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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 18th July, 2019

+ BAIL APPL. 1124/2019

P. RAJA & ANR.

..... Petitioners

Through: Mr. Vinay Vats & Mr. Rajesh
Kumar, Advs.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for the
State with SI Avinash Pratap,
PS Chankya Puri.
Mr. Kirti Uppal, Sr. Adv. with
Mr. Aditya Awasthi, Mr.
Rajesh Paul & Mr. Chander
Shekhar, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first petitioner is described as sole proprietor of Mednob Healthcare, a proprietary concern located in Madurai (Tamil Nadu), the second petitioner statedly being his Manager. The said entity had entered into a contract described as Memorandum of Understanding (MoU) dated 12.12.2014 with Primus Super Speciality Hospital (the complainant) regarding supply of five diagnostic equipments. It appears from the documents and it is not disputed that the petitioners received from the opposite party, an amount of Rs. 1.48 crore out of the total consideration of Rs. 1.97 crore. Two out of the five machines

were supplied, there also being a controversy raised about the supplied machines being faulty. It appears, after prolonged correspondence between the parties, the petitioners not coming forth with any corrective steps or for supply of the remainder, a complaint was lodged which led to the registration of first information report (FIR) no. 003/2018 with police station Chankyapuri in which allegations of involvement of the petitioners in acts of commission and omission constituting offences under Section 406/420/34 IPC have been levelled.

2. The case has been under investigation, not much progress having been made therein, as the later events would show also because the petitioners engaged the opposite party in some parleys for amicable resolution. It may be added here itself that at the instance of the first petitioner arbitral proceedings are also stated to have taken place at Madurai (Tamil Nadu), it leading to an arbitral award dated 16.05.20018 in terms of which the complainant side would owe an amount of Rs. 32,43,309/- to him under the same contract. The complainant, however, pointed out at the hearing and the counsel for the petitioners conceded to this position, that a challenge has been brought to the arbitral award, *inter alia*, on the ground that the sole arbitrator had misconducted himself by taking up such assignment against the backdrop showing he having been earlier associated as counsel for the petitioners. Objection to this effect had been taken at the outset by the opposite party and challenge on this ground is pending in Court. The arbitral award has, thus, yet to attain finality.

3. The petitioners had earlier approached the court of Sessions for anticipatory bail by moving an application which appears to have come up for consideration for the first time on or about 17.05.2018. Interim protection was granted by the initial order against coercive steps to be taken with directions to the petitioner to join investigation and cooperate, this against the backdrop of the report of the investigating officer that they had failed to do so earlier.

4. Copies of the proceedings recorded by the court of Sessions on the aforesaid bail application on 17.05.2018 till 30.04.2019 have been shown to the court at the hearing. It appears that the matter remained pending for almost one year on the file of the Sessions Court, not for hearing on merits of prayer for anticipatory bail but for making efforts to broker an amicable resolution, initially at the instance of the petitioners, the complainant having later joined in such request. The prolonged and protracted proceedings before Sessions court do show that a settlement was achieved which was reflected in an email dated 13.11.2018 as is referred in the order dated 27.11.2018 of the additional sessions judge. But then, the fact remains that such resolution did not eventually work out and the parties again fell out.

5. What stands out, however, from the said proceedings is that at the instance of the petitioners, it was submitted by their counsel that all the five machines which are subject matter of the contract had been supplied, some grievance having been raised about inability to install the said machines because the installation site was not made ready. Reference has been made to some communications flowing from the petitioners to the complainant side about the installation site being not

ready, the last such communication referred to being an email dated 10.06.2016, the submissions of the counsel for the petitioners being that the complainant was simply not cooperating, not even caring to answer.

6. The submission on behalf of the petitioners that all the five machines had been supplied was found to be factually incorrect and eventually so conceded even while the matter was pending before the court of Sessions, a specious explanation being offered that the statement to such effect was inadvertently made by the counsel as was recorded in the order dated 16.08.2018. It is inconceivable that a statement to such effect could have been made by the counsel on his own. From this, it turns out that the petitioners made an endeavour to mislead the court of Sessions.

7. When the matter came up for hearing against this light before the court of Sessions on 27.04.2019, another presiding officer being in the chair, the facts of the case and above proceedings were highlighted. It is against this backdrop that the court of Sessions deemed it necessary to insist on the presence of the petitioners on the next date, posting the matter for hearing to 30.04.2019. The petitioners had the interim protection and, therefore, should have had no difficulty in compliance. After all, the court required their presence so that all the necessary facts could be brought out with their assistance at the hearing. The petitioners instead chose to play truant. An application was made on their behalf for exemption from personal appearance on the ground they were due to travel to Moscow on 01.05.2019.

8. The presiding officer of the court of Sessions dealing with the application for anticipatory bail, however, was not impressed with the reasons. The order recorded on 30.04.2019 shows that the matter was heard for some time and, thereafter, the counsel appearing for the petitioners made an endorsement on the application for bail seeking to withdraw the same. The counsel who was appearing for the petitioners before the trial court is the counsel who is assisting the advocate presenting arguments on the application at hand before this Court. It is submitted by him that the endorsement on the application before the court of Sessions seeking to withdraw was “*without prejudice*”.

9. It is noted that in the application dated 01.05.2019 for anticipatory bail presented before this Court, it has been contended (in para 48) that the counsel was “*not allowed to argue the case on merits*” by the sessions Court on 30.04.2019. This contention apparently is false and incorrect because, as pointed out by the counsel for complainant, the petitioners had made up their mind on 29.04.2019 itself that they would not press the anticipatory bail for decision before the Sessions Court. This is demonstrated by the fact that their affidavits filed in support of the application at hand were sworn and attested on 29.04.2019, a day before the proceedings took place on 30.04.2019 in the court of Sessions leading to withdrawal of the application.

10. The counsel of the petitioners referred to judgment of the Kerala High court reported as *Aneesh vs. State of Kerala 2013 SCC Online Ker 24507*; to submit that dismissal of the application at hand

only on the ground of withdrawal of the application before the court of Sessions would be pre-judicial. Interestingly, in the judgment cited at bar reference is made to another decision of Kerala High Court reported as *Varada Nadarajan vs. State of Kerala, 2013 (4) KLT 356* wherein the practice of withdrawal of applications from one court for fresh application to be filed before another leading to forum hunting was disapproved of, an endeavour also made by the petitioners in present case and a tendency which cannot but be condemned.

11. But then, the above ought not be the reason for dismissal of the application for anticipatory bail at hand. It is the conduct of the petitioners which weighs against their prayer for protection in the nature of anticipatory bail. They tried to mislead the court of Sessions by making false claims about the supply of all the five machines. The submission made before this Court that the petitioners were unable to supply rest of the machines because the installation sites were not ready and the complainant side was not responsive is also *prima facie* not correct as selective documents seem to have been represented in support. As was brought out at the hearing, the counsel for the complainant showing from their records, the responses given by them to the petitioners as late as in July, 2016, it cannot be said that the inability to supply the machines was for any such legitimate reasons or reasons attributable to the opposite side.

12. The facts of the case cannot be lightly brushed aside as portraying only a civil dispute. There are reasons to suspect dishonest and fraudulent intention since beginning. The matter, therefore, requires deeper probe. Given the conduct of the petitioners,

investigation cannot be effective if they enjoy any such protection as of anticipatory bail. The need for custodial interrogation would have to be kept in mind.

13. The petition is, therefore, dismissed.

R.K.GAUBA, J.

JULY 18, 2019

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