

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.16775 of 2017
and CRL.M.P.No.10304 of 2017

K.Raju

...Petitioner

Vs.

1. The State,
Rep. by the Inspector of Police,
E-10, Kayar Police Station,
Kancheepuram District.
Crime No.89 of 2017
2. Diamond Engineering Chennai Pvt. Ltd.
No.501, Vandalur,
Kelambakkam Main Road,
Mambakkam,
Chennai - 600 127.

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash the FIR in Crime No.89 of 2017 on the file of the 1st respondent police as against the petitioner/accused.

For Petitioners : Mr.N.Basakaran

For Respondents : Mr.C.Raghavan
Government Advocate for R1

Mr.R.Sathishkumar for R2

ORDER

This petition has been filed seeking to quash the FIR in Crime No.89 of 2017 pending investigation on the file of the 1st respondent police.

2. The defacto complainant namely the 2nd respondent had filed the complaint before the respondent police on the ground that the petitioner has fabricated invoices to the tune of

Rs.8,05,04,283/- as if raw materials were supplied for the period from 21.04.2016 to 07.05.2016. Based on this complaint, the respondent police registered an FIR for the offences under Sections 417, 465, 468, 420 and 473 of IPC.

3. The learned counsel for the petitioner submitted that the entire complaint is false and the defacto complainant has concealed the fact that they owe a sum of Rs.28,77,01,785/- to the Mrs.Shah Brothers Ispat Pvt. Ltd. The petitioner was working as a Manager in the said company. The company went into liquidation and the NCLT, Chennai Bench by an order dated 06.06.2017 had appointed an Insolvency Resolution Professional to take charge of the company. This order was taken on appeal before the Appellate Tribunal, New Delhi and the appeal was also dismissed by an order dated 27.07.2017.

4. The learned counsel for the petitioner submitted that after the Insolvency Resolution Professional took charge of the Company, he assessed the assets and liabilities of the Company and found that the 2nd respondent owes a sum of Rs.28,77,01,785 in which Rs.8,05,04,283/- also forms a part. The learned counsel therefore submitted that it is very evident that the complaint given by the 2nd respondent is false.

5. The Insolvency Resolution Professional who is now in-charge of the above said Mrs.Shah Brothers Ispat Pvt. Ltd, has filed an affidavit before this Court. The relevant portions of the affidavit is extracted hereunder:

1. I submit that M/s.Shah Brothers Ispat Private Limited had filed a Section 9 Application against M/s.Diamond Engineering Chennai Private Limited under the Insolvency and Bankruptcy Code, 2016, pursuant to which the Hon'ble National Company Law Tribunal, Chennai vide its order dated 06.06.2017, had appointed me as the Interim Resolution Professional of M/s.Diamond Engineering Chennai Private Limited. Further I submit that subsequent to the aforementioned, the Committee of Creditors had appointed me as the Resolution Professional of M/s.Diamond Engineering Chennai Private Limited and vide order dated 19.09.2017, the Hon'ble National Company Law Tribunal, Chennai had ratified the decision of the Committee of Creditors.

2. I submit that as per Section 15 of the Insolvency and Bankruptcy Code, 2016, I had caused a public announcement Of the initiation of Corporate Insolvency Resolution Process of M/s.Diamond

Engineering Chennai Private Limited and had invited the creditors to file their claims with me vide paper publication in Economic Times and Malai Murasu news paper dated 09.06.2017.

3. I submit that pursuant to the aforementioned M/s.Shah Brothers Ispat Private Limited had filed its claim with me on 20.06.2017 for a sum of Rs. 28,77,01,785/- (Rupees Twenty Eight Crores, Seventy Seven Lakh, One Hundred and Eighty Five Only). I submit that pursuant to the submission of claim I had verified the documents supporting the said claims and I had admitted that M/s.Diamond Engineering Chennai Private Limited is due and liable to pay M/s.Shah Brothers Ispat Private Limited a sum of Rs.28,77,01,785/- (Rupees Twenty Eight Crores, Seventy Seven Lakh, One Thousand Seven Hundred and Eighty Five Only).

4. I submit that it was bought to my knowledge that M/s.Diamond Engineering Chennai Private Limited as on 06.06.2017 had filed a Criminal Complaint before the Inspector of Police, E 10, Kayar Police Station, Kancheepuram District under sections 417, 465, 468, 420 & 473 of the Indian Penal Code against Mr. K. Raju, who has been working as the manager of M/s. Shah Brother's Ispat Private Limited's Chennai branch and the complaint was numbered as Crime No. 89 of 2017; whereby M/s.Diamond Engineering Chennai Private Limited has alleged that Mr. K. Raju (Petitioner/Accused) has fabricated invoices as if raw material were supplied from 21.04.2016 to 07.05.2017 for a sum of Rs. 8,05,04,283/- (Rupees Eight Crores, Five Lakhs, Four Thousand, Two Hundred and Eighty Three Only).

5. I submit that the M/s. Shah Brothers Ispat Private Limited's claim of Rs.28,77,01,785/- (Rupees Twenty Eight Crores, Seventy Seven Lakh, One Thousand Seven Hundred and Eighty Five Only) is inclusive of the disputed sum of Rs. 8,05,04,283/- (Rupees Eight Crores, Five Lakhs, Four Thousand, Two Hundred and Eighty Three Only).

6. It is clear from the above affidavit that the claim of Rs.8,05,04,283/- made by the petitioner is a valid claim and supported by records.

7. The petitioner is only a manager who was working in Mrs.Shah Brothers Ispat Pvt. Ltd. The FIR registered against him is an abuse of process of law and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

8. In the result FIR in Crime No.89 of 2017 on the file of the 1st respondent is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

ssr

To

1. The Inspector of Police,
E-10, Kayar Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Baskaran, Advocate SR.No.68504

CRL.O.P.No.16775 of 2017
and CRL.M.P.No.10304 of 2017

NR(CO)
GMY(12/09/2019)

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