

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 210 OF 2018

ESSILOR INDIA PVT. LTD., THR.,
THR.ITS CONST. POA, ANKUR DEKA
RABHA.,

... Petitioner

Versus

STATE OF GOA, THR. PUBLIC
PROSECUTOR AND 2 ORS.,

... Respondents

Shri S.D. Lotlikar, Senior Counsel with Ms. Revati Shivkumar,
Advocate for the petitioners.

Shri S.R. Rivankar, Public Prosecutor on behalf of the State.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 9th January 2019

P.C.:

Heard Shri S.D. Lotlikar, learned Senior Counsel and S.R. Rivankar, learned Public Prosecutor on behalf of the State.

2. Shri Lotlikar, learned Senior Counsel invited attention to the complaint which according to him indicated the commission of the offences of misappropriation, criminal breach of trust, forgery and falsification of accounts amongst others and in view thereof even assuming at the highest that the parties have gone to arbitration, still it did not bar the respondents from registering an FIR and carrying out the investigation in the matter. In that context, he placed reliance in M/s. Chowgule and Company Private Limited v/s. State(WP No.236/2013) wherein it was reiterated by the Division Bench of this Court that a First

Information Report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the Police Officer to suspect the commission of a cognizable offence.

3. It was further the contention of Shri S.D. Lotlikar, learned Senior Counsel that even assuming that there is a civil angle to the transaction between the parties, nonetheless, it would not bar the Investigating Agency from registering the First Information Report and carrying out the investigation and in that context reliance was place in *Amit Kapoor v/s. Ramesh Chander & Ors.* [2012 (9) SC 329].

4. Shri S.R. Rivankar, learned Public Prosecutor submitted that a preliminary enquiry was conducted in the matter and thereupon findings were that the so called complaint disclosed that the transaction between the parties was of a civil nature and besides they had approached the Arbitrator and the Company Law Board.

5. Having considered the submissions of Shri S.D. Lotlikar, learned Senior Counsel in the matter and the judgments relied upon in *Chowgule & Company(supra)* in particular and *Amit Kapoor(supra)*, and more particularly on an appraisal of the complaint in question it is apparent that the complaint per se discloses the commission of cognizable offences against the

parties named therein and therefore it is not available to the respondents to allege that there is a civil lis between the parties. In the circumstances, therefore even assuming that there is a civil flavour to the transaction between the parties, the fact that cognizable offences have also been made out in the complaint cannot at all be ignored. It would be incumbent on the respondents to register the complaint rather than turning a Nelson's eye on the issue.

6. In view thereof, the Writ Petition is allowed and the orders passed by the learned J.M.F.C., Mapusa dated 16/07/2018 and that passed by the Additional Sessions Judge, Mapusa in Revision No.58 of 2018 are quashed and set aside and the respondents are directed to register the FIR on the basis of the complaint filed by the petitioners and to carry out the investigation in the said FIR in accordance with law.

7. The petition stands disposed off.

8. Authenticated copy to be issued to the parties.

NUTAN D. SARDESSAI, J.

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