IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 02.03.2022	ORDERS PRONOUNCED ON 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.27139 OF 2016
AND
CRL.M.P.NOS.13735 AND 13736 OF 2016

1. SAVANI TRANSPORTS PRIVATE LIMITED
809-A BROADWAY CENTER
DR.AMBEDKAR ROAD
DADAR EAST, MUMBAI - 400 014.

2. HANSAT SAVANI
S/O.MARITHLAL SAVANI
DIRECTOR
SAVANI TRANSPORTS PRIVATE LIMITED
809-A BROADWAY CENTER, 2nd FLOOR
DR.AMBEDKAR ROAD
DADAR EAST, MUMBAI – 400 014.

3. NAYANT SAVANI
S/O.MARITLAL SAVANI
MANAGING DIRECTOR
SAVANI TRANSPORTS PRIVATE LIMITED
809-A BROADWAY CENTER, 2nd FLOOR
DR.AMBEDKAR ROAD
DADAR EAST, MUMBAI – 400 014.

4. M.K.BHATIA SAVANI
OPERATIONAL HEAD
SAVANI TRANSPORTS PRIVATE LIMITED
809-A, BROADWAY CENTER, 2nd FLOOR
DR.AMBEDKAR ROAD
DADAR EAST, MUMBAI – 400 014.

5. VIVEKANANDAN, S/O.SUBRAMANIAM
ZONAL MANAGER,
SAVANI TRANSPORTS PRIVATE LIMITED
NO.66 THAMBUCHETTY STREET
PARRYS, CHENNAI – 600 001.

6. THIAGARAJAN, S/O.RAJAPUSHNAN
SENIOR BRANCH MANAGER
SAVANI TRANSPORTS PRIVATE LIMITED
NO.66, THAMBUCHETTY STREET
PARRYS, CHENNAI - 600 001.

7. ANBU @ ANBALAGAN,, S/O.ELUMALAI
LOADING CLERK
SAVANI TRANSPORTS PRIVATE LIMITED
NO.66, THAMBUCHETTY STREET
PARRYS, CHENNAI - 600 001.

... PETITIONERS

Vs.

1. STATE REP. BY
THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH (DCB)
THIRUVALLUR.

2. M/S.GREAVES COTTON LIMITED
REPRESENTED BY ITS
GENREAL MANAGER - PROCUREMENT LOGISTICS
MR.VINAY KUMAR ACHARYA
S/O.B.V.ACHAYA
HAVING MANUFACTURING UNIT AT
F-62, F-63, SIPCOT INDUSTRIAL COMPLEX
GUMMIDIPOONDI - 601 201.

... RESPONDENTS

This Criminal Original Petition is filed under Section 482 Cr.P.C. to to call for the records relating to C.C.No.90 of 2016 on the file of learned Judicial Magistrate No.I, Ponneri and to quash the same.

For Petitioners	:	Mrs.Nalini Chidambaram Senior Counsel assisted by Mr.G.Sarath Babu for M/s.M.Sounderrajan
For Respondent-1	:	Mr.R.Murthi Government Advocate
For Respondent-2	:	Mr.V.R.Appaswamee

ORDER

This petition is filed to call for records in C.C.No.90 of 2016 on the file of learned Judicial Magistrate No.I, Ponneri and to quash the same.

2. Final report in C.C.No.90 of 2016 was filed on the basis of complaint dated 09.07.2015 given by the second respondent against the petitioners. The gist of the complaint, is as follows:-

Second respondent, M/s.Greems Cotton Limited is a public limited company engaged in the business of manufacture and sale of automative engines, industrial engines, farm equipments as well as spare parts for the same. It has its factory at SIPCOT Industrial Estate, Gummidipoondi. First petitioner/accused, Savani Transports Private Limited is a private company engaged in the business of providing cargo service including sundry parcel Service, bulk transportation, turnkey project, odd dimensional cargo, warehousing, logistics and carrying and forwarding. First petitioner's registered office is at Mumbai and it has its zonal office at Chennai. 5th petitioner is a zonal manager at Chennai. 6th petitioner is senior branch manager at Chennai. 7th petitioner is loading supervisor at Chennai. 4th petitioner is operationl head at Mumbai. Second and third petitioners are the Director and Managing Director respectively of Savani Transport Private Limited. Second and third petitioners are incharge and responsible for the day-to-day affairs of the company. Second respondent engaged authorised transporters including the first petitioner for transporting petrol and diesel pumpsets, gensets and water sealed pumpsets along with accessories from Gummidipoondi factory to various locations in India. It was found for the period from March 2011 to April 2015 in Gummidipoondi factory that instances of fraud and cheating in the transaction with the first petitioner. It was observed that in several instances, first petitioner had been charging the second petitioner for two or more trucks per consignment, when in fact first petitioner was using only one truck for transporting consignment. First petitioner was cheating the second respondent and charging for more than two or more truck loads while using only one truck. In March 2015, consignment worth Rs.25,73,720/- was sent from Gummidipoondi factory to Bhuvaneswr and Patna through the first petitioner. The accused had conspired and colluded with each other and legally misappropriated the consignment. By the act of the accused, the accused fraudulently misappropriated the money and cheated the second respondent to the tune of Rs.3,11,96,357/- apart from misappropriating consignment worth Rs.25,73,720/-. Therefore, the complaint was given.

3. On the basis of this complaint, investigation was conducted and four final reports for the period 2011-12, 2012-13, 2013-14 and 2014-15 had been filed against the petitioners. Final reports had been taken cognizance in C.C.No.90 of 2016. Challenging the taking cognizance of the case against the petitioners, this petition is filed for quashing the proceedings.

4. Learned senior counsel for the petitioners submitted that the allegations made in the complaint will not make out a case for criminal prosecution. There may be a cause for filing a civil case. In fact, second respondent filed a civil suit in C.S.No.499 of 2018 on the file of this Court for claiming a sum of Rs.4,18,03,148/- and costs. When a civil suit was already filed claiming money for the transactions alleged in the complaint, prosecuting the criminal case cannot be correct and not legal. Directors of the company are in Mumbai and they have no personal knowledge about the day-to-day affairs of the company and therefore, the case given and First Information Report filed against the Directors of the company is not in accordance with law. There is a delay in giving the complaint. The ingredients for filing final reports for the offences under Sections 406 and 420 IPC are not made out.

5. It is further submitted that petitioners had detained the goods of the second respondent for the reason that the transport charges were not paid. Petitioners are entitled to retain the consignment for realising the transportation charges. When the petitioners applied for anticipatory bail, this Court found that there is an element of civil dispute involved in this case and granted anticipatory bail and there is no change of circumstances even now. The civil dispute has been converted into criminal dispute with a view to harass the petitioners and therefore, the petition in C.C.No.90 of 2016 is to be quashed.

6. In support of her submissions, learned Senior Counsel Mrs.Nalini Chidambaram relied on the following judgments for the proposition that when the issue is civil in nature, launching a criminal prosecution is not correct and criminal prosecution cannot be allowed to continue:-

(i) (2020) 3 SCC 794 (Rajeshbhai Muljibhai Patel ..vs.. State of Gujarat and another), wherein it is held that,

> "When issue as to genuineness of documents, forgery of which was the basis of the criminal proceedings, was pending consideration in civil suit, First Information Report ought not to have been allowed to continue in present case as it would prejudice the interest of parties and the stand taken by them in the civil suit."

(ii) (2020) 12 SCC 51 (Sardar Ali Khan ..vs.. State of Uttar Pradesh through Principal Secretary, Home Department and another), wherein it is held that,

> "When civil court is seized of the very same issue, allowing the criminal proceedings to continue without any criminal element having been established, would be nothing but an abuse of process of law."

and

(iii) (2019) 20 SCC 744 (State of Uttar Pradesh and others ..vs.. Ravi Prakash Srivastava and another), wherein it is held that,

> "When nature of dispute was really that of a civil dispute, criminal proceedings is quashed and directions of High Court for taking over of school in question, which had allegedly acquired land in question fraudulently, and for payment of compensation, set aside. All issues, including dispute as to title and genuineness of documents of title, to be determined in appropriate civil proceedings."

7. The judgments reported in (2015) 4 SCC 609 (Sunil Bharti Mittal ..vs.. Central Bureau of Investigation) and (2020) 3 SC 240 (Sushil Sethi and another ..vs.. State of Arunachal Pradesh and others) are pressed into service for the proposition that the Directors of the company can be roped in only if (a) there is sufficient incriminating evidence against them coupled with criminal intent or (b) the statutory regime attracts the doctrine of vicarious liability. In the case before hand, it is submitted by the learned senior counsel that there is no specific allegations against the Directors of the company, there is no incriminating evidence that they acted with the criminal intent. Therefore, the Directors cannot be prosecuted. Previously first petitioner was not shown as accused in the complaint and only in the final reports filed, first petitioner was shown as accused, which show that the only intention of the second respondent is to harm and harass the petitioners. Thus, the learned senior counsel for the petitioners prayed for quashing the case in C.C.No.90 of 2016.

8. In response, learned counsel for the second respondent submitted that as per agreement, the full truck was hired for transportation of goods. However, the petitioners in connivance with each other raised several bills for the consignment, instead of using multiple vehicles, used one vehicle for transportation, but charged for multiple vehicles. It is evident from the records maintained at Gummidipoondi factory that only one vehicle was used for loading the goods and for

unloading the same at the destination. The Directors are the beneficiaries of this cheating and fraud. They are in knowledge of the affairs and they are the one who are incharge of day-to-day administration of the first petitioner. Therefore, the Directors as well as other accused are equally liable and responsible for committing the fraud, cheating and misappropriation against the second respondent. The scope of entertaining quash petition under Section 482 Cr.P.C is limited. An action may give a cause for criminal as well as civil liability. In the case before hand, it is clearly brought out from the materials produced by the prosecution that the petitioners had knowingly cheated and made the second respondent to part with money in excess what actually due to the petitioners. The case is required to be tried for proving the allegations against the petitioners. Therefore, he prayed for dismissal of this petition. He relied on the following judgments for the proposition that given set of facts give raise to civil as well as criminal proceedings :-

(i) 2021 SCC OnLine SC 206 (Priti Saraf and another ..vs.. State of NCT of Delhi and another);

(ii) (2014) 3 SCC 389 (Vijayander Kumar and others ..vs.. State of Rajasthan and another), wherein it is held that,

> "A given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to informant/ complainant that itself cannot be a ground to quash a criminal proceeding. Real test is whether allegations in complaint disclose a criminal offence or not."

and

(iii) (2006) 6 SCC 736 (Indian Oil Corporation ..vs.. NEPC India Ltd., and others)

> "Disputes arising from breach of contract. Even a civil remedy available and availed of, remedy under criminal law is not barred if the allegations disclose a criminal offence. Allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal code, petition under S.482 cannot be maintained."

9. Considered the rival submissions and perused the records.

10. As narrated above, two specific allegations are made against the petitioners. The first allegation is that the petitioners while transporting the goods from the second respondent factory at Gummidipoondi to various destinations, prepared multiple lorry receipts for despatching through a

single truck, but raised bills against each lorry receipt implying that the multiple trucks had been utilised. In this process, first petitioner company claimed Rs.75.64 lakhs during 2011-12, Rs.96.93 lakhs during 2012-13, Rs.71.06 lakhs during 2013-14 and Rs.58.84 lakhs during 2014-15 totally a sum of Rs.3,02,47,000/-. Second allegation is that the petitioners had misappropriated the consignment worth Rs.25,73,720/- sent to Bhuvaneswar and Patna in March 2011.

11. With regard to the allegations of misappropriation of consignment worth about Rs.25,73,720/-, it is the case of the petitioners that the second respondent had not paid transportation charges to the tune of Rs.38,97,550/-. Inspite of the claim made for payment of freight charges, if the charges has not been made, petitioners are entitled to recover the money as per the provisions of Carriage by Road Act, 2007. Petitioners had followed the procedures established by law before detaining the goods and they acted bona fide and as per law. There is no mala fide in their action. As per the order passed in anticipatory bail petition, petitioners were prepared to release the consignment on payment of freight charges. But second respondent has not paid the freight charges and therefore, the consignment was not delivered.

12. In view of the fact that petitioners claim protection for their action under Carriage by Road Act, 2007 and that second respondent has not paid the freight charges as directed in anticipatory bail order, this Court is of the considered view that no criminal prosecution can be launched for not delivering the consignment worth Rs.25,73,720/-.

13. Other allegation is that the petitioners during financial years 2011-12 to 2014-15 cheated the second respondent and made the second respondent to part with a sum of Rs.3,02,47,000/- by making fraudulent claim of using multiple lorries contrary to the fact that only single lorry was used during the transportation on various occasions. The complaint, statement of complainant and statement of LW.2 - Chief Auditor and other witnesses namely, LW.3 – Sathishkumar, LW.4 – Ravichandran and LW.5 – Ramu make out a clear case that the petitioners had raised multiple lorry bills for use of single lorry for transportation and thus, made the second respondent to pay excess amount than what is due. Certainly prima facie case is made out for framing charge under Section 420 IPC. It is very clearly stated in the complaint that the Directors are also responsible for the day-to-day administration of the first petitioner company and they are the beneficiaries of this fraudulent transaction. The disputed facts cannot be gone into and investigated in an enquiry under Section 482 Cr.P.C. The

disputed facts have to be enquired and tried through examination of witnesses and production of documents.

14. Delay is not the ground for throwing the case of the prosecution out of consideration. Merely because a civil suit was filed, criminal prosecution cannot be quashed, if prima facie criminal offence is made out. It is specifically alleged by the respondents that Directors are beneficiaries of this cheating and fraudulent act. Directors have not taken any steps to salvage the issue even after the receipt of letter dated 29.05.2015 prior to giving the complaint. It is also claimed that the Directors are responsible for the day-to-day administration of the first petitioner. Petitioners have not produced any materials to show who is in-charge of the day-to-day affairs of the first petitioner. Therefore, adding the Directors as accused cannot be considered, in the circumstances of the case, as illegal.

15. For the reasons aforesaid, this Court finds that there are materials in the form of complaint and statements of witnesses supported by documentary evidence to form an opinion that prima facie case is made out against the petitioners for framing charge under Section 420 IPC and in this view of the matter, this petition is dismissed so far as charge under Section 420 IPC is concerned and allowed in respect of charge under Section 406 IPC is concerned. Thus, this Criminal Original Petition is allowed in part. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mra

To

1 The Judicial Magistrate No.I,
Ponneri.

2. -do- through The Chief Judicial Magistrate,
Thiruvallur.

3. The Inspector of police
District Crime Branch (DCB)
Thiruvallur.

4. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.N.R.R.Arun Natarajan, Advocate, S.R.No.26014

Crl.O.P.No.27139 of 2016
and
Crl.M.P.Nos.13735 and 13736 of 2016

AD(CO)
RLP(02/05/2022)