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CRL.O.P.No.19022 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.19022 of 2019

1.B.Raajaraajan
Director,
Gold King Tex India Pvt. Ltd.

2.R.Hemavathi
Director,
Gold King Tex India Pvt. Ltd.

.. Petitioners/Accused

Versus

1.The State rep by
The Inspector of Police,
District Crime Branch,
Namakkal Police Station,
Namakkal

... Respondent

2.A.Sudhakaran
Rep. by its Authorised Representative,
GTN Enterprises Limited.

... Respondent

/Defacto
complainant.

Criminal Original Petition filed under Section 482 of the Code
of Criminal Procedure to call for the records of FIR in Crime No.13 of



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2018 on the file of the 1st respondent and quash the same.

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For Petitioners : Mr.S.Veeraraghavan
For Respondent-1 : Mr.A.Damodaran
Additional Public Prosecutor

For Respondent-2 : Mr.D.R.Arunkumar

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.13 of 2018 on the file of the 1st respondent.

2. The petitioners are ranked as A1 and A2 in Crime No.13/2018 on the file of the first respondent police. The learned counsel for the petitioners submitted that the *defacto* complainant has got business transactions with the petitioner's company by name 'M/S.Gold King Tex India Private Limited'; the parties have entered into a job work agreement, according to which the *defacto* complainant has to supply yarns to the petitioner's company and the petitioner's company has to make use of yarns and give back the same as the finished products and give it back to the *defacto* complainant's company.

3.The case of the prosecution is that despite the yarns were



supplied subsequent to the agreement on various occasions, finished products were not supplied to the *defacto* complainant and there is also an outstanding of Rs.40,14,469/-to be paid by the petitioner's company. The yarns which are said to be in the custody of the petitioner's company would fetch a value of Rs.3,19,31,240/-.

4.The further allegation of the *defacto* complainant is that the materials supplied have been misappropriated by the petitioners and they have enriched wrongful gain out of it and whenever the *defacto* complainant demanded, he is being threatened by the petitioners.

5.The learned counsel for the petitioners submitted that the transaction between the petitioners and the *defacto* complainant is purely a business transaction in accordance with the terms of the job agreement between both the companies. According to the said agreement, the parties have agreed to resolve their issues before the Arbitration.

6. The Arbitration Clause pertaining to the said agreement is



incorporated under Clause 19 and it reads as under:

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“19. Determination of rules of procedure. –

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (I of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence”

7. The learned Additional Public Prosecutor appearing for the first respondent police submitted that even though the transaction is a business transaction, the yarns which have been entrusted to the petitioners company for converting it as finished product has been misappropriated to the personal unlawful gain of the petitioners and hence the criminal action has been initiated. It is further submitted that whenever the *defacto* complainant's company representative approached the petitioners, they used to threatened them with dire consequences.

8. No doubt, there is a job work agreement between the petitioners



company and the *defacto* complainant's company. According to the said agreement those disputes which arise in connection with quality and other commercial issues should be sorted out between the parties by mutual consultation from time to time and if the dispute is not resolved through such an understanding, they should be referred to Arbitration. However, in the present case, the allegations have been made about misappropriating the yarns which have been entrusted in the custody of the petitioners.

9. Had it been an issue which concerned about the quality of the finished product or settlement of outstanding, it is correct to state that such issue should be referred to Arbitration. But in the case in hand, the allegations are made to the extent that the goods entrusted to the petitioner's company for converting them into finished product, had been misappropriated by the petitioners and they have enriched unlawful gain out of it. In such circumstances, it is obligatory on the part of the 1st respondent police to investigate and find out the whereabouts of the materials and how it had been utilized and whether the offence of misappropriation or intimidation had been committed. Even though it appears to be a civil transaction concerning the business, there are also allegations which would show that to foist a criminal



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liability for misappropriating the yarns.

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10. In view of the above stated reasons, I feel the investigation should be allowed to go. So, the first respondent police is directed to complete the investigation and file the final report as expeditiously as possible.

Accordingly, this Criminal Original Petition stands **dismissed**.

07.12.2022

Index: Yes/No
jrs



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To:

1. The Inspector of Police,
District Crime Branch,
Namakkal Police Station,
Namakkal

2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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