take cognizance in respect of the said documents on the ground of the documents being forged and fabricated as provided under Section 195 Cr.P.C.

12. I do not find any merit in the aforesaid submission of the petitioner. As would be evident from the aforesaid extract of the FIR, there are clear allegations of forgery and fabrication of documents by the petitioners. The act of forgery and fabrication, if any, was complete before the documents were being used in judicial proceedings before the Company Law Board. Therefore, the bar under Section 195 Cr.P.C. would not come into play.

13. For all the aforesaid reasons, I find no merit in this petition.

14. Dismissed.

VIPIN SANGHI, J

JANUARY 17, 2017

B.S. Rohella