IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6517 OF 2021

Vinit Ramesh Gupta ...Petitioner
V/s.
State of Maharashtra and Ors. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 3984 OF 2021

Nisha Vinit Gupta ...Petitioner
V/s.
The State of Maharashtra and Ors. ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 6494 OF 2021

Ramesh Bholaram Gupta ...Petitioner
V/s.
The State of Maharashtra and Anr. ...Respondents

Ms.Mansha Khemka, Ms.Twinkle Khemka, Mrs. Bhagyashree Upadhyay-Tiwari i/by Khemka and Associates for the Petitioners.
Mr. A.M. Saraogi, for Respondent No.2.
Mr. J.P. Yagnik, APP for the Respondent-State.

CORAM : A.S. GADKARI & SHARMILA U. DESHMUKH, JJ.

Reserved on : 26th September, 2023.
Pronounced on : 16th October, 2023.

ORDER : (Per SHARMILA U. DESHMUKH, J.):

1. The Petitioners seek quashing of the charge-sheet/final report i.e.C.C.No.266/PW/2020 arising out of First Information Report bearing CR No.454 of 2019, registered with Andheri Police Station for the

offences punishable under Sections 406, 407, 408, 420, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code, 1860, which subsequently was transferred to the Economic Offences Wing (EOW) and renumbered as CR No.71 of 2019.

Vinit Gupta-Petitioner in W.P. No.6517 of 2021 is the husband of Nisha Gupta-Petitioner in W.P. No.3984 of 2021 and son of Ramesh Gupta-Petitioner in W.P.No.6494 of 2021. As the Petitions raises identical issues for consideration, the petitions are heard together and disposed of by this common Order.

2. CR No.454 of 2019 came to be registered with Andheri Police Station at the instance of the Respondent No.3-Navin Agrawal employed with Respondent No.2-Rashi Peripherals Pvt.Ltd against Vinit Gupta, and the Directors of M/s.EXL India and Directors of M/s.DNX Cargo India Ltd. and others. Charge-sheet came to be filed on 20th March, 2020 and it is registered as C.C. No.266/PW/2020 against Vinit Gupta, Ramesh Gupta, Vimlesh Dwivedi and Directors of M/s.EXL India and the Directors of M/s.DNX Cargo India Ltd. On 4th March, 2022 supplementary charge-sheet came to be filed in which Nisha Vinit Gupta and other persons were impleaded as Accused.

3. The case of the prosecution as spelt out from the FIR No.454 of 2019 is that Vinit Gupta was working as an Account Executive with M/s. Rashi Peripherals Pvt. Ltd. which was in the business of importing spare

parts of computers and selling the same in different parts of the country. The Company has different branch offices and warehouses at various locations, the mother warehouse being at Palghar. Upon receipt of orders by the branch office, an email is sent to the mother-warehouse with a copy to the Corporate Office and shipments are done by mother warehouse after receiving instructions from corporate office. Transport contracts are executed by the Company with different transport companies. These transporters pick up the goods from the warehouse for delivery, the details whereof are entered into four lorry receipts. After delivery of goods, a summary detailing the invoice number, lorry receipt number, location of delivery, number of packets delivered etc is sent by email from the mother-warehouse to the Corporate Office. Out of the four copies of lorry receipt, one copy is kept in the ware-house, one copy contains the acknowledgment of delivery by the consignee, one copy is retained by the transporter and one copy is submitted to the company alongwith the invoice for transportation.

4. As far as the payment of the invoices is concerned, the system adopted by the Company is that, the invoices are sent by the transporters collectively on monthly basis to the purchase department. The accounts department verifies the invoices with the daily summary and obtains authorization of the purchase Manager. Thereafter, the invoices are

sent to the accounts department for processing the payment. The invoices are then sent to the purchase department for verifying whether the transportation cost is correctly debited against the goods sent by the concerned branch. The invoices are then filed and instructions given to the accounts department for payment and after payment on monthly basis reconciliation is done by the accounts department.

5. It is alleged that, the work of Vinit Gupta as an Account Executive was to co-ordinate the work of delivery of the goods from the time of its despatch from the warehouse to its destination, to check the dockets received from the warehouse and feed data in excel-sheets, to file the dockets, to check invoices of the transporters, obtain authorisation from the superiors and forward the invoices for payment to the accounts department. After verification by accounts department, the invoices are sent back to Vinit Gupta, for verifying the amount of invoices against the goods debited by the various branches. It is alleged that, the Company noticed huge discrepancy between total transportation cost booked and total transportation cost debited to respective branches and upon inquiry learnt that, the transportation costs did not tally with the summary of the goods transported from the ware-house. Upon scrutinizing the invoices it came to their notice that, most of the invoices of M/s.EXL India Pvt.Ltd. and M/s.DNX Cargo India

Pvt. Ltd. were missing from the records and upon further inquiry, it was found that, the lorry receipts submitted along with the invoices are not in existence. It is further alleged that, for the period from 2013, Vinit Gupta in collusion with the Directors of M/s. EXL India Pvt. Ltd. and M/s. DNS Cargo India Pvt.Ltd. has fabricated transport bills and has produced the same for payment to the company and as such, have cheated the company to the tune of about Rs.9,01,64,249/-.

6. Prior to the lodgment of CR No.454 of 2019 on 3rd August, 2019, the first-informant has lodged FIR No.591 of 2018 on 5th December, 2018, against Vinit Gupta and the Directors of SRC Express Cargo Pvt. Ltd viz. Narayan Nigam and Rajesh Nigam, which came to be transferred to EOW vide Crime No.3 of 2019. The offences alleged were Section 406, 408, 420, 465, 467, 471 read with 34 of IPC. The chargesheet in CR No.591 of 2018 came to be filed on 3rd October, 2022 against the Petitioners Narayan Nigam and Vilas Nigam, Rajesh Nigam, Dashma Anand Diwan and Anand Jitendra Diwan.

7. Heard Ms.Mansha Khemka, learned Advocate appearing for the Petitioners, Mr.A.M.Saraogi, learned Advocate appearing for the Respondent No.2 and Mr. J.P. Yagnik, learned APP for the Respondent-State.

8. Ms.Khemka, learned Advocate for the Petitioners submits that, based on identical allegations contained in the 1st CR i.e. FIR No.591 of 2018, the same first informant has lodged the 2nd FIR No.454 of 2019. She has taken this Court to the allegations in both the FIR's and would submit that, the crime alleged is in respect of the same period and the only change is the name of the transporter companies viz EXL India Pvt. Ltd. and M/s.DNX Crago India Pvt.Ltd. She would contend that, the 2nd FIR has been lodged as a counterblast to the civil suit filed by M/s.EXL India Pvt.Ltd. against Rashi Peripherals Pvt.Ltd. According to her, considering the identical allegations in the first and the second FIRs, registered with the same police station i.e. Andheri Police Station, the the principle of "sameness" is attracted and the prosecution of the Petitioners based on the second FIR is not sustainable. She places the reliance on the decision of the Apex Court in the case of *Anju Chaudhary Vs. State of Uttar Pradesh and Another*, reported in *(2013) 6 SCC 384*.

9. Mr. Saraogi, learned Advocate for the Respondent No.3-the first-informant submits that, Rashi Peripherals Pvt.Ltd was the authorized/executive dealer of HP Products and Vinit Gupta was incharge of the logistics. He would submit that, the allegations in the FIR's discloses prima facie case of collusion with the transporters leading to preparation of false invoices and causing loss to the company. He

would further submit that, the transactions in the second FIR is different from the transactions in the first FIR and the offences are not the same.

10. Mr. Yagnik, learned APP submits that, the charge-sheet has been filed and as per the investigation report, there has been transfer of substantial funds from the bank account of Vinit Gupta into the bank accounts of Nisha Gupta and Ramesh Gupta and also from the account of transporters into the accounts of Nisha Gupta and Ramesh Gupta. He submits that, the transactions in both the FIR's are different and the accused Directors are separate and role of these companies are different.

11. We have considered the submissions and perused the record.

12. The submission canvassed for consideration by Ms.Khemka, is that applying the principle of "sameness", the prosecution under the second FIR cannot be permitted. To appreciate the submission of Ms.Khemka, both the FIR's will have to be examined to ascertain whether the gravamen of charges in the 1st and 2nd FIR are in substance and truth the same arising out of the same incident or different incidents forming part of the same transaction. As such, we have carefully scrutinized the allegations in both the FIR's.

13. In respect of the 1st FIR viz. FIR No.591 of 2018, Vinit Gupta, Ramesh Gupta, Nisha Gupta, Directors of SRC Express Cargo Pvt.Ltd. and others have been chargesheeted. In respect of the second FIR viz.

FIR No.454 of 2019, apart from Petitioners herein, the Directors of M/s.EXL India Pvt.Ltd. and M/s. DNS Cargo India Pvt.Ltd and others have been chargesheeted.

14. We have hereinabove noted the substance of charge in the second FIR. The first FIR, after stating the system adopted by the Company for despatch and delivery of goods, procedure followed for payment of the transportation invoices, which is common in both FIR's, alleges that, as it was noticed that, the transportation costs exceeded the sales, inquiry was conducted by the first informant. During inquiry, it came to their notice that, as regards SRC Express Cargo Pvt.Ltd., the docket number mentioned on the lorry receipt and docket number mentioned in the invoice and email sent by the godown incharge does not match. That although the payments were made to the transport agency, and the number of the relevant invoice/bill was obtained however, the documents of the docket numbers/challans were found missing from the record room. It is alleged that, scrutiny of the documents pertaining to the transaction with SRC Express Cargo Pvt.Ltd. reveals that, for the period from 19th November, 2014 to 9th October, 2018 about 1592 bills, which are detailed, are fabricated. That there is huge discrepancy noted in the amounts of 14 invoices, which are detailed, sent by SRC Express Cargo Pvt.Ltd. It is alleged that, Vinit Gupta in collusion with the Directors of SRC Express Cargo Pvt. Ltd have

cheated the company and amount of Rs.3 Crore have been misappropriated.

15. Perusal of charge-sheet discloses that, huge amounts have been transferred from the bank account of Vinit Gupta to the bank accounts of Ramesh Gupta and Nisha Gupta and from the bank accounts of M/s.DNX Cargo India Pvt.Ltd and SRC Express Cargo Pvt Ltd to the bank account of Ramesh Gupta and/or his firm, and, to the bank account of Nisha Gupta.

16. The allegations in both the FIR's indicate that, Vinit Gupta, who was employed as an Account Executive of the Company, in connivance with the different transport companies has forged and fabricated the invoices of transport companies and has thereby caused payment of excess amount to be made to the transport companies as transportation costs, thereby cheating the Company. The consideration being part of the excess amount received in the bank account of the Petitioners herein. The first FIR is in respect of the underhand dealings with M/s.SRC Express Cargo Pvt. Ltd. and the second FIR alleges connivance by Vinit Gupta with M/s. EXL India Pvt. Ltd. and M/s.DNX Cargo India Pvt. Ltd.

17. As the pivotal point raised for consideration is the application of principle of sameness, profitable reference can be made to the decision of the Apex Court in the case of *T.T. Antony Vs. State of Kerala and*

Others reported in (*2001) 6 SCC 181.* The Apex Court analysing the provisions of Section 154 of Cr.P.C. held that, under the scheme of Cr.P.C. only first information in respect of commission of a cognizable offence satisfies the requirement of Section 154 of Cr.P.C. and thus there can be no second FIR and consequently there can be no fresh investigation on receipt of other subsequent information in respect of same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

18. Heavy reliance is placed by Ms. Khemka on the decision of *Anju Choudhary (supra).* In the facts of that case, the issue for consideration before the Apex Court was whether there can be more than one FIR in relation to the same incident or different incidents arising from the same occurrence. The Court held that, in order to examine the impact of one or more FIRs, the Court has to rationalize the facts and circumstances of each case and then apply the test of “sameness” to find out whether both the FIR relates to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of second FIR is different and they are in respect of two different incidents/crimes, the

second FIR is permissible, which is the view expressed in the case of *Babubhai Vs. State of Gujarat and Others,* reported in *(2010) 12 SCC 254.*

19. The common thread which runs through the decisions of Apex Court as aforestated is that, if the second FIR is in relation to the same incident or different incidents forming part of the same transaction, the second FIR is liable to be quashed. In the instant case, upon consideration of both the FIR's we find that, the modus operandi alleged is the same. The first FIR alleges fabrication of transport invoices and causing payment of excess amount in collusion with SRC Exports Cargo Pvt.Ltd. The fabricated invoices detailed are about 1592 in number. As against this, in the second FIR, the same modus operandi is alleged albeit with completely different set of invoices, challans and lorry receipts raised by different transporters viz M/s. EXL India and M/s. DNX Cargo India Pvt.Ltd.

20. It is true that, law does not permit second FIR for the same cause of action, only because the principle of law does not allow that the person should be vexed twice. The issue as to whether both the crimes arise out of same incident is to be answered in the negative as the delivery of the goods was by different transporter, the invoices fabricated are different, the challans and lorry receipts and excess

amount received are different. Then the issue to be considered is whether they form part of the same transaction. Sufficient guidance in that context has been given by the Apex Court in paragraph 44 and 45 of *Anju Choudhary* (supra) which reads thus:

> *"44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.*
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> *45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences*

"committed in the course of the same transaction"."

21. Viewed in the light of the aforestated indices, in the instant case the transactions with different transporters are not related to one another in any manner whatsoever. They are distinct and separate incidents and have been committed with the involvement of different persons. The only common factor is the modus alleged to have been adopted by Vinit Gupta in committing the crime. These offences being different and distinct incidents, even if there are some overlapping features, the subsequent investigation cannot be quashed. At the cost of repetition, there are two different sets of invoices, challans and lorry receipts alleged to be fabricated with connivance with different conspirators albeit during the same period. The principle of sameness could have an application to the present case, if separate FIR's were lodged in respect of separate invoices raised by the same transporter for in that case the incidents would be part of the same transaction or for example out of the conspiracy with one transporter further co-conspirators are found or other offences arise. The offences alleged in both the FIR's are not committed in course of same transaction or arise out of same occurrences as there is no continuity of action.

22. The chargesheet indicates that, during the period of the alleged crime substantial cash deposits of about Rs.2,53,97,809/- has been

deposited in the various bank accounts of Vinit Gupta, held either individually or with his family members. In the bank account of Vinit Gupta, a sum of Rs.4,83,735/- has been deposited by M/s.DNX Cargo India Pvt. Ltd. In the joint bank account held by Vinit Gupta and his mother Smt.Kiran Gupta, DNX Cargo India Pvt. Ltd. has transferred a sum of Rs.3,69,935/- and in the joint account held by Vinit Gupta with his sister Prabha Gupta, who deceased in the year 2011, DNX Cargo India Pvt. Ltd. has transferred a sum of Rs.13,39,321/-. As illustrated by the Apex Court in the case of *Anju Choudhary* (supra), if same group of people commits theft in similar manner in different localities falling under different jurisdictions, even if the incidents were committed in close proximity of time, there could be separate FIRs. The investigation in one offence is not dependent on the investigation in the other offence. In our opinion, the test of sameness is not satisfied in the present case.

23. Resultantly, in our view, the lodgment of second crime is not arising out of the same transaction or facts of the first FIR and is a distinct and separate cause of action.

24. There are no merits in the Petitions. Petitions are accordingly dismissed.

(SHARMILA U. DESHMUKH, J.) **(A.S. GADKARI, J.)**