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

Reserved on: 25th February 2022
Decided on: 26th August, 2022

\+ **CRL.M.C. 2159/2021 & CRL.M.A. 14547/2021**

WING COMMANDER A.S. OBERAI & ANR. .... Petitioner
Represented by: Mr. Subhash Jha, Advocate with Mr. Yash Chaturvedi & Mr. Siddharth Jha, Advocates.

versus

STATE OF NCT DELHI & ANR. ..... Respondent
Represented by: Mr. Amit Gupta, APP for the State. Mr. Anirudh Bakhru, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition, the two petitioners namely Wing Commander A.S.Oberai and Aniruddha Avinash Shambhus seek quashing of FIR No. 214/2017 under Sections 406/420/34 IPC registered at P.S.Tilak Nagar on the complaint of the respondent No. 2 and the proceedings pursuant thereto.

2. Learned counsel for the petitioner contends that there are no specific allegations against the petitioners in the FIR in question. No overt act has also been attributed to the petitioners. The petitioner No. 1 being salaried director of the company and not involved in day to day affairs of the company, no criminal liability can be fastened on him. Even the transactions as a whole do not disclose any offence, much less the offence punishable under Sections 406/420 IPC. Though the petitioner No. 1 is a Director, petitioner No. 2 is not even a Director. Petitioners are not the signatories to the cheques nor have any relation whatsoever to the accounts.

Averments in the complaint on the basis of which, FIR is registered does not attribute any mens rea and hence, no FIR could have been registered permitting the police to embark on an investigation. The allegations at best constitute a civil liability.

3. Refuting arguments of learned counsel for the petitioners, learned APP for the State contends that the other Directors of the company namely Skytel Networks Limited (in short, 'Skytel') were also salaried, however, that does not mean that they were not responsible for day to day functioning of the company. It is the acts of the Directors of the company which have resulted in cheating to the complainant for a sum of ₹30 lakhs. Extensive efforts were made to trace Siddhartha Srivastava, one of the Directors of the company who signed the agreement being the signing authority of Skytel, however, he is not available, NBWs have been issued and 82 CrPC proceedings initiated against the said accused. Notice was sent to the petitioner No. 1, however, he neither replied nor joined the investigation. Petitioner No. 2 who was the Accountant of the company was interrogated who also stated that Siddhartha Srivastava was the owner of the company and the Directors were employed on salary basis. Details of Skytel company were collected from ROC, Mumbai which revealed that the following were the Directors of the company:

(1) Mr.Amarjit Singh Oberoi

(2) Chetan Dogra

(3) Siddhartha Shankar Bose

(4) Bharat Chandraprakash Vyas

(5) Ritu Lalit Jethi, and

(6) Siddhartha Srivastava was Director in 2012.

4. In the above-noted FIR, Pankaj Gupta and Vikas Gupta, both partners of M/s. PGS Teleworld, a registered partnership firm working at Ganesh Nagar, Tilak Nagar, Delhi stated that in the month of December 2013 and January 2014, complainants were approached by Skytel at their office at Ganesh Nagar, New Delhi and lucrative offers of investment/business were given. It was claimed that Skytel was a carrying and forwarding agency for the car products. After various rounds of meeting with employees and representatives and detailed telephonic conversations with Siddhartha Srivastava, Director of Skytel and bargaining and negotiations, an agreement dated 8th January 2014 was entered through Skytel's authorized representative Suresh Dhiman at New Delhi. As per the agreement, the complainants had to deposit a sum of ₹30 lakhs as refundable security with the accused company and the company were to keep stock of goods to be marketed with the complainants worth an amount equivalent to ₹30 lakhs. The complainants had to make necessary arrangements for the products of the accused company, the accused company was to arrange for staff, advertisement, selling of the goods in the market. The complainants were to get 1.5% per month interest on refundable security as well as 1.5% commission on the monthly turnover apart from stationary and mobile charges. The complainants were appointed as the carrying and forwarding agents only. As such, the complainants were not supposed to do anything with the stock and the accused company was dealing with the sales of the products of the accused company as agreed between them. As per the terms and conditions of the agreement, the complainants paid ₹30 lakhs to the accused company by RTGS on 11th January 2014. However, the accused company failed to perform its part of the agreement and neither appointed

workforce to get the business, nor kept any stock of goods with the complainants, nor provided any business promotion nor did anything incidental or ancillary to the aforesaid agreement dated 8th January 2014. Consequently, the complainants vide their email dated 22nd February 2014 asked the accused company and its representatives to refund the amount as even after one and a half month of the agreement, the business venture had not started. During that period, Skytel paid a sum of ₹46000/-, ₹45000/- and ₹54000/- on various dates in February and March 2014 as compensation to the complainants for not doing the business. Even thereafter, the accused company did not start any business with the complainant. However, to show its bonafide, the accused sent a consignment on 25th March 2019 to the godown of the complainants, however, the said consignment had nothing to do with the car products. When despite repeated reminders, refundable security was not returned, the above-noted FIR was lodged by complainants.

5. On the allegations as noted above, it cannot be said that the FIR does not disclose commission of a cognizable offence and is liable to be quashed on the said count. However, whether the two petitioners are involved in the alleged commission of cognizable offences is a matter of investigation.

6. As noted above, during the course of investigation, it was found that the company has six Directors including petitioner No. 1 herein and Siddhartha Srivastava who entered into a dialogue with the complainants and induced them to invest in accused company i.e. Skytel. Whether the petitioner No. 1 had any role in the misappropriation if any or not and whether any benefit from the said transactions has arisen in favour of the petitioner No. 1 is under investigation. Despite notice issued to the petitioner No. 1, he had neither replied nor joined the investigation.

7. Further, petitioner No. 2 is the Accountant of the Skytel and even his role is under examination by the investigating agency. Since FIR discloses the commission of a cognizable offence, whether any role is attributed to the petitioners or not cannot be stated affirmatively at this stage, unless the investigation is complete. Once the investigation is complete and a charge sheet is filed arraying the petitioners as accused, the petitioners would have the liberty to address arguments at the stage of framing of charges to show that de hors the plea of quashing of the FIR, the two petitioners herein had no role to play in the alleged offence.

8. It is trite law that once the FIR prima facie discloses the commission of a cognizable offence, the Court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into the cognizable offence [see *State of West Bengal & Ors. Vs. Swapan Kumar Guha & Ors.* (1982) 1 SCC 561)]

9. Since in the present case, the FIR prima facie discloses the commission of cognizable offence, no case for quashing of the same is made out. This Court therefore finds no ground to quash the FIR in question and the proceedings pursuant thereto at this stage.

10. Petition is dismissed.

<u>CRL.M.A. 14547/2021 (for stay)</u>

In view of the order passed in the petition, the application is disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

AUGUST 26, 2022/akb