IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6077 of 2018
and Crl.M.P.Nos.3049 of 2018 & 5598 of 2021

1. M.Muruganandham
2. Sushmita Priya ...Petitioners

Vs.

1. State represented by
   The Inspector of Police,
   Central Crime Branch-I,
   O/o. The Commissioner of Police,
   Grater Chennai City,
   Vepery, Chennai.

2. D.Bala Ravi Chandrudu ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the First Information Report registered in Crime No.83 of 2017 on the file of the respondent police.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
For Mr.N.G.P.Rajaram.

For Respondents
For R1 : Mr.L.Baskaran
Government Advocate (Crl. Side)
For R2 : Mr.K.P.Anantha Krishna

ORDER

This petition has been filed to quash the FIR registered in Crime No.83 of 2017 on the file of the first respondent police, for the offences punishable under Sections 420, 294(b) & 506(2) of IPC, as against the petitioners.

2. The second respondent lodged complaint alleging that the accused had induced him to invest money in their Sri Balaji Gas cylinder manufacturing company. They also promised to repay the amount within few months and also promised to execute their property documents as security. Believing their assurance, the defacto complainant initially paid a sum of Rs.2,00,00,000/-. Subsequently, the accused insisted to pay amount towards expenses for running the factory. Therefore, once again the defacto complainant paid another sum of Rs.1,00,00,000/-. However, on receipt of the said amount, the accused failed to execute any surety and also not returned the said amount. When it was questioned by the defacto complainant, he was threatened with dire consequences and cheated the entire amount. On receipt of the said complaint, the first respondent registered the FIR in Crime No.83 of 2017 for the offence under Sections 420, 294(b), 506(ii) of IPC.

3. The learned Senior Counsel appearing for the petitioners submitted that the entire transaction between the petitioners and the respondent are business transaction and commercial in nature. Therefore, no offence is made out as against the petitioners, since the entire allegations are civil in nature. It is a simple money transaction and also the defacto complainant ought to have approached the civil Court for recovery of money.

3.1. He further submitted that the defacto complainant suppressed the fact that the Lease Agreement dated 27.07.2016 was executed between the petitioners and the defacto complainant. As per the lease agreement the premises of the factory and the office were handed over to the defacto complainant. The second respondent only looked after the entire business during the period 27.07.2016 to 15.01.2017. In fact, the petitioners also repaid a sum of Rs.1,45,00,000/- to the investors brought in by the defacto complainant. Though the nomenclature of the agreement is lease agreement, it is a partnership agreement, wherein both the parties agreed to share the profit and loss 50%:50% ratio.

3.2. That apart, there is a specific clause in the agreement to invoke the Arbitration proceeding, if any dispute arose between the parties. Accordingly, the parties appointed the Hon'ble Mrs.Prabha Sridevan retired Judge of this Court as a sole Arbitrator. The Arbitrator passed an award dated 24.01.2020, thereby dismissed the claim of the petitioners and partly allowed the counter claim made by the second respondent. Accordingly, the petitioners are ordered to pay a sum of Rs.1,57,62,000/- together with interest at the rate of 18% per annum from 24.01.2020 till the date of payment. Therefore, the learned Arbitrator categorically concluded that the entire claim of the respondent was not allowed and it was allowed partly. Once again for the very same transaction, the second respondent lodged complaint and it is nothing but arm twisting method to extract money from the petitioners.

3.3. In fact, the learned Arbitrator passed award on the claim filed by the petitioners and not on the claim petition made by the second respondent. Therefore, the entire allegations are civil in nature and no cause of action arose to lodge complaint and no offence is made out as against the petitioners and the FIR is liable to be quashed. In support of his contention, he relied upon the following judgments of this Court dated 13.07.2022 passed in Crl.O.P.No.23500 of 2019 in the case of Narayanan Ramasamy Vs. M/s. Sun TV Network Ltd., as follows:-

> *"17. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of* ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others*** *reported in* ***(2006) 6 SCC 736****, held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.*
>
> *21. In the case on hand, there was a Memorandum of compromise between the parties and accordingly, an Arbitrator has been appointed to deal with the issues. That apart, in the present case it is a*

commercial transaction between the parties as such, the offences under Sections 406 & 420 of IPC are not at all made out as against the accused persons. Therefore, the judgment cited by the learned counsel appearing for the respondent is not helpful to the case on hand. The entire dispute is civil in nature which is tried to be converted into crime and the present complaint is nothing but clear abuse of process of law for settling the civil dispute. Therefore, the impugned complaint cannot be sustained as against the accused persons and it is liable to be quashed."

3.4. He also relied upon another judgment of this Court reported in ***CDJ 2022 MHC 1740*** in the case of ***N.Mohamed Farook & ors Vs. State & anr.,*** as follows :-

17.Further, as stated supra, there is no explanation for the belated complaint lodged on 08.01.2022 for the alleged occurrence which had taken place on 25.11.2021. It seems that the second respondent lodged the complaint by abusing the process of law and to achieve recovery of amounts arising out of commercial dispute. It is nothing but an attempt to give cloak of a criminal offence in respect of the matters which were purely civil and contractual, ostensibly with *an intention to pressurize and harass the petitioners to part with amounts. The prosecution cannot be used as an instrument of harassment or for seeking private vendatta or with an ulterior motive to pressurize the accused. Therefore, the F.I.R cannot be sustained as against the petitioners."*

3.5. He further relied upon the judgment reported in ***(2021) 14 SCC 626*** in the case of ***Randheer Singh Vs. State of Uttar Pradessh & ors,*** in which the Hon'ble Supreme Court of India held as follows :-

"33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the

allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."

3.6. He relied upon yet another judgment of the Hon'ble Supreme Court of India reported in ***(2022) 7 SCC 124*** in the case of ***Vijay Kumar Ghai and ors Vs. State of West Bengal & ors.,*** which held as follows :-

"35. In Vesa Holdings Pvt. Ltd. & Anr. Vs. State of Kerala & Ors. 27, this Court made the following observation:-

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal

offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be 26 (2000) 4 SCC 168 27 (2015) 8 SCC 293 encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."

3.7. He also relied upon the judgment reported in ***CDJ 2019 SC 721*** in the case of ***Satishchandra Ratanlal Shah Vs. State of Gujarat & anr.,*** in which the Hon'ble Supreme Court of India held as follows :-

"15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those

breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and in-efficient transfers, under Section 415 of IPC."

Hence, he prayed to quash the entire proceeding as against the petitioners.

4. The learned counsel appearing for the second respondent submitted that the Arbitration proceedings or the award passed by the Arbitrator is not a bar to lodge criminal prosecution as against the petitioners. Merely because there is an arbitration clause in the agreement, that cannot prevent criminal prosecution against the petitioners, if an act is made out *prima facie* offence. The allegations leveled as against the petitioners are clearly constitute offences under Sections 420, 294(b) & 506(2) of IPC.

4.1. He further submitted that the petitioners had schemed and misrepresented that they would give property and then the stock as security and later even giving control over the account of the company. But they failed to do so and as such the offence under Section 420 of IPC is clearly made out as against the petitioners. The criminal intention of the petitioners is very evident on record since they failed to furnish any security and also failed to share any property. The second respondent was never inducted as partner.

4.2. He also contended that it is not a case where a person having a right on the company is making a claim. The petitioners have intentionally and knowingly misled the defacto complainant luring him to part with the money on multiple occasions with sole intention to gain wrongfully. In fact, the petitioners by using the entire amount, cleared all their dues over their property encumbered in the bank. In the same manner, the petitioners cheated so many persons wherein complaints have been registered. Hence, he prayed for dismissal of the present petition.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that now the investigation is under progress and the FIR cannot be quashed on its threshold, since it has to be investigated to unearth the truth. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India reported

in ***2021 SCC OnLine SC 315*** in the case of ***Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and ors.,*** and prayed for dismissal of the present petition.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. The second respondent lodged complaint in which the petitioners are arrayed as A1 & A2. The crux of the complaint is that the petitioners run a gas cylinder manufacturing company in the name and style of Sri Balaji Gas Cylinders. Since they were under financial stress, they approached the second respondent and demanded fund of Rs.2,00,00,000/-. They also agreed to pay interest for the said amount. After receipt of huge money to the tune of Rs.3,00,00,000/-, both the parties entered into a lease agreement and categorically mentioned the amount invested by the second respondent as loan.

8. Further the petitioners made the second respondent as joint holder of the account and passed resolution dated 39.07.2016, thereby made the second respondent as Chief General Manager of the company.

However, the petitioners unilaterally removed the second respondent from being the joint account holder of the bank account and started preventing the second respondent from entering into the factory. The petitioners also failed to execute any security for the amount received by them as assured by them. When it was questioned by the second respondent, he was threatened with dire consequences.

9. Admittedly, there is a specific clause in the lease agreement to appoint Arbitrator, if any dispute arose between the petitioners and the second respondent. As rightly pointed out by the learned counsel appearing for the second respondent merely because that is an arbitration clause in the agreement, that cannot prevent criminal prosecution as against the petitioners, if an act constitute a criminal offence. Therefore, the existence of an arbitration clause cannot take the criminal acts out of the jurisdiction of the Courts of law. Therefore, the point urged by the petitioners that arbitration award was already passed in this matter, would not take away the criminally which is even otherwise made out prima facie case. This cannot be the basis to quash the criminal proceeding pending against the petitioners.

10. The present FIR is not a civil case where it is just a money due. The second respondent specifically alleged that the petitioners schemed and misrepresented that they would first give property, then the stock as security and later even giving control over the account of the company. Hence the criminal intention of the petitioners is evident on record. Therefore, the allegations made in the FIR clearly constitute the offence under Sections 420, 294(b) & 506(2) of IPC. Therefore, the judgments, cited by the learned counsel appearing for the petitioners, are not helpful to the case on hand.

11. If it is commercial transaction, the offence under Section 406 or 420 of IPC is not made out. Whereas in the case on hand, the petitioners deceived the second respondent to pay such a huge amount and thereafter failed to execute any security. That apart, initially, the petitioner made the second respondent as Chief General Manager. However, they prevented him from even entering into the factory and they unilaterally removed the second respondent from their joint bank account.

12. On perusal of the award passed by the sole Arbitrator dated 25.01.2020, the claim petition filed by the petitioners was rejected and further observed that the first accused had sole control of the payment made by the oil companies because he has not furnish the details of the joint bank account to the oil companies for releasing payment only to the said account from the date of lease, thereby he committed the criminal breach. Investment made by the second respondent and his acquaintances at his instance were credited both to the Indian Overseas Bank joint account and the Canara Bank sole account. But the payments made by the oil companies were received and credited to the Canara Bank account. Without any control over the receipts, the second respondent had no obligation to perform. Therefore, the first accused had committed the breach and not by the second respondent.

13. Further in the very same proceeding, the second respondent made counter claim. While allowing the counter claim partly, the learned Arbitrator observed that the contract has been breached because the payments made by the oil companies have been taken by the first accused by depositing it in the Canara Bank account to which he alone had access. Therefore, the sum invested by the second respondent must be

repaid by the first accused. As admitted by the accused, the second respondent paid a sum of Rs.2,26,62,000/- and after deducting the repayment of Rs.69,00,000/-, the Arbitrator awarded a sum of Rs.1,57,62,000/- payable by the accused and partly allowed the counter claim filed by the second respondent.

14. Therefore, to attract the offences under Sections 420, 294(b) & 506(2) of IPC, there are ingredients very much available in the FIR. That apart, FIR is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the Police is in progress, this Court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the FIR does not deserve to be investigated or that it amounts to abuse of process of law.

15. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations *therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.*

....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

16. In view of the above discussions, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

16.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

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To

1. The Inspector of Police,
   Central Crime Branch-I,
   O/o. The Commissioner of Police,
   Grater Chennai City,
   Vepery, Chennai.

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

G.K.ILANTHIRAIYAN. J,

rts

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