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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2021

PRONOUNCED ON : 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.7913 of 2021

and

Cr1.M.P.No.5238 of 2021

1.Dasaratha Rami Reddy.M

2.Pratap Reddy.M

3.Kiran Kumar Reddy.M

4.Nandana Reddy.M

... Petitioners

Vs.

1.The Inspector of Police,  
EDF-I Wing, Team-I,  
Central Crime Branch,  
Vepery, Chennai-600 007.

2.M/s.Auro Logistics Pvt Ltd., (ROC.NO.044337),  
Rep. by its General Manager Mr.G.Srinivasan,  
No.9, Old No.8, Ranjith Road,  
Kotturpuram, Chennai-600 085.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records and quash all proceedings in Crime No.61/21 pending on the file of the 1st respondent Police.

For Petitioner : Mr.P.V.S.Giridhar for  
M/s.Giridhar and Sai

For R1 : Mr.A.Damodaran,  
Government Advocate (Cr1. Side)

For R2 : Mr.Jayant K.Mehta, Senior Counsel and  
Mr.Shri Singh for Mr.Vijaya Suresh



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## ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.61 of 2021, pending on the file of the 1st respondent Police.

2.The petitioners are the accused in FIR in Crime No.61 of 2021, dated 02.03.2021 registered by the 1st respondent Police for offence under Section 420 IPC on the complaint given by the 2nd respondent/defacto complainant.

3.The gist of the complaint is that the 2nd respondent, a company viz., M/s.Auro Logistics Private Limited, Chennai is engaged in the business of logistics, extraction of minerals. The 1st petitioner approached the 2nd respondent company and represented that he is the brother of Chennakesava Reddy who was involved in mining activity in Gubbi Taluk, Tumkur District holding mining licence number in M.L.No.1266. Further, represented that his brother is holding the mining lease by virtue of family partition and there was surplus manganese reserves in the mining area which can be extracted and sold for good profits. Believing the representation of the 1st petitioner, the 2nd respondent company entered into the job agreement, dated 11.11.2005 with the petitioners for extracting manganese reserve through the license of Chennakesava Reddy. In pursuance to the job agreement, the 2nd respondent company remitted a sum of Rs.50/- lakhs as refundable security deposit by way of demand draft No.748615, dated 17.12.2005 drawn on the Federal Bank, Limited and relevant entries were made in the books of account. Based on the assurance and inducement of the 1st petitioner, the 2nd respondent company had invested a sum of Rs.1,40,50,428/- towards the implementation of the extraction of manganese ore under the job work agreement and for development of the infrastructure to carry out the extraction process.

4.During extraction, it was found that the manganese ore in its individual form cannot be extracted from the mining area of Chennakesava Reddy, since the manganese band runs parallel close to iron ore band and therefore, both the minerals have to be simultaneously extracted. Further, the said Chennakesava Reddy had no permission to extract iron ore and there was no possibility of extraction of manganese ore individually without mining iron ore. The 1st petitioner knowing well that there is



no permission to extract the iron ore, induced the 2nd respondent company with dishonest intention to enter into the job work agreement dated 11.11.2005 by misrepresenting that there was minerable manganese reserves in the mining lease, cheated, defrauded the 2nd respondent company. Further, the 1st petitioner in collusion with his sons/2nd & 3rd petitioners and his daughter/4th petitioner misrepresented with malafide intention, induced the 2nd respondent to deposit Rs.50/- Lakhs as security refundable deposit. After receiving the money, the petitioners herein did not repay the same and they were not reachable. Further, the petitioners threatened the Directors, Promoters and the representative of the 2nd respondent company with dire consequences if insisted for repayment of security deposit. Owing to the dishonest act of the petitioners, the 2nd respondent was cheated and defrauded to the tune of Rs.1,90,50,428/- .

5.The learned counsel for the petitioners submitted that the complaint of the 2nd respondent is frivolous, so absurd and inherently improbable. The alleged event according to the 2nd respondent said to have taken place during the year 2005, but the complaint came to be lodged in the year 2021 after lapse of 16 years, for which, no explanation was given by the 2nd respondent company. The learned counsel further submitted that the job agreements were entered between the 1st petitioner and the 2nd respondent company in the State of Karnataka and the mining works were carried out in Tumkur District, Karnataka. The petitioners lodged a criminal complaint against the 2nd respondent company and others based on the independent Audit Report of M/s.Brahmaiha and Company submitted before the National Company Law Tribunal, Bangalore in C.P.No.59 of 2014. Since the petitioners lodged complaint against the 2nd respondent company to the Inspector of Police, Sanjayanagara Police Station, Bangalore on 10.11.2020, as a counter blast, the 2nd respondent lodged the above complaint to the 1st respondent Police, which culminated into FIR in Crime No.61 of 2021.

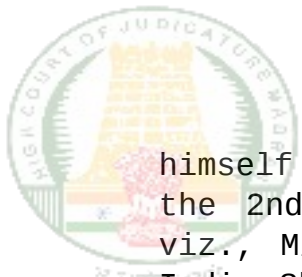
6.In the job agreement dated 15.10.2005, it is mentioned that the mining lands are the family property originally owned by the 1st petitioner's father late Narasi Reddy and later, the family partition had taken place, the mining land and licence was apportioned to Chennakesava Reddy, who gave power of attorney to the 1st petitioner. Thereafter, the job agreement was entered by



the 1st petitioner on behalf of himself and on behalf of his brother Chennakesava Reddy as confirming party with the 2nd respondent. Further, the entire history, devolution of property, applying licence for mining, rejection of the same, against which filing revision before the State and finally obtaining licence from the Central Government/the Directors of Mines and Geology Department, Government of Karnataka after getting clearance from other departments are clearly mentioned in the job agreement. The 2nd respondent was entrusted with the job for removal of iron ore at the rate of Rs.250/- metric tons for the first three years of the mining lease period and there will be an upward revision of 10% for every three years subsequently, till the expiry of the mining period. The period of mining was for twenty years. Further, the job agreement contains various other clauses.

7.Subsequent to it, on 11.11.2005, another job agreement was entered, in which how the licence was granted, then cancelled and thereafter, getting licence by approaching the High Court of Karnataka are clearly narrated. Further, it is mentioned that the 2nd respondent was entrusted with the work for removal of iron ore, manganese ore and other associate ores for the period of 20 years in M.L.No.1266. It is made clear in certain terms the 2nd respondent was entrusted with the removal of all ores including iron ore which are available in that site. The monthly minimum quantity of removal of iron ore was fixed at 20,000/- metric tones and the rate fixed was Rs.100/- per ton for the first 3 years of the mining period. There will be upward revision of 5% for every 3 years subsequently till the expiry of the mining period. With regard to the other ores, the price to be determined at the later date on mutual consent of the parties. The refundable security deposit of Rs.50/- lakhs made by the 2nd respondent company is mentioned in the second job agreement. The agreement is binding on the parties for a period of 20 years, i.e., till the year of 2025. According to the petitioners, the mining licence is still in force.

8.The learned counsel for the petitioners further submitted that during this period, there was misunderstanding between the petitioner and his brother Chennakesava Reddy, who cancelled the power of attorney. Hence, a suit in O.S.No.7374 of 2008 was filed by the 1st petitioner seeking revocation of power of Attorney dated 23.04.2008 executed by his brother is not binding on the 1st petitioner, since the 1st petitioner for



himself and for his brother had entered into job agreements with the 2nd respondent. In the suit, the 2nd respondent company viz., M/s.Auro Logistics Private Limited, Chennai and M/s.Trans India Shipping Service Private Limited are the defendants 2 and 3. During the pendency of the suit, a compromise was arrived and to that effect, a Memorandum of Compromise was filed. In the Memorandum of Compromise, the said Chennakesava Reddy is entitled for 10% of all finished ores in M.L.No.1266 as per the marketing agreement entered between the 1st petitioner and the 2nd respondent company and others on 30.01.2009 has been endorsed. With regard to the same, the 2nd respondent and other companies had no objection. On addendum the agreement dated 11.12.2005 executed between the 1st petitioner/plaintiff and the defendants therein incorporating the above changes which shall become part and parcel of the Memorandum of Compromise. Thus, the 2nd respondent being a party to the Memorandum of Compromise endorsed the compromise which is binding and enforceable between the parties inter se to the suit in O.S.No.7378 of 2008. Admittedly, the 2nd respondent company and the 1st petitioner are parties to the suit. Thus, after filing of such Memorandum of Compromise, the 2nd respondent cannot now make a claim that he was cheated by the petitioners and the refundable security deposit of Rs.50/- lakhs has not been repaid.

9.The learned counsel for the petitioners further submitted that as per the job work agreements, for the dues, Arbitration proceedings was initiated by the 2nd respondent as claimant against M/s.Sri Lakshmi Narasimha Mining Company Private Limited. The 2nd petitioner represented M/s.Sri Lakshmi Narasimha Mining Company Private Limited and filed the counter claim to the claim petition and the arbitration proceedings is in progress. In the meanwhile, the 2nd and 3rd petitioners filed Company Petition before the National Company Law Tribunal, Bangalore in C.P.No.59 of 2014 against M/s.Sri Lakshmi Narasimha Mining Company Private Limited and other Directors of the 2nd respondent company. The Company Law Board by order dated 07.07.2015 appointed M/s.Brahmaiha and Company., Chartered Accountant, Bangalore as an Independent Auditor to audit the books and accounts and conduct enquiry. The said Auditor filed his report on 13.11.2017 and there was some dispute with regard to the payment of fees to Independent Auditor. The Company Petition in C.P.No.59 of 2014 was dismissed by order dated 22.03.2019 with observation that the Independent Auditor



M/s.Brahmaiha and Company directed to furnish the copy of his report to the parties subject to payment of fees as per the directions of the Tribunal and further, the petitioners therein were given liberty to file a fresh case, in case findings in the Audit Report gives any cause of action. Aggrieved over the same, the petitioners therein filed appeal before the National Company Law Appellate Tribunal, New Delhi. This being the case, the 2nd respondent suppressed all these subsequent development and litigations between the petitioners and the 2nd respondent had approached the 1st respondent Police as though they were misled and cheated by the petitioners. The petitioners represented that only manganese ore was available and it is not possible for extraction, since the manganese band runs parallel close to iron ore band and therefore, both the minerals have to be simultaneously extracted. In the job agreements dated 15.10.2005 and 11.11.2005, the deposit and availability of iron ore are clearly mentioned. Thus, there is no false representation by the petitioners.

10.The learned counsel for the petitioners further submitted that pursuant to the approval dated 25.08.2008, the mining lease was transferred to the Company and the transfer was ratified in the Board Meeting dated 12.01.2009. On commencement of the operations, the 2nd respondent company on its part of obligation under the job agreement dated 15.10.2005 started extracting ore from the mining and then sold the same to M/s.Trans India Shipping Service Private Limited in accordance with the terms set forth in the sale agreement. Both the Companies are interconnected, closely held entities. In the meanwhile, the law regulating mines and minerals were amended whereby the appointment of raising contractors was made illegal. As a result, the job work agreement and the sale agreement became frustrated and the company could not engage itself with the 2nd respondent company and M/s.Trans India Shipping Service Private Limited. Hence, there was arrangement for changing nomination of Directorship. Since this being the case, the complaint lodged against the petitioners by the 2nd respondent before the 1st respondent Police ought not to have been entertained. The subsequent developments and endorsement of the same have completely changed the character, import and its obligation of the job work agreement.

11.In support of his submission, the learned counsel for



the petitioners relied on the judgment of the Hon'ble Apex Court in the case of "R.P.Kapoor Versus the State of Punjab reported in AIR 1960 SC 866" and in the case of "State of Haryana Versus Bhajan Lal reported in (1992) SCC (Cr1) 426." For the point of jurisdiction, he relied on the judgment of the Apex Court in the case of "Kaushik Chatterjee Versus State of Haryana reported in (2020) 10 Supreme Court Cases 92." Hence, he prayed for quashing of the FIR against the petitioners.

12.The learned counsel for the 2nd respondent filed affidavit and typed set of papers and made his submissions that the 2nd respondent company lodged a complaint to the 1st respondent Police and the FIR in Crime No.61 of 2021 came to be registered on 02.03.2021, for offence under Section 420 IPC against the petitioners. The 2nd respondent is the company viz., M/s.Auro Logistics Private Limited, Chennai having office at Kotturpuram, Chennai. The company is engaged in the business of Logistics, Extraction of Minerals. In the year 2005, the 1st petitioner approached the 2nd respondent company and represented that he is the power agent of his brother Chennakesava Reddy, who was involved in mining activity in M.L.No.1266. Based on the representation, the job agreement dated 11.11.2005 was entered between them. As per the job agreement, the amount of Rs.50 lakhs was given as refundable security deposit through demand draft. The 2nd respondent company had invested a sum of Rs.1,40,50,428/- towards the implementation of extraction of manganese ore under the job agreement and for development of infrastructure to carry out the extraction process. Later, it came to light that the manganese ore in its individual form cannot be extracted from the mining area, since the manganese band runs parallel close to iron ore band. Further, it is found that the said Chennakesava Reddy did not have permission to extract the iron ore and there was no possibility to extract manganese ore individually without extracting the iron ore. Thus, the 1st petitioner knowing well that there was no permission to extract iron ore, induced the 2nd respondent company with dishonest intention to enter into the job agreement dated 11.11.2005. Further, all the petitioners herein had induced the 2nd respondent company to part with Rs.50 Lakhs as refundable security deposit and misappropriated the same and not repaid to the 2nd respondent company.

13.The learned counsel further submitted that the



commercial production commenced only in December 2007. In the year 2008, the said Chennakesava Reddy transferred the mining lease to the 2nd respondent company through M/s.Sri Lakshmi Narasimha Mining Company Private Limited. Subsequent to this transfer, a Memorandum of Compromise was entered in the suit in O.S.No.7374 of 2008 wherein the job agreement entered by the 2nd respondent was extended made binding on the said company which also undertook to take over the liability of the petitioners. The mining operation was stopped by the Hon'ble Apex Court in the month of July 2011. Thereafter, cancelled the minor lease in the month of April 2012. Subsequent to the closure of the mines, the 2nd respondent sought for repayment of the refundable security deposit of Rs.50 lakhs held by the petitioners. Now, the petitioners changed their colours and given reasons disputing some debit notes, which was clarified with the statement of accounts to the petitioners. The statement of accounts were audited and income tax paid on it. Thus, the petitioners to wriggle out from the obligation to pay back the refundable security deposit of Rs.50 lakhs were making false allegations against the 2nd respondent. Apart from security deposit, the petitioners are due to the tune of Rs.4 Crores which is now the subject matter of the Arbitration Proceedings pending before the Arbitrator. This arbitration is for the dispute with regard to accounting and nothing to do with the security deposit.

14.The learned counsel for the 2nd respondent further submitted that the petitioners 2 to 4 filed Company Petition in C.P.Nos.59 of 2014 and 9 of 2016 against M/s.Sri Lakshmi Narasimha Mining Private Limited, R.Swarup Reddy, Yathin Reddy, Jansi Reddy and Imran Pasha with regard to the board meetings held on 06.09.2013 and 20.09.2013. The Investigation to be carried in the affairs of the company for the misconduct committed by one Venkata Rami Reddy who misappropriated the company funds and defrauded the 2nd respondent company and M/s.Trans India Shipping Service Private Limited and other companies. During the proceedings of the Company Petition in C.P.No.59 of 2014, M/s.Bramhaiya and Company was appointed to conduct enquiry. Finally, the Company Petition was dismissed by order dated 22.03.2019 giving right to the petitioner to file fresh case, in case the Auditor Report gives any cause of action. The petitioner instead of filing a fresh application before NCLT, filed an appeal before the National Company Law Appellate Tribunal and same is pending adjudication. In the meanwhile, the



petitioners lodged a complaint on 18.01.2021 to the Inspector of Police, Sanjayanagara Police Station, Bangalore. After completion of preliminary enquiry, the complaint was closed on 07.02.2021 and directed the 2nd petitioner to approach the National Company Law Appellate Tribunal for his relief.

15.Thus, the contention of the petitioners are civil dispute and the matter has already been adjudicated by the National Company Law Tribunal. Now claiming some of the disputes are pending before the Arbitrator and taking shield is not proper. The issues therein are not with regard to the misappropriation committed by the petitioners on the refundable security deposit.

16.In support of his submissions, the learned counsel for the 2nd respondent relied upon the following citations:-

17.In the case of "M/s.Neeharika Infrastructure Private Limited Versus State of Maharashtra and others reported in 2021 SCC OnLine SC 315", the Hon'ble Apex Court had given guidelines in quashing the FIR in exercise of the power under Section 482 Cr.P.C., and under Article 227 of the Constitution of India. From the guidelines issued, it is seen that only in exceptional cases where non-interference would result in miscarriage of justice; Interference at the stage of Investigation/FIR is permitted if the case falls within the parameters laid down by the Hon'ble Apex Court in the case of "R.P.Kapur Versus the State of Punjab reported in AIR 1960 SC 866" and in the case of "State of Haryana Versus Bhajan Lal and another reported in (1992) SCC (Cr1) 426." At the stage of FIR, the Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the Court has to permit the investigating agency/Police to investigate the allegations in the FIR.

18.Further, placed reliance on the judgment of the Hon'ble Apex Court in the case of "Skoda Auto Volkswagen India Private Limited Versus State of Uttar Pradesh reported in 2020 SCC OnLine SC 958" for the principle that the Courts would not thwart any investigation and guidelines enumerated in the case of State of Haryana Versus Bhajan Lal and another reported in (1992) SCC (Cr1) 426., the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of



rare cases and the criminal proceedings ought not to be scuttled at the initial stage.

19. For the point of the jurisdiction, he placed reliance in the case of "Satvinder Kaur Versus State (Govt. of NCT of Delhi) and another reported in (1999) 8 Supreme Court Cases 728".

20. In the case of "K. Jagadish Versus Udaya Kumar G.S. and another reported in (2020) 14 Supreme Court Cases 552", the Hon'ble Apex Court held that both the civil and criminal proceedings are maintainable in respect of same set of facts. The two types of actions are quite different in content, scope and import.

21. In view of the above, the learned counsel for the 2nd respondent prayed for dismissal of the Quash Petition.

22. The learned Government Advocate (Cr1. Side) appearing on behalf of the 1st respondent Police submitted that in the present case, FIR registered only on 02.03.2021. Immediately on registration of the same, the petitioners filed this petition during the month of April 2021 leaving little time for the 1st respondent Police to conduct investigation. On the complaint, the 1st respondent Police finding cognizable offence, registered a case in Crime No.41 of 2021, for offence under Section 420 IPC. The Hon'ble Apex Court in the case of "State of Neeharika Infrastructure Versus State of Maharashtra reported in 2021 SCC OnLine SC 315", had given certain guidelines and held that only in rarest of rare cases, the FIR can be quashed. The facts of the above case does not fall under the rarest of rare cases or within the parameters laid by the Hon'ble Apex Court in the case of "State of Haryana Versus Bhajan Lal and another reported in 1992 SCC (Cr1) 426".

23. The learned Government Advocate further submitted that the petitioner entered into the job agreements with the 2nd respondent for extracting iron ore in the year 2005. The mining licence M.L.No.1266 is not for extracting iron ore and the said Chennakesava Reddy, who is the brother of the 1st petitioner did not have any permission to extract iron ore. When the job agreement was executed, the amount of Rs.50 lakhs by way of demand draft remitted to the petitioners as refundable security deposit. Thus, the petitioners had deceived the 2nd respondent



to part with Rs.50 lakhs at the time of execution of the job agreement. The job agreement was entered between the petitioners and the 2nd respondent for a period of twenty years. During extraction, it was found that the manganese ore in its individual form cannot be extracted from the mining area of Chennakesava Reddy, since the manganese band runs parallel close to iron ore band and therefore, both the minerals have to be simultaneously extracted. Further, the said Chennakesava Reddy did not have any permission to extract iron ore and there was no possibility of extraction of manganese ore individually without mining iron ore. The 1st petitioner knowing well that there is no permission to extract the iron ore, induced the 2nd respondent with dishonest intention to enter into the job work agreement dated 11.11.2005 by misrepresenting that there were minerable manganese reserves in the mining lease, cheated and defrauded the 2nd respondent. Further, the pendency of the Arbitration Proceedings would not affect the investigation to proceed further.

24.The proceedings of the Company Petition between the parties is for different relief. The subject matter in the present complaint is not similar with any of the proceedings between the parties.

25.With regard to the point of jurisdiction raised by the learned counsel for the petitioners, the learned Government Advocate submitted that the Apex Court in the case of "Satvinder Kaur Versus State (Government of NCT of Delhi) and another reported in (1999) 8 SCC 728" held that the Police officers is competent to investigate any cognizable offence and if he comes to conclusion that the crime was committed beyond its territorial jurisdiction, the Investigating Officer can forward the case to the Police station having jurisdiction. In this case, the point raised by the learned counsel for the petitioners with regard to the point of jurisdiction is misplaced.

26.Thus, the investigation is at the initial stage and not permitting the Investigation Officer to conduct investigation would amount to curtailing the powers of the Investigating Officers.

27.In support of his submissions, the learned Government Advocate relied on the decision of the Hon'ble Apex Court in the case of "State of Orissa and others Versus Ujjal Kumar Burdhan reported in (2012) 4 Supreme Court Cases 547" wherein the



existence of arbitration agreement or arbitration proceedings cannot take away the criminal acts out of jurisdiction of the Courts.

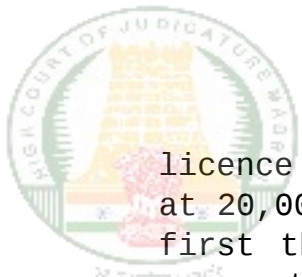
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28. In view of the above submission, he strongly opposed the quashing of FIR against the petitioner and prayed for necessary direction.

29. This Court considered the rival submissions and perused the materials available on record.

30. It is admitted fact that the job agreement entered between the petitioners and the 2nd respondent on 15.10.2005 and subsequent to it, another job agreement executed on 11.11.2005.

31. The crux and ingredients of the agreement is that the 1st petitioner's father late Narasi Reddy was holding vast tracks of lands having mine ore deposits including iron ore, manganese ore etc. During family partition, the 1st petitioner's brother Chennakesava Reddy was apportioned with their mining lands. Thereafter, the 1st petitioner and his brother as confirming party, entered into the job agreement with the 2nd respondent. In the first job agreement, there is mention for extraction of iron ore by the 2nd respondent for a period which shall be co-terminus with the terms of renewed mining licence. The removal of ore shall be at the rate of Rs.250/- metric tones for the first three years and there will be upward revision of every three years of 10% till the expiry of the mining lease granted. The removal of iron ore shall be based on the actual weighment made at the company's weigh bridge at site. Further, in the agreement various other clauses are included. As per the first agreement, the amount of Rs.50 lakhs was paid as refundable security deposit. The second job agreement dated 11.11.2005 is a detailed one, wherein it is found that the permission granted by the Director of Mines & Geology, vide, his order, dated 28.10.2004 permitting to mine iron ore along with manganese is clearly mentioned. Further, withdrawal of permission on 07.12.2004 and subsequently, getting stay order from the Karnataka High Court and thereafter, commencing mining operation and the subject of mining area filing under mining license M.L.No.1266 are found. In both job agreements, it is mentioned about removal of iron ore, manganese ore and other associate minerals for a period of twenty years pertaining to the mining



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licence M.L.No.1266. The monthly minimum removal has been fixed at 20,000 ton of iron ore at the rate of Rs.100/- per ton for the first three years and an upward revision of 5% for every three years till the expiry of the mining lease. The refundable security deposit of Rs.50/- lakhs has been reiterated and the agreement was binding on the parties for the period of twenty years i.e., till the year of 2025. Thereafter, the mining licence, which was in the name of the petitioner's brother Chennakesava Reddy was cancelled through the deed of revocation of the power of attorney, dated 23.04.2008. This necessitated the 1st petitioner to file a suit in O.S.No.7374 of 2008 against his brother Chennakesava Reddy, the 2nd respondent company and its associate M/s.Trans India Shipping Service Private Limited seeking for a declaration that the deed of revocation of power of attorney dated 23.04.2008 executed by Chennakesava Reddy is not binding on the 1st petitioner and sought permanent injunction to restrain Chennakesava Reddy or his agents from entering into any transaction in relation to the mining leases. Thereafter, the mining licence was transferred to the company in the name of M/s.Shri Lakshmi Narasimha Mining Company Private Limited, Bangalore. The 2nd respondent and its nominees were made as Directors of M/s.Shri Lakshmi Narasimha Mining Company Private Limited, Bangalore. During the pendency of the suit, a Memorandum of Compromise was filed and the learned City Civil Judge, Bangalore on 30.01.2009 recorded as follows:-

"The 1st plaintiff, 2nd plaintiff represented through 1st plaintiff, 1st defendant, 2nd deft. represented through its Manager, namely Narayanagowda 3rd deft. represented through the CEO namely R.Swarup reddy and respective advocate of the plaintiffs and defendants present before the Court. The authority letter issued by the 2nd plaintiff, 2nd deft. and 3rd deft. produced before the Court.

The plaintiffs and the defendants submits that they have got compromised the case as filed the compromise petition U/o 23 rule 3 of C.P.C. I read this compromise petition, both the parties in the open Court in presence of their respective advocates. Both the parties admit the contents of this compromise petition as true and correct. 1st deft. also admits the receipt of two cheques and a D.D for total sum of Rs.2 Crore 50 lakh as mentioned in the compromise petition. Hence, I pass the following order.



## ORDER

In view of the compromise between the parties suit of the plaintiffs be decreed in terms of the compromise petition. Draw the decree accordingly.

Refund half of the Court fee to the plaintiffs."

32.The 2nd respondent is the 2nd defendant in the suit and the 3rd defendant is its associate viz., M/s.Trans India Shipping Private Limited, Chennai. As per the compromise, the mining commenced from 16.11.2007 and the job work and the sale agreement were ratified. The extracted iron ore was sold to the 2nd respondent company, who in turn sold to M/s.Trans India Shipping Service Private Limited as per terms set forth in the sale agreement. Both the 2nd respondent and M/s.Trans India Shipping Service Private Limited are interconnected undertakings promoted and owned directly/indirectly by R.Swarup Reddy, Yathin Reddy, Jansi Reddy and Imran Pasha, who are from one family. The mined ores are valued several crores and made profit out of it.

33.In the course of operation, they also got into the real estate business. The petitioners purchased vast tracks of land and continued their business. Due to change of Law, the mining could not be done from July 2011 onwards, since there was a ban on employment of raising contractors. In the meanwhile, there have been nomination of directors, subscription of shares of the business were done. In these transactions, dispute aroused in the manner in which the meetings were held and the business carried out. Later, the petitioners found the forgery committed by the 2nd respondent and huge sums of money siphoned out with false account. Therefore, the Company Petitions were filed before the National Company Law Tribunal, Bangalore in C.P.Nos.59 of 2014 & 9 of 2016. The National Company Law Tribunal, Bangalore had gone in detail with regard to the dispute of convening the board meetings, allotment of shares, approval of balance sheet and its accounts. Later, in the Company Proceedings independent Auditor M/s.Bramaiha and Company was nominated, who conducted enquiry and found siphoning of huge sums of money.

34.In the Arbitration Proceedings initiated by the 2nd respondent, the dispute regarding payment made between the 2nd respondent and M/s.Shri Lakshmi Narasimha Mining Company Private



Limited are adjudicated. This Arbitration Proceedings is with regard to the dispute in statement of accounts for mining, sale of ore, sharing of payment of royalty and other amounts as agreed in the job agreement and further, serious doubts are cast on several debit notes. The 2nd respondent had clarified the same by issuing detailed clarification to all the debit notes along with the statement of accounts which is disputed. Further, the 2nd respondent already remitted the income tax on the debit funds raised and settled the accounts. The 2nd respondent availing benefit of income tax on these amounts by projecting as expenses in the books of accounts cannot be the reason to discard the independent audit report. Taking shield on payment of income tax and availing benefit will not absolve the misappropriation and this claim is not acceptable. Now the petitioners disclaiming this expense is only to avoid repayment of security deposit which is not acceptable. In the arbitration proceedings, the 2nd respondent made a claim of around Rs.4 Crores from M/s.Shri Lakshmi Narasimha Mining Company Private Limited, Bangalore.

35.On perusal of the claim petition, counter claim of the respondent in the arbitration proceedings and also from the Company Petitions, it is seen that pursuant to the job agreements there have been further development in their business. Both the 2nd respondent and the petitioners have been carrying on their business by extracting iron ore and selling the same through M/s.Trans India Shipping Service Private Limited, which were in operation till cancellation of mining operation license by the authorities. This being the fact, the petitioners cannot be found fault with. The business was running to several crores, made profits and later, due to stoppage of mining business came to stand still, caused some loss. The subsequent business association of the petitioners and the 2nd respondent had completely changed the nature of job agreements and the initial job agreement got submerged.

36.The refundable security deposit has got submerged into the other transactions, the licence which was in individual name later transferred in the name M/s.Shri Lakshmi Narasimha Private Limited Company, wherein the petitioners as well as the family members of the 2nd respondent, Directors became part of it carrying on their business and later, the payments made. The Audit Report of M/s.Bramaiha and Company has given a finding of misappropriation of funds and there is dispute between the



petitioners and the 2nd respondent over the same.

37.The job agreements of the year 2005 got transferred into subsequent agreement and finally, got submerged with the mining and other businesses. Non projecting the mineral deposits and agreement without proper mining license cannot be accepted, since the business was successfully carried out between the petitioners and the 2nd respondent company over the period of time till the cancellation of mining licence by the statutory authority. Now, reverting back and lodging a complaint is nothing but to spite venom to take revenge. The dispute is commercial dispute between them. In this case, the private business transactions have been given criminal colour.

38.In view of the above, this Court comes to the conclusion that the FIR even is taken at face value and accepted in its entirety do not prima facie constitute any offence or case against the petitioners. The FIR against the petitioners is maliciously instituted with an ulterior motive for wreaking vengeance on them and with a view to spite them due to private and personal grudge. Hence, the continuation of the criminal proceedings would amount to abuse of process of law and miscarriage of justice.

39.In the result, this Criminal Original Petition is allowed and the FIR in Crime No.61 of 2021 pending on the file of the 1st respondent is hereby quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,  
EDF-I Wing, Team-I,  
Central Crime Branch,  
Vepery, Chennai-600 007.



2.The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.K.Vijaya Suresh, Advocate, S.R.No.36905

+1cc to M/s.Giridhar & Sai, Advocate, S.R.No.36423

Cr1.0.P.No.7913 of 2021

JP-II(CO)  
SB(24/08/2021)