

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 429 OF 2018

1. Pancharatna Metal Processing Ltd.,
5-2-202 to 205, 2nd Floor,
Balaji Market, Distillery Road,
Ranigunj, Secunderabad.
2. Kishore Murlidhar Agarwal
Age: 63 years, Occu.: Business,
R/o 8-2-120/77, Plot 92-A,
Next lane to TDP office,
Banjara hills, Road-2,
Hyderabad.
3. Shankar Kishore Agarwal
Age: 30 years, Occu: Business,
R/o 8-2-120/77, Plot 92-A,
Next lane to TDP office,
Banjara hills, Road-2,
Hyderabad.
4. Aruna Kishore Agarwal
Age: 50 years, Occu: Business,
R/o 8-2-120/77, Plot 92-A,
Next lane to TDP office,
Banjara hills, Road-2,
Hyderabad.

..PETITIONERS

VERSUS

1. M/s Raghuveer Steel Partnership Firm
Through its Partnership
Laxminivas Omprakashji Mallawat
Age: 43 years, Occu.: Business,
R/o House no. 2-20-64, Kadrabad,
Bhajimadi, Jalna.
2. State of Maharashtra

..RESPONDENTS

Mr. Vijay Sharma, Advocate h/f Mr. V.A. Bagdiya, Advocate
for petitioners.

Mrs. A.N. Ansari, Advocate for respondent no.1.

Mr. S.B. Joshi, A.P.P. for respondent no.2 - State.

CORAM : SANGITRAO S. PATIL, J.

DATE : 07th AUGUST, 2018

JUDGMENT :-

Rule, returnable forthwith. Heard finally with
the consent of the parties.

2. The petitioners have challenged the order dated
07th March, 2018 passed by the learned Additional Sessions
Judge, Jalna in Criminal Revision Application no. 43 of
2017 whereby the order dated 19th July, 2016 passed by the
learned Judicial Magistrate First Class, Court no.2, Jalna
issuing process against the petitioners for the offences
punishable under Sections 409, 420, 468 read with Section
34 of the Indian Penal Code ("I.P.C." for short), came to
be confirmed.

3. The learned Counsel for the petitioners submits
that as per the Memorandum of Understanding ("MOU" for
short) executed on 07th November, 2013 between the parties,

the machineries worth Rs.4,35,00,000/- were sold out to respondent no.1. As per term no.8 of that MOU, respondent no.1 had undertaken to clear all taxes i.e. Excise Duty and CST on the said machineries. Moreover, transportation, loading and disassembling of machineries and other expenses were to be borne by respondent no.1. The learned Counsel for the petitioners submits that respondent no.1 dismantled all the machineries and transported them to his place of business at Jalna. Nothing has remained to be taken away by him. However, it is falsely alleged that the material worth Rs.35,27,299/- has not been sent by the petitioners to respondent no.1 despite repeated demands. He submits that this dispute is purely of a civil nature. As per clause (9) of the MOU, in the event of any dispute and differences, it was decided to resolve those issues by mutual consultation and failing which, it was agreed that it should be resolved through a sole Arbitrator M/s Sunil & Sanjay, Chartered Accountants, Hyderabad, whose proceedings and jurisdiction will be within Hyderabad.

4. The learned Counsel for the petitioners submits that in the complaint there is no whisper of this MOU and

by suppressing this material fact, respondent no.1 succeeded in getting the order of issue of process against the petitioners. He submits that considering the facts and circumstances of the case, asking the petitioners to face criminal proceeding without any basis is nothing but an abuse of process of law. In support of his contention he cited the judgments in the case of **B. Suresh Yadav Vs. Sharifa Bee and Another (2007) 13 SCC 107, Suneet Gupta Vs. Anil Triloknath Sharma and Others (2008) 11 SCC 670** and **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others Vs. Nimra Cerglass Technics Private Limited and Another (2016) 1 SCC 348**. He submits that the learned Magistrate as well as the learned Additional Sessions Judge did not consider the facts of the case in their proper perspective and wrongly issued and confirmed the order of issue of process against the petitioners. He, therefore, prays that the impugned orders may be quashed and set aside.

5. The learned Counsel for respondent no.1 opposed the petition. According to her, as seen from the contents

of the complaint, material worth Rs.35,27,299/- which was to be transported by the petitioners to respondent no.1 has not been transported and thereby the petitioners have cheated respondent no.1 and committed criminal breach of trust. According to her, the learned Trial Court has rightly issued process against the petitioners. She supports the impugned orders passed by the Courts below and prays that this petition may be dismissed.

6. As seen from the contents of the complaint, factory materials and machineries of the petitioners were sold out to respondent no.1. Naturally some documents evidencing such transaction was required to be executed. Accordingly, MOU was executed on 07th November, 2013. The total price of the materials was fixed at Rs.4,35,00,000/-. As per clause (8) of the said MOU, respondent no.1 had undertaken to clear all the taxes i.e. Excise Duty and CST etc. on materials. The expenses for transportation, loading and disassembling of materials were to be borne by respondent no.1. According to the petitioners, all the materials, subject matter of MOU, have been taken away by respondent no.1.

7. The petitioners have produced copy of the F.I.R. lodged by them against respondent no.1 and two others for the offences punishable under Sections 406, 420, 506 and 120-B of the I.P.C. on the allegations that out of the price of the materials worth Rs.4,35,00,000/-, respondent no.1 and two others did not pay Rs.1,58,00,000/-, though entire materials and machineries were taken away by them. The said F.I.R. was investigated and the Investigating Officer submitted a final report stating that in view of the MOU dated 07th November, 2013, executed between the parties, the dispute is purely of a civil nature. The learned Counsel for the petitioners submits that during the course of investigation in that F.I.R., respondent no.1 had produced MOU for showing that the dispute, subject matter of the F.I.R., was of a civil nature. He submits that the same analogy is applicable to the facts of the present case. He submits that respondent no.1 cannot take recourse to a shortcut method to settle the civil dispute by prosecuting the petitioners.

8. The complaint filed by respondent no.1 is totally

silent about the MOU dated 07th November, 2013 which was very much pressed by himself into service for his defence in the F.I.R. that was lodged by the petitioners. As per clause (9) of the said MOU, it was necessary for respondent no.1 to get the dispute resolved by mutual consultation and in the event of failure in arriving at a settlement, refer the dispute to a sole arbitrator as named in clause (9). The total value of the materials/machineries was Rs.4,35,00,000/-. When respondent no.1 comes with a case that material worth Rs.35,27,299/- only has remained to be supplied by the petitioners to him, it means that the materials/machineries having value of Rs.3,99,72,701/- have been supplied. As such, the substantial part of the MOU seems to have been materialized. Prima facie, it seems that there is civil dispute between the parties. It cannot be allowed to be fought before the Criminal Court. In view of the judgments cited by the learned Counsel for the petitioners, asking the petitioners to face the ordeal of criminal proceeding, in the above circumstances, is nothing but an abuse of process of law.

9. The learned Additional Sessions Judge did not appreciate the evidence of the case properly and wrongly upheld the order passed by the learned Magistrate. There are no sufficient grounds to proceed against the petitioners for the above mentioned offences. The dispute between the parties is purely of a civil nature. In the circumstances, the impugned order will have to be quashed and set aside. Hence, I pass the following order :-

ORDER

(i) Criminal Writ Petition is allowed.

(ii) The impugned order dated 07th March, 2018 passed by the learned Additional Sessions Judge, Jalna, dismissing the Criminal Revision Application no. 43 of 2017 challenging the order dated 19th July, 2016 passed by the learned Judicial Magistrate First Class, Jalna in Regular Criminal Case no. 28 of 2015, are quashed and set aside.

(iii) Rule is made absolute.

(iv) Criminal Writ Petition is accordingly disposed of.

[**SANGITRAO S. PATIL**]
JUDGE

SSD