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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.01.2020.

\+ CRL.REV.P. 422/2019

RAKESH KUMAR & ANR ..... Petitioner

Through Mr. Roshan Santhalia and Ms. Nikitha Surbhi, Advs.

versus

STELLAR INFORMATION TECHNOLOGY PVT LTD & ORS ..... Respondents

Through Mr. Rohit Bajaj, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

<u>J U D G M E N T</u> <u>(ORAL)</u>

1. The present petition is filed under section 397 read with section 401 & 482 of the code of criminal procedure, 1973 against the impugned order dated 24.01.2019 passed by ld. Metropolitan Magistrate-06, Saket Courts, New Delhi in complaint case no.2389/2018.

2. As stated in the present petition that Petitioners were previously employees of the Respondent No. 1 Company until they resigned from the company in 2015. The Petitioners then joined a new company "Techchef Consulting India Pvt. Ltd.". Petitioner No. 1 was forced to file civil suit for

recovery of outstanding dues owed to him by the Respondent No. 1 Company, bearing CS No. 612372/2016, titled "***Rakesh Kumar v. Stellar Information Technology Pvt. Ltd.***" as the Respondent No. 1 Company failed to disburse full and final settlement amounts owed to the Petitioner No. 1 despite of repeated requests. Another ex-employee of the Respondent No. 1 Company, Mr. Anish Kumar was also forced to file civil suit for recovery of outstanding dues against the Respondent No. 1 Company, bearing CS mentioned above.

3. It is further stated that Respondents responded to these suits by filing a frivolous civil suit, before this Court against the Petitioners and other ex-employees including Mr. Anish Kumar, bearing CS (COMM) No. 482/2016, titled "***Stellar Information Technology Pvt. Ltd. v. Rakesh Kumar &Ors***." which was filed merely as a counterblast to the legitimate suits filed by the Respondent No. 1/Company's ex-employees. Said suit was filed by Respondent No. 1 Company seeking permanent and mandatory injunction along with damages and compensation for breach of contract by Petitioners. This Court had framed issues in said suit and Issue No. 6 was framed regarding the genuineness of the disputed agreements, which is currently pending adjudication bearing CS (COMM) No. 482/2016, titled ***"Stellar***

Information Technology Pvt. Ltd. v. Rakesh Kumar & Ors."

4. The said civil suit was filed by the Respondent No. 1 Company against its ex-employees, including Petitioners as well as other persons. Therein, it has been alleged that Petitioners have breached the employment agreements which they signed with the Respondent No. 1 Company. Further alleged that said employment agreements contained Non-Compete and Non-Solicitation clauses, which have been violated by Petitioners.

5. Learned counsel appearing on behalf of petitioners submits that in the suit, Respondents attempted to enforce Non-Compete and Non-Solicitation clauses against the Petitioners which they claim were a part of certain agreements, had been executed by Petitioners with Respondent No. 1 Company. The Respondents produced said agreements, namely, "CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED 06/02/2007" and "CONFIDENTALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED NIL" before this Court and alleged agreements contained Non Compete and Non-Solicitation clauses, which were enforceable against Petitioners.

6. Respondent No. 1 Company has filed several agreements before this Court in civil suit CS (COMM) No. 482/2016 which they allege have been

executed by Petitioners. However, the Petitioners, upon perusing the pleadings in said civil suit, were shocked to see that Respondent No. 1 Company had forged signatures of the Petitioners on various agreements in order to mala fidely enforce them against Petitioners. Then, Petitioners realized that the Directors of the Respondent No. 1 Company, i.e. Respondent nos. 2 to 4, had illegally and fraudulently created and manufactured the above-mentioned agreements by forging signatures of the Petitioners with the intention of dragging the Petitioners into frivolous litigation. The Respondents were merely attempting to create obstacles for the Petitioners in their employment at their new company.

7. It is further submitted that qua the Petitioner No. 1, purported signature of the Petitioner No. 1 at the end of the "CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED 06/02/2007" has been forged and fabricated by the Respondents. Further, the name which is mentioned below the alleged signatures of Petitioner No. 1 is also not in the handwriting of Petitioner No. 1. The consent of Petitioner No. 1 had never been taken to approve or acknowledge the above-mentioned agreement at any point of time. Furthermore, Petitioner No. 1 had, at no point, witnessed the said agreement. In fact, until Petitioner

No. 1 received a copy of the civil suit filed by Respondent No. 1 Company before this Court, the Petitioner No. 1 had never even seen the alleged agreement. Therefore, it was of the utmost shock and surprise to Petitioner No. 1 to see a forged and fabricated signature of himself on an agreement, which he had never seen or signed.

8. Learned counsel further submits that a bare perusal of the signature of Petitioner No. 1 on the agreement in question clearly establishes that it is starkly different from the original signatures of the Petitioner No. 1 at various other places. Signatures on the bank account opening form of Petitioner No. 1 is on record as Annexure P3 of the petition to provide a comparison. Furthermore, signatures of the Petitioner No. 1 on the agreement in question are also different from other signatures of Petitioner No. 1, on agreements which had actually been executed by the Petitioner No. 1 with the Respondent No. 1 Company. These agreements including the Appointment Letter dated 25.01.2007 issued to the Petitioner No. 1 by the Respondent No. 1 Company; the Agreement containing the Terms of Employment dated 06.02.2007 executed between Petitioner No. 1 and Respondent No. 1 Company and the Confirmation Letter dated 01.08.2007 which was issued to Petitioner No. 1 have been filed by Respondent No. 1

Company in civil suit before this Court. Thus, prima facie comparison of signatures on these genuine documents with the signature on the "CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED 06/02/2007" is proof of mala fide intention of Respondents and criminal act of forgery. Despite this, the authorized representative of Respondent No. 1 Company deposed on affidavit about the veracity and genuineness of the agreement in question.

9. It is further submitted that the Petitioner No. 1 has admittedly only signed the "EMPLOYEE CONFIDENTIALITY AGREEMENT 06/02/2007" and not the "CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED 06/02/2007", which has been filed by the Respondent No. 1 Company before this Court. This agreement is of same date as the disputed agreement, however, contents are extremely different.

10. Qua the Petitioner No. 2, it is submitted that purported signature of the Petitioner No. 2 at the end of "CONFIDENTIALITY AND INVENTION ASSIGNMENT AGREEMENT FOR EMPLOYEE DATED NIL" is forged and fabricated. The consent of Petitioner No. 2 had not been taken to approve or acknowledge this document at any point of time.

Further, Petitioner No. 2 had not witnessed this document at any point of time. First time, Petitioner No. 2 had seen this document when he received copy of the suit filed before this Court.

11. Learned counsel further submits that the Trial Court failed to appreciate that mere existence of simultaneous civil proceedings arising out of same events and facts cannot be the basis for dismissal of a criminal complaint at the stage of issuing process. This issue has been decided by various High Courts and the Hon'ble Supreme Court.

12. To strengthen his arguments, learned counsel for petitioner has relied upon the case of ***Kishan Singh v. Gurpal Singh: AIR 2010 SC 3624*** *whereby held as under:-.*

> "15. The correctness of the aforesaid judgment in V.M. Shah (supra) was doubted by this Court and the case was referred to a larger Bench in K.G. Premshankar Vs. Inspector of Police &Anr., AIR 2002 SC 3372. In the said case, the Judgment in V.M. Shah (supra) was not approved. While deciding the case, this Court placed reliance upon the Judgment of the Privy Council in Emperor Vs. KhwajaNazair Ahmad, AIR 1945 PC 18 wherein it has been held as under :-
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> "It is conceded that the findings in a civil proceeding are not binding in a subsequent prosecution founded upon the same or similar allegations. Moreover, the police investigation was stopped and it cannot be said with certainty that no more information could he obtained. But even if it were not, it is the duty of a criminal court when a prosecution for a crime takes place before it to form its

own view and not to reach its conclusion by reference to any previous decision which is not binding upon it."

16. In Iqbal Singh Marwah&Anr. Vs. Meenakshi Marwah&Anr., (2005) 4 see 370, this Court held as under "Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein."

17. In P. Swaroopa Rani Vs. M. Hari Narayana alias Hari Babu, AIR 2008 SC 1884, this Court has held as under:-

"It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case....

Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."...

...19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There

> is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject matter and both the cases have to be decided on the basis of the evidence adduced therein."

13. Therefore, it is submitted that the Petitioners had a right to seek remedy under criminal law by filing the criminal complaint, even though there were ongoing civil proceedings before this Court. A repetition of evidence is required in both proceedings, so as to enable the civil and criminal courts to separately evaluate whether the differing standards of proof have been met in the separate proceedings. For the same reason the chance of contrary findings cannot be the reason for dismissal of the present complaint. Hence, the observations made by the Ld. Metropolitan Magistrate in the impugned order are contrary to the settled law.

14. Further relied upon the case decided by Hon'ble Supreme Court in ***Ramdev Food Products Pvt. Ltd. v. State of Gujarat, AIR 2015 SC 1742*** whereby it was held "specifically in the context of the offence of forgery that initiation of criminal proceedings may be permitted when there is a pending civil proceeding between the parties if an offence is shown to have been committed." The relevant para of the same is reproduced as under:-

> "12. It is further submitted that in the present case, the civil proceedings are pending between the parties where the question of genuineness or otherwise of the partnership deed is an issue. The process of criminal law cannot be used when a dispute is primarily of civil nature. Simultaneously initiation of criminal proceedings may be permitted where an offence is shown to have been committed. Thus, the Magistrate was entitled to satisfy himself as to whether any cognizable offence had been committed before proceeding further."

15. Accordingly, the law is clear that dismissal of a complaint under Section 203, CrPC cannot be done on the grounds that a civil dispute is already existing between the parties where substantial evidence is there of the offence being committed. High Court of Jharkhand in ***Dhruva Narayan Sinha v. State of Bihar, 2001 CriLJ 2446 has held as under:-***

> "4. On the other hand, learned counsel appearing on behalf of opposite party No. 2 contended before me that the Additional Sessions Judge has rightly remanded back the case to the trial Court for reconsideration as the trial Court dismissed the complaint case on flimsy ground which cannot be sustained in the eyes of law. It is further argued that as many as five witnesses have been examined and they have supported the prosecution case but their evidence has been ignored by the trial Court. It is also argued that at this juncture the trial Court has only to see as to whether prima facie case is made out or not, but it has not been considered rather the trial Court dismissed the complaint case on the ground that no witness of the locality was examined and there is already a civil dispute between the parties which cannot be the

> basis fordismissal of the complaint case under Section 203 of the Code when there is overwhelming evidence about the occurrence and the witnesses examined are very much consistent.
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> 5. It is true that as many as five witnesses have been examined duringenquiry under Section 202 of the Code, of whom, PW 1 (Kiran Bhandari) is the wife of the complainant, who herself was the victim, but surprisingly enough, the trial Court did not consider the evidence of PWs. The Additional Sessions Judge observed in his order that five witnesses have supported the occurrence.
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> 6. It is well-settled that at the stage of issuing processes, the Magistrate is mainly concerned with the allegation made in the complaint or the evidence led in support of the same and he is only to be satisfied whether there are sufficient ground for proceeding against the accused. It is not the province of the Magistrate to enter into detailed discussion of the merits or demerits of the case. It is limited only to ascertained of falsehood of the allegation made in the complaint—(i) on the material placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issuance of processes has been made out, and (Hi) for deciding question particularly from the point of view of the complainant without at all adverting to any defence that the accused may have."

16. Thus, it is submitted that civil proceedings before this Court have no relevance to the criminal complaint and existence of suit cannot be grounds for dismissal of the same under Section 203 of Cr.P.C.

17. It is not in dispute that petitioners/ complainants examined themselves as CW-1 and CW-2 besides examining Mr. Deepak Jain, Handwriting expert

as CW-3 who provided his report Ex.CW-3/A as per which, the petitioner's signatures on the documents were forged. In their court statements, CW-1 and CW-2 reaffirmed the averments of the complaint.

18. It is also not in dispute that civil suit bearing CS (COMM) No.482/2006 is pending before this Court and issues in that suit have been framed. Issue No. 6 in that case, is whether the defendant No. 1 & 2 (complainants) have not signed the "Employee Confidentiality and Invention Assignment Agreement". Thus, the issue whether complainants have signed the documents in question is already sub-judice before this Court in the judicial proceedings. No conclusive finding has yet been given on said issue. The parties are yet to lead their respective evidence in proof of the same.

19. Keeping in view of the above stated facts, the Trial Court has opined that the complaint is pre-mature. Summoning of the accused in complaint case would entail repetition of evidence and chances of contrary findings. At this stage, the complainants' have not been able to prima facie establish commission of offence u/s 463 IPC by the respondent/accused, when the allegations of forgery have been denied by them.

20. It is not in dispute that criminal and civil proceedings can be initiated simultaneously.

21. It is also not in dispute that if the same set of evidence is there in criminal proceedings as well as in the civil suit, then the criminal proceedings are to be stopped till the witnesses are examined in the civil suit.

22. Since the issue of forgering of signatures is pending and specific issue has been framed by this Court as noted above, the Trial Court, in my considered opinion has rightly closed the complaint at that stage.

23. Due to the closing of complaint case by the learned MM, the right of petitioners have not been closed. Dismissal of above mentioned complaint is only at this stage, which means, if the petitioner succeeds in the civil suit to establish that their signatures were forged by respondents, at that time they have liberty to revive the complaint at this stage, where it was dismissed.

24. Accordingly, this Court finds no merit in the present petition and the judgments cited by the petitioners are not relevant at this stage.

25. In view of above, I find no ground to interfere in the impugned order dated 24.01.2019 and the petition is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 20, 2020
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