$~5

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

+ **<u>W.P.(CRL) 1136/2020</u>**

SHRI HOTU GORDHANDAS MAKHIJANI & ORS...... Petitioners

Through Mr Vivek Sood, Senior Advocate with Mr Abhay Anturkar, Mrs. Surbhi Kapoor, Advocates.

versus

STATE & ANR. ..... Respondents

Through Mr Avi Singh, ASC for State.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**<u>O R D E R</u>**

% **28.07.2020**

**[Hearing held through video conferencing]**

**<u>CRL. M.A. 9990/2020</u>**

1. Allowed, subject to all just exceptions.

**<u>W.P.(CRL) 1136/2020 & CRL. M.A. 9989/2020</u>**

2. The petitioners have filed the present petition, *inter alia*, praying as under:-

> " Pass necessary orders and directions thereby quashing F.I.R. No. 0066 of 2020, dated 04.07.2020 registered at Police Station Economic Offences Wing, Mandir Marg, New Delhi under Sections 420/ 467/ 471/ 120B IPC and all the proceedings emanating therefrom."

3. The FIR in question (FIR 0066/2020) was registered at the instance of General Manager of the Directorate General of Hydrocarbons (hereafter

'DGH'). The DGH had alleged that a fabricated bank guarantee had been furnished by petitioner no.3 company in compliance with the conditions stipulated under the revenue Sharing Contract (hereafter RSC) entered into between DGH and petitioner no.3 company. There is no dispute that a fabricated bank guarantee in the sum of ₹7.2 crores purportedly issued by Allahabad Bank was furnished by petitioner no.3 to the DGH. The petitioners state that at the material time, they had no knowledge that the bank gurantee in question was forged or fabricated. They claim had relied upon one Nilesh Mahatre – their business associate – for securing the bank gurantee and also remitted a sum of ₹80 lakhs for the said purpose.

4. Mr Sood, learned Senior Counsel appearing for the petitioner contends that the FIR in question requires to be quashed, essentially, on two grounds.

5. First, that the petitioners had submitted a detailed representation to the Investigating Officer of the Economic Offences Wing on 08.06.2020 setting out the sequence of events but no inquiries in this regard were made. He contended that in terms of the decision of the Supreme Court in ***Lalit Kumari v. Government of U.P. and others : 2014 (2) SCC 1*****,** it was necessary for the IO to make proper inquiries before registering the FIR in question.

6. Mr Sood referred to the representation dated 08.06.2020 and drew the attention of this Court to serial no. 52 of the tabular statement contained therein. It is stated therein that the name of the petitioner had been changed from Arsh Corporate Services Private Limited to Duganta Oil and Natural Gas Private Limited but DGH and Ministry of Petroleum and Natural Gas had failed and neglected to record the change in the name of the petitioner

no.3 company in their records. The petitioners claimed that this had placed them in a peculiar position because petitiner no. 3's bankers could not issue a bank guarantee at the instance of Arsh Corporate Services Private Limited as in their records the name of petitioner no.3 company was reflected as Duganta Oil and Natural Gas Private Limited. Thus, the petitioners were compelled to approach a third party for a bank guarantee.

7. Second, he submits that on 07.05.2020 the petitioners had registered an FIR with Economic Offences Wing Mumbai, *inter alia*, alleging that they have been cheated by Mr Nilesh Mahatre and the other persons.

8. This Court does not find any merit in the contentions advanced on behalf of the petitioners. There is no dispute that an offence has been committed as it is admitted that a forged and fabricated bank guarantee was furnished to the DGH. The said bank guarantee was submitted by petitioner no.3 company. Petitioner nos. 1 and 2 are admittedly directors of petitioner no.3 company. The contention whether the petitioners have submitted the said bank guarantee in the bona fide belief that it is a genuine document, is a matter that is required to be investigated. Clearly, the FIR in question cannot be quashed on the basis of the defence sought to be set up by the petitioners. It is apparent that the petitioner no.3 is a beneficiary of the said transaction as the forged bank guarantee was submitted to the DGH in discharge of its obligations. Thus there is sufficient material to investigate the involvent of the petitioners in the offence and the EOW cannot be faulted for registering the FIR in question.

9. The contention that the petitioners were put in a very peculiar position on account of failure on the part of DGH to record the change in name of petitioner no.3 as Duganta Oil and Natural Gas Private Limited in its

records, is also unpersuasive. There could be no objection to the bank issuing a bank guarantee at the instance of petitioner no.3 and also mentioning the former name of petitioner no.3, as has been disclosed by the petitioner in the cause title of the present petition. Assuming that the concerned bank did not agree to the same and the petitioners were aggrieved by the inaction on the part of the DGH, it was always open for them to take up the issue with DGH and avail of their remedies in that regard. The contention that the petitioners had to necessarily approach a third party for bank guarantee on account of DGH's inaction in recording petitioner no. 3's changed name, is clearly unsubstantial.

10. The contention that the present FIR in question requires to be quashed as the petitioners themselves have filed an FIR in Mumbai, cannot be accepted. The FIR filed by the petitioners relates to them being cheated. The FIR in question has been filed by the DGH on account of the petitioners furnishing a forged bank guarantee to it. Undeniably, the two FIRs may be connected, however, considering that the information provided by the DGH clearly discloses an offence, no fault can be found with the registration of the FIR in question.

11. The contention that the necessary inquiries required to be conducted before registration of the FIR were not conducted cannot be readily accepted.

12. Mr Avi Singh, learned ASC submits that the information regarding the alleged offence was received on 18.03.2020. The preliminary inquiries were conducted and, thereafter, the FIR was registered on 20.07.2020. It is not necessary for the EOW to investigate and deal with all the contentions as stated in the representation submitted by the petitioners before registration

of the FIR. The inquiries to be made prior to registration of the FIR are for a limited purpose to ascertain at the threshhold whether the allegation that an offience has been committed, is disclosed and borne from the facts as alleged. In the present case, the reported facts clearly disclose commission of an offence. As noticed above, there is no dispute that a fabricated bank guarantee was furnished by petitioner no.3 to the DGH and petitioner no.3 was a beneficiary of the said transaction.

13. In the aforesaid circumstances, the petition is unmerited and is, accordingly, dismissed.

14. It is clarified that nothing stated in this order shall be construed as an opinion – *prima facie* or otherwise – on the merits of the allegations and the investigation or further proceedings shall be conducted uninfluenced by any observations made herein. All observations made in this petition are solely to examine the prayer made by the petitioners, that is, whether the FIR in question ought to be quashed.

**VIBHU BAKHRU, J**

**JULY 28, 2020**

pkv