**Crl.O.P.Nos.10773 & 10846 of 2021**

**M.NIRMAL KUMAR.,J**

This matter is posted today before this Court under the caption "For Being Mentioned."

**2.** Heard the learned counsel on either side.

**3.** Para No.8 of the order dated 01.07.2021 shall be read as follows :

"8.Mr.Ramesh/defacto complainant, who was the then employee of M/s. Intelligent Software Solutions Pvt. Ltd., had left the service. Now, he is presently working with one Govindarajan S/o.Mottaiyan, who is the Assistant General Manager of the defacto complainant's company and he has been authorized by the resolution of the company passed on 05.04.2021to represent the company and filed a petition to enter into a compromise on the following conditions:-

> To sign, execute, present any case and to appear and represent the company before the Hon'ble Madras High Court, Chennai in Crl.O.P.No.10733 and 10846 of 2021.
>
> To sign Vakalat or authorization on behalf of the company in favour of such counsel / advocate proceeding / defending any legal proceedings, appeals, revisions etc.,
>
> To present / re-present before the Hon'ble Madras High Court, Chennai in respect of Criminal Original Petition No.10733 and 10846 of 2021, since the company has entered into compromise.
>
> To engage Advocates and to sign Vakalatnamas for this purpose;
>
> To settle, compound and enter into compromise any claim, debt outstanding relating to the subject matter of pending proceedings at any stage and to make endorsements to that effect, on behalf of our company and to receive any sum from such accused person towards settlements of dues in the event of any compromise/ settlement.
>
> To withdraw any complaint on such compromise/ settlement and to prefer appeals/ revisions before the Appellate Court against any order/ judgement passed in such criminal proceedings, on behalf of our company.

Based on the same, a compromise affidavit has been filed by the petitioner as well as the defacto complainant. The petitioner entered into a compromise, on the following conditions, which were resolved on 05.04.2021, vide compromise memo dated 24.06.2021 and the following terms and conditions have been aggrieved upon, which are extracted below:

> *"A) Mrs.S.Hymavathy-(A-1 in C.C.No.2031 & 2032 of 2006 pending on the file of the Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai) have no objection for withdrawing and provides unconditional and willful consent favoring for withdrawing the amount Rs.5,00,000/- (Rupees Five Lakhs Only) deposited as fixed deposit in the name of M/s. Intelligent Software Solutions Pvt.Ltd., in Canara Bank General Patters Road Branch towards amicable settlement in C.C.No.2031 & 2032 of 2006 pending on the file of Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai.*
>
> *B) Mr.Govindarajan Mottaian Assistant General Manager M/s. Intelligent Software Solutions Pvt.Ltd., (Defacto Complainant's Company) agrees for*

*the above said settlement amount and assures that he or his Company (M/s. Intelligent Software Solutions Pvt) or successors shall not claim anything over and above the said value whether monetary or material.*

*C) Mr.Govindarajan Mottaian Assistant General Manager M/s. Intelligent Software Solutions Pvt.Ltd (Defacto Complainant's Company) agrees to withdraw the complaint in Crime No.262 of 2005 and charge sheet has been filed by the respondent Police in C.C.No.2031 & 2032 of 2006 is pending trial in Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai.*

*D) M/s. Intelligent Software Soultions Pvt have no objection for quashing the case in Crime No.262 of 2005 and charge sheet has been filed by the respondent Police in C.C.No.2031 & 2032 of 2006 is pending trial in Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai.*



*E) Mrs.S.Hymavathy – (A-1 in C.C.No.2031 & 2032 of 2006 pending on the file of Hon'ble XI Metropolitan Magistrate, Saidapet, Chennai) have no* *objection towards M/s. Intelligent Software Solutions Pvt Ltd (represented through its authorized signatory) in withdrawing the amount of Rs.5,00,000/- lying as fixed deposit in the name of M/s. Intelligent Software Solutions Pvt Ltd in Canara Bank, General Patters Road, Branch deposited by S.Hymavathy pursuant to order dated 31.05.2005 passed by this Hon'ble Court in Crl.O.P.No.11708 of 2005, along with its accrued interest, towards amicable settlement in C.C.No.2031 & 2032 of 2006."*

The defacto complainant and the petitioner appeared through video conferencing before this Court and they are identified and verified. The defacto complainant has also said that he has no objection for withdrawing his complaint in Crime No.262 of 2005. Finding that it is only a private transactions and there was an employee and employer relationship dispute arose, with reconciliation of accounts, finally, a resolution was made and the issue has been resolved."

**M.NIRMAL KUMAR.,J.**

**dna**

**4.** The Registry is directed to print the name of the petitioner's counsel as "Mr.S.R.Rajagopal, Senior Counsel for Mr.C.Vidhusan" in the order and issue a fresh copy of the order, after carrying out the above mentioned correction at Para No.8 of the order.

**26.07.2021**

**dna**

**Note: Issue order copy on 28.07.2021**



**Crl.O.P.Nos.10773 & 10846 of 2021**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

Crl.O.P.Nos.10773 & 10846 of 2021
and
Crl.M.P.Nos.6419 & 6455 of 2021

S.Hymavathy ... Petitioner
(in both Crl.OP's)

Versus

1.State by
The Inspector of Police,
Central Crime Branch,
Chennai.
(Cr.No.262 of 2005).

2.R.Ramesh ... Respondents
(in both Crl.OP's)

**COMMON PRAYER:** Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings of the case pending trial in C.C.No.2031 of 2006 and C.C.No.2032 of 2006 respectively, on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioner.

**In both Crl.OP's :-**

For Petitioner : Mr. R. Rajagopal forefathers
for Mr.C.Vidhusan

| | | |
|---|---|---|
| For R1 | : | Mr.A.Damodaran<br>Government Advocate (Crl. Side) |
| For R2 | : | Mr.D.Yashwanth Rajan |

**COMMON ORDER**

These Criminal Original Petitions have been filed to call for the records pertaining to the proceedings of the case pending trial in C.C.Nos.2031 & 2032 of 2006 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioner.

2.The cases are still at the stage of trial. By passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably among themselves.

3.This gist of the case is that one Ramesh, Accounts Officer of M/s. Intelligent Software Solutions Pvt. Ltd., had lodged a complaint against its then Center Manager and Cashier of NIIT-T.Nagar for the offence of Criminal Breach of Trust and misappropriation of the company amount around Rs.20 Lakhs. The Intelligent Software Solutions Private Limited is having exclusive right in training the students in computer under NIIT guidelines. The company has given its franchisee to NIIT. The petitioner herein was working as Center Manager and she was responsible for the day-to-day affairs and administration of the center. She is also entrusted with the responsibility of collection of fees in installment from students and make proper accounting of the cash so collected and remitting the same into the company accounts. A2/Ravisankar was working as a Cashier in the defacto complainant's Company and A3/R.Govardhanan is the Paramour of A1/petitioner herein, who used to visit the defacato complainant's company every day and offered computer courses. Many students were joining the courses conducted by defacto complainant's company. The petitioner as the Centre Manager collected the entire fees of the students and the same would be deposited into the A/c.No.8896 in Andhra Bank. The every day collection fees from the students were entered into ENCORE system of computer software supplied by NIIT and it maintains the proper accounting and sending the reports. They are also instructed to maintain a separate register and they should also make entry of daily collection of fee from the students manually. During the month of September, 2004, NIIT Company has sent a E-mail to the company stating that the collection amount for the period 1st October 2003 to August 2004 amounting to Rs.74,68,386/- as per the ENCORE Accounting System of the NIIT had not been properly accounted for. Later, it was detected that the petitioner and A2/Ravisankar had swindled Rs.27

Lakhs of the defacto complainant's company with the active connivance of the other accused/A3 by forging the accounts by giving falsification of details with the intention of cheating the company. Hence, a complaint came to be lodged.

4.On completion of investigation, two charge sheets were filed finding that there were two accounting periods and the same is taken on file in C.C.No.2031 & 2032 of 2006 respectively, before the XI Metropolitan Magistrate, Saidapet, Chennai on 07.04.2021 for the offence under Sections 408, 477-A, 406 r/w 109 IPC.

5.The contention of the petitioner is that the petitioner got appointment in the defacto complainant's company on 01.06.2001 and she was overall in charge of the said Computer Training Centre and Administration of the Centre. The second accused/Ravisankar was the Cashier working from 18th April, 2002 in the above said company. The dispute is with regard to the difference in the amount reflected in the manual book and bank book. There are two current accounts viz., A/c.No.8896 and A/c.No.7236, out of which, one account is for remitting the collection of fees and another account is for spending expenses incurred for materials and other administration expenses. The amounts are initially collected manually and temporary receipts were issued. Later the same would be entered into ENCORE package system and also simultaneously into the register, which were later reconciled. There was some discrepancies in the reconciliation, which had caused doubt on the defacto complainant. Further, the petitioner herself for personal reasons wanted to get relief and she had sent a relieving letter on 10.11.2004. Later she had informed that she was ready to hand over all the records to the defacto complainant. From 01.12.2004, she stopped going to the job of the said company. Later NIIT had terminated the agreement and license, which had offended and caused them to lodge the above complaint. The petitioner had also given an undertaking that the defacto complainant wants to reconcile the amount, whenever and whatever difference in the accounts the same can be made good.

6.Further, the petitioner along with other accused had started a company in the name of "Adopt Technologies" while working in the defacto complainant company is not correct. The defacto complainant is getting offended and objected for the petitioner and the other accused for starting a company by similar in nature. There is no prohibitory clause on starting a company with acquired knowledge by the petitioner. Further the allegation of the defacto complainant that many of the students are studying without any materials. The main grievance of the defacto complainant is that since the petitioner had started a competitive business against the defacto complainant, hence, the accused/petitioner herein, A2 and A3 have been falsely implicated in this case.

7.Further, it is submitted that the due to passage of time, the dispute between the petitioner and the defacto complainant, had now been resolved and by consent of the both parties, both the cases can be quashed.

8.Mr.Ramesh/defacto complainant, who was the then employee of M/s. Intelligent Software Solutions Pvt. Ltd., had left the service. Now, he is presently working with one Govindarajan S/o.Mottaiyan, who is the Assistant General Manager of the defacto complainant's company and he has been authorized by the resolution of the company passed on 05.04.2021to represent the company and filed a petition to enter into a compromise on the following conditions:-



1. To sign, execute, present any case and to appear and represent the company before the Hon'ble Madras High Court, Chennai in Crl.O.P.No.10733 and 10846 of 2021.



2. To sign Vakalat or authorization on behalf of the company in favour of such counsel / advocate proceeding / defending any legal proceedings, appeals, revisions etc.,

3. To present / re-present before the Hon'ble Madras High Court,

Chennai in respect of Criminal Original Petition No.10733 and 10846 of 2021, since the company has entered into compromise.

4. To engage Advocates and to sign Vakalatnamas for this purpose;

5. To settle, compound and enter into compromise any claim, debt outstanding relating to the subject matter of pending proceedings at any stage and to make endorsements to that effect, on behalf of our company and to receive any sum from such accused person towards settlements of dues in the event of any compromise/ settlement.

6. To withdraw any complaint on such compromise/ settlement and to prefer appeals/ revisions before the Appellate Court against any order/ judgement passed in such criminal proceedings, on behalf of our company.

Based on the same, a compromise affidavit has been filed by the petitioner as well as the defacto complainant. The defacto complainant and the petitioner appeared through video conferencing before this Court and they are identified and verified. The defacto complainant has also said that he has no objection for withdrawing his complaint in Crime No.262 of 2005. Finding that it is only a private transactions and there was an employee and employer relationship dispute arose, with reconciliation of accounts, finally, a resolution was made and the issue has been resolved.

9.Under such circumstances, no useful purpose will be served in keeping the First Information Report pending, even though, the offences involved are non-compoundable in nature. In the light of the guidelines given by the Hon'ble Supreme Court reported in ***2017 9 SCC 641-(Parbathbhai Aahir @ Parbathbhai Vs. State of Gujrath),*** and after exercising due caution as advised by the Hon'ble Suprme Court in ***The State of Madhya Pradesh v. Dhruv Gurjar and Another*** reported in ***(2019) 2 MLJ Crl 10***, and ***Arun Singh & Others v. Stat of U.P. through its Secretary & Another*** reported in ***(2020) 2 LW Crl 957,*** this Court in exercise of its jurisdiction under Section 482 Cr.P.C. quashes the First Information Report in Crime No.262 of 2005, on the file of the 1st respondent Police, and the consequential Calender Cases in C.C.Nos.2031 & 2032 of 2016.

10.In view of the same, this Court is inclined to quash the proceedings, not only against the petitioner, but too, the other accused, since, the grounds of the accused are similarly placed.



11.In view of the above, C.C.Nos.2031 & 2032 of 2006, on the file of the XI Metropolitan Magistrate, Saidapet, Chennai is hereby quashed as against all the accused.

12.Accordingly, the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

**01.07.2021**

Index: Yes/No
Internet: Yes/No

klt

To

1.The learned XI Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
Central Crime Branch, Chennai.

3.The Public Prosecutor,
High Court, Madras.

**M.NIRMAL KUMAR., J.**

klt

Crl.O.P.Nos.10773 & 10846 of 2021
and
Crl.M.P.Nos.6419 & 6455 of 2021

01.07.2021