HONOURABLE JUSTICE G. SRI DEVI

<u>CRIMINAL PETITION No.3969 of 2019</u>
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<u>WRIT PETITION No.15557 of 2019</u>

<u>COMMON ORDER</u> :

1. Criminal Petition No.3969 of 2019 is filed under Section 482 Cr.P.C. seeking to quash the proceedings in Crime No.494 of 2019 on the file of Banjara Hills Police Station, Hyderabad, registered against the petitioner and others for the offences punishable under Sections 420, 465, 467 and 471 of I.P.C.

2. Writ Petition No.15557 of 2019 is filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Mandamus declaring the action of the second respondent (S.H.O., Banjara Hills Police Station, Hyderabad) in registering Crime No.494 of 2019 on the file of Banja Hills Police Station, as unconscionable, arbitrary, un-constitutional and in violation of principles of natural justice and consequently quash the proceedings in the above crime against the petitioners and direct respondents 1 and 2 to take action against respondent No.3 company (hereinafter referred to as "respondent-company") for filing a false complaint dated 06.06.2019, which was registered as Crime No.494 of 2019 against the petitioners before Banjara Hills Police Station, Hyderabad.

3. Since the issue involved in both the Criminal Petition and Writ Petition is inter-connected, they are being disposed of by this common order.

4. Heard Sri Avinash Desai, learned Counsel for the petitioners in both the matters; Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of Sri N.Naveen Kumar, learned Counsel for the respondent-company in both the matters and learned Government Pleader for Home in W.P.No.15557 of 2019 and learned Public Prosecutor appearing on behalf of the State in Crl.P.No.3969 of 2019.

5. The case of the prosecution is that one Arvind Kumar Shaw, Finance Manager of Radha Smelters Private Limited (respondent-company), lodged a complaint on 06.06.2019 alleging that one A.U. Industries Limited through its director Saran Kumar Vaddevalli (petitioner No.2 in W.P.No.15557 of 2019), requested them to supply TMT steel by issuing a purchase order dated 02.07.2018 initially for purchase of TMT bars worth Rs.3,34,09,635/-. He informed that supply of goods will be done on assured payment i.e., in the form of bank guarantee and requested them to supply the material. Believing the said representation, the respondent-company had supplied TMT steel material to the AU Industries from 07.07.2018 to 30.09.2018 to the tune of Rs.4,47,95,315/- at the site and the same was acknowledged. AU Industries Limited submitted bank guarantee No. 00000002021007 dated 13.07.2018 for an amount of Rs.2,00,00,000/- and Bank guarantee No.CD00000002022044 dated 23.07.2018 for an amount of Rs.2,00,00,000/- to convince the respondent-company that the sale consideration is assured in the event of default by AU Industries Limited. The respondent-company would not have supplied TMT bars but believing the said representation accepted the bank guarantees

submitted by the AU Industries as genuine. Thereafter, AU Industries Limited placed another purchase order dated 06.10.2018 to purchase TMT Bars worth Rs.5,91,42,544/-. The respondent-company informed AU Industries Limited that supply of goods will be done on assured payment preferably in the form of Letter of Credit issued by any Nationalized Bank. AU Industries Limited agreed to submit Letter of Credit and requested them to supply the material. AU industries Limited paid an amount of Rs.1,00,00,000/- on 11.10.2018 with respect to the previous purchase order dated 02.07.2018 and to induce them for further supply of steel assuring that payment is guaranteed by Letter of Credit. Accordingly, the respondent-company had supplied TMT steel material to the AU Industries Limited from 12.10.2018 to 17.10.2018 to the tune of Rs.6,00,03,296/- and the same was acknowledged at the delivery site. AU Industries Limited, submitted the Letter of Credit bearing No.EBLC2018100701 issued by UCO Bank Limited, for an amount of Rs.6,00,00,000/- dated 06.10.2018 to convince the respondent-company that the sale consideration is assured in the event of default by the AU Industries Limited. The respondent-company would not have supplied TMT Bars but believing that the Letter of Credit is genuine had supplied the same. Since AU Industries Limited failed to make payment, the respondent-company had no option except to invoke the Bank Guarantees dated 13.07.2018 and 23.07.2018 by lodging the same with HDFC Bank, Srinagar Colony Branch. The respondent-company addressed several reminder letters to the bank, the said bank guarantees could not be encashed. The bank neither deposited the said amount against bank guarantees nor rejected the same. It is also stated that even the cheques issued by AU Industries Limited are dishonoured. The two bank guarantees and Letter of Credit submitted by AU Industries Limited turned out to be forged documents, no payment was realized. The bank guarantees and Letter of Credit are fabricated and forged documents, which are used as genuine to induce the respondent-company to supply TMT steel worth Rs.10,47,98,611/- and defaulted in making payment of outstanding dues of Rs.6,88,78,798/- as per the terms and conditions of the purchase order. Thus, AU Industries Limited committed various offences of forgery, cheating and requested to take action against the persons, who are responsible for conducting the business of AU Industries Limited.

6. It has been submitted on behalf of the petitioner in Crl.P.No.3969 of 2019 that there is absolutely no allegation against the petitioner either in the complaint or in the F.I.R. and that the petitioner is in no way connected to AU industries Limited. It is also stated that as and when civil disputes of non-payment of some bills arose between the respondent-company and AU Industries Limited, one of the Directors of AU Industries Limited approached the petitioner to resolve the payment related issues, so that some of the earlier payments would be released. Petitioner only attempted to resolve the disputes between the respondent-company and AU Industries Limited in good faith at the request of AU Industries Limited. The petitioner had no idea about the transactions between the companies which happened much before they met him. It is also stated that there is no specific overt act against

the petitioner and even the name of the petitioner was not mentioned in the complaint. The contents of the complaint do not constitute any offence much less to say that the offences punishable under Sections 420, 465, 467 and 471 against the petitioner. Only to harass the petitioner the respondent-company got issued notice under Section 41(A) IPC by abusing police power. There is no allegation that the petitioner had any role either in the submission of bank guarantees or in the attempted encashment of the bank guarantees by the company. The contents of the complaint clearly show that a civil dispute between two companies is being converted into a criminal case to abuse the process of law for wrongful motives.

7. It has been submitted on behalf of the petitioners in W.P.No.15557 of 2019 that AU Industries Limited never issued Letter of Credit to the respondent-company and only shared a preliminary draft of the Letter of Credit with the respondent-company, but the respondent-company never confirmed the said Letter of Credit as such the same has never come into force and the Letter of Credit enclosed with the complaint must be a fabricated document by the respondent-company itself. It is also submitted that the bank guarantees issued to the respondent-company are SWIFT messages issued by the bank, which would bear no signature and which can never be forged. The bank guarantees have not been encashed due to the lapses on the part of the respondent-company as the respondent-company failed to fulfill the terms and conditions of the financial instruments and the same was informed to the respondent-company on 28.11.2018 itself. It is also

submitted that the respondent-company approached AU Industries Limited and stated that they have not thoroughly gone through the bank guarantee documents and requested to issue cheques for the security till the money is repaid to the respondent-company and accordingly AU Industries Limited issued cheques and made partial payments as against the purchase orders. It is further submitted that the allegations that the Letter of Credit and bank guarantees are forged and fabricated are baseless. The information was sought by the Investigating Agency with regard to the genuineness of the bank guarantees. The bank also furnished information stating that the bank guarantees are genuine. It is also submitted that the complaint clearly shows that a civil dispute between two companies is being converted into a Criminal case by abusing the process of law with wrongful motives and to get the amounts due to the respondent-company cleared by pressurizing the petitioners by filing the criminal case. It is further submitted that the police officials are acting hand-in-glove with the respondent-company and harassing the petitioners by abusing police power.

8. In support of the aforesaid contentions, learned Counsel for the petitioners relied on the following judgments of the Apex Court.

1. ***Pepsico India Holdings Private Limited v. Food Inspector and another***[1]
2. ***Inder Mohan Goswami and another v. State of Uttaranchal***[2]
3. ***Satishchandra Ratanlal Shah v. State of Gujarat and another***[3]

[1] (2011) 1 SCC 176
[2] (2007) 12 SCC 1
[3] (2019 SCC Online SC 196

4. ***Hridaya Ranjan Prasad Verma and others v. State of Bihar***[4]
5. ***Anil Mahajan v. Bhor Industries Limited and another***[5]

9. Learned Government Pleader for Home opposed the writ petition by filing a counter-affidavit, wherein he admitted about the lodging of complaint by Aravind Shaw and also registration of crime against the petitioners in both the matters. It is also stated that on 10.06.2019, the Investigating Officer addressed a letter to UCO Bank, Hyderabad, with a request to furnish the information of Letter of Credit No.EBLC2018100701, whether the name of the bank mentioned in the said Letter of Credit is genuine or not and obtained the information through letter dated 10.06.2019, in which it is mentioned that the Letter of Credit is fake. On the same day, the Investigating Officer also addressed a letter to HDFC Bank Limited, Srinagar Colony Branch, Hyderabad, with a request to furnish the information of Bank Guarantees and also why the said bank guarantees were not honoured; why the same were not returned to the company and to confirm whether the above bank guarantees are genuine or fake. It is also stated that on 25.06.2019, the Investigating Officer examined Branch Manager of the said Bank and he stated that as per their bank records the above bank guarantees are genuine. It is also stated that except the 1st petitioner, none of the other accused co-operated with the investigation and did not attend the police station for enquiry. It is also stated that case was registered basing on the complaint lodged by the company.

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[4] (2000) 4 SCC 168
[5] (2005) 10 SCC 228

The truth or otherwise of the complaint would be revealed after completion of investigation. It is also stated that the Branch Manager of HDFC Bank, stated that the bank guarantees are genuine but the Branch Manager, UCO bank stated that the Letter of Credit is fake. As such, it cannot be said that the police officials conspired with the respondent-company and harassing the petitioners with a view to help the respondent-company to recover the balance payments. On 19.07.2019, the Investigating Officer seized certain material including hard discs and there is clear element of cheating. As such, it cannot be said that the civil dispute between two companies is being converted into a criminal case by abusing the process of law with ulterior motive. As there is an element of cheating and breach of trust, the crime was registered against the accused, as such it cannot be said that the contents of the complaint does not even constitute any offence. There is no basis for the allegation that the action of the respondents is in violation of fundamental rights of the petitioners. It is also stated that the investigation is in preliminary stage as such the proceedings cannot be quashed. In support of his contention, he relied on the judgments of the Apex Court in ***State of Orissa v. Saroj Kumar Sahoo*** [6] and ***State of West Bengal v. Swapan Kumar Guha***[7].

10. Learned Senior Counsel appearing for the respondent-company would submit that believing that the bank guarantee and Letter of Credit submitted by the petitioners are genuine, the respondent-company had supplied TMT steel material to AU Industries Limited.

[6] (2005) 13 SCC 540
[7] AIR 1982 SC 949

When AU Industries Limited committed default in payment of money, the respondent-company had invoked the bank guarantees by addressing letters to the bank for encashing the bank guarantees, but the bank neither deposited the amount nor rejected the bank guarantees. It has been further submitted that on enquiry, it came to know that the Bank Guarantees and Letter of Credit are forged and fabricated documents and no payment was realized. Thus, in order to cause wrongful loss to the respondent-company the petitioners cheated the respondent-company by producing the forged and fabricated bank guarantees and letter of credit. The learned Senior Counsel relied upon a decision of the Apex Court in ***Indian Oil Corporation v. NEPC India Ltd., and others***[8].

11. The law regarding sufficiency of grounds which may justify quashing of FIR in a given case is well settled. The Court has to eschew itself from embarking upon a roaring enquiry into the details of the case. It is also not advisable to adjudge whether the case shall ultimately end in submission of charge sheet and then eventually in conviction or not. Only a *prima facie* satisfaction of the Court about the existence of sufficient ingredients constituting the offence is required in order to see whether the FIR requires to be investigated or deserves quashing. The ambit of investigation into the alleged offence is an independent area of operation and does not at all for interference in the same except in rarest of rare cases. The operational liberty to collect sufficient material, if there exists any, cannot be scuttled prematurely

[8] (2006) 6 SCC 736

by any uncalled for over-stepping of the Court. It has to be an extremely discreet exercise. The Hon'ble Apex Court's decisions given in the case of ***R.P. Kapur vs. The State of Punjab***[9] and in the case of ***State of Haryana vs. Bhajan Lal***[10] have also recognized certain categories by way of illustration which may justify quashing of a complaint or charge sheet and the same may also be good grounds to quashing the FIR. Some of them also akin to the illustrative examples given in the case of ***Smt.Nagawwa vs. Veeranna Shivalingappa Konjalgi***[11]. The case is whether the allegations made against the accused in the FIR or the evidence collected by the investigating officer do not constitute any offence or whether the allegations are absurd or extremely improbable or impossible to believe or whether the Prosecution is illegally barred or whether the criminal proceedings are malicious and malafied, instituted only for ulterior motive of wreaking vengeance may be, illustratively, the fit cases for the High Court in which the FIR or the criminal proceedings may be quashed. If a particular case falls in some such categories as recognized by the Apex Court in ***Bhajan Lal's case (supra)***, it may justify the interference by this Court in exercise of its inherent power as provided in the Code of Criminal Procedure or in exercise of its power vested by the Constitution of India.

12. Illuminated by the case law hereinabove, this Court has adverted to the entire facts available on record. The submissions made

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[9] AIR 1960 SC 866
[10] 1992 SCC (Cri) 426
[11] (1976) 3 SCC 736

by the learned counsel for the petitioners call for a determination on pure questions of fact which may adequately discerned either through proper investigation or which may be adjudicated upon only by the trial Court. This Court does not deem it proper to suffocate the ambit and scope of independent investigation into the case. A thread-bare discussion of various facts and circumstances, as they embark from the allegations made against the accused, is being purposely avoided by the Court for the reason that the same might cause any prejudice to either side during investigation or trial. But, it shall suffice to observe that a perusal of the record makes out *prima facie* offence at this stage and there appears to be sufficient grounds for investigation in the case.

13. Thus, after considering the various decisions including the decision of Bhajan Lal's case (10 supra), I am of the view that there can be no interference with the investigation or order staying arrest unless cognizable offence is not *ex-facie* discernable from the allegations contained in the F.I.R. or there is any statutory restriction operating on the power of the police to investigate a case. From a perusal of the F.I.R., *prima facie,* it cannot be said that no cognizable offence is made out. Hence, no ground exists for quashing of the F.I.R. or staying the arrest of the petitioners. Hence, the prayer in the Writ Petition is refused. However, since the petitioners have already been issued a notice under Section 41-A Cr.P.C., they are directed to comply with the said notice.

14. Insofar as the Criminal Petition No.3959 of 2019 is concerned, the only allegation against the petitioner is that he has actively involved in the settlement proceedings between the parties by acting as a mediator, but during the course of investigation, the petitioner has been issued a notice under Section 41-A Cr.P.C. Since the case is only at the preliminary stage of investigation, the petitioner is directed to comply with the said notice. However, till conclusion of the investigation and submission of final report, no coercive steps whatsoever shall be taken against the petitioner.

15. In the result, the Writ Petition and the Criminal Petition are disposed of with the above directions.

16. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

01.10.2019
gkv/Gsn