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Crl.O.P.No.8055 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.8055 of 2021

and

CRL.M.P.Nos.5304 and 5306 of 2021

1.Ashok Agarwal
2.Anita Agarwal
3.Ajay Agarwal
4.Viswanathan

... Petitioners

Vs

1.State represented by
The Sub Inspector of Police,
EDF-II, Team-III,
Central Crime Branch,
Chennai.
(Crime No.96 of 2016)

2.Narayan Maheswari

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.4302 of 2020 on the file of the Metropolitan Magistrate Exclusively for Trial of CCB and CBCID, Egmore, Chennai and quash the same.

For Petitioners : Mr.E.V.Chandru

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : No Appearance



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4302 of 2020 on the file of the Metropolitan Magistrate Exclusively for Trial of CCB and CBCID, Egmore, Chennai.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials available on record.

3. The case of the prosecution is that the second respondent is doing bulk quantity business in ferrous, non ferrous, stainless steel, M.S.Scrap and other metals. The accused is involved in various businesses including steel and other metals under the name and style of M/s.AML Steels Ltd. All the accused persons approached the second respondent for supply of steel on regular basis from 2009. As per the order placed by the accused, the defacto complainant started to supply raw materials to the accused. They assured that they would settle the dues early and requested the defacto complainant to supply the materials regularly. Accordingly, they had supplied the materials.



4. During the year 2014-2015 and 2015-2016, a huge amount of Rs.2,97,69,856/- was due from the accused. In order to settle the dues, the first accused Company entered into a Memorandum of Understanding with the second accused on 02.02.2016. As per the Memorandum of Understanding, the accused acknowledged and confirmed the debt payable by them to an extent of Rs.2,97,69,856/- to the second respondent. They issued 22 cheques drawn various dates for various amounts. However, when the cheques were presented for collection, all the cheques returned as “Payment Stopped by Drawer” and also “exceeds arrangements”. In order to escape from the liabilities, the accused had entered into the Memorandum of Understanding and thereby cheated the defacto complainant. Hence, the complaint.

5. On receipt of the complaint, the first respondent registered FIR in Crime No.96 of 2016 for the offences under Sections 406, 420 and 34 of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.4302 of 2020 on the file of the Metropolitan Magistrate Exclusively for Trial of CCB and CBCID, Egmore, Chennai.



6. The learned counsel appearing for the petitioners would submit that there are totally eight accused, in which, the petitioners are arrayed as A2, A4, A5 & A7. According to the statement recorded from the Regional Director of Registrar of Companies, the first and second petitioners had resigned their post as Directors, even before the execution of Memorandum of Understanding. Therefore, they had not committed any offence as alleged by the prosecution.

7. A perusal of the statement recorded from the Regional Director of Registrar of Companies under Section 161 of Cr.P.C reveals that the first petitioner herein, who was a Chairman and Managing Directors of the first accused Company, resigned on 16.08.2014. Whereas, other petitioners are still holding the post of Director. There is no mentioning about their resignation. Even assuming that they had resigned their post, it has to be tested only before the Trial Court. Mere statement recorded under Section 161 Cr.P.C. cannot be considered to quash the entire proceedings. If at all the statement is in favour of the accused, the accused can get benefits only before the Trial Court by cross-examination.



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8. Insofar as the offences are concerned, a Memorandum of Understanding was executed by the first accused Company and thereby it admitted and acknowledged their liability to the tune of Rs.2,97,69,856 /- In order to escape from the liability, they had executed the Memorandum of Understanding and thereafter, stopped the payment for the cheques. In the year 2018, they had also wound up the Company. If the accused had not executed any Memorandum of Understanding, the second respondent would have been taken immediate action as against the accused persons for non-payment of dues for the materials supplied by the second respondent. Therefore, all the offences are clearly attracted as against the petitioners.

9. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, which is as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in



their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

10. Recently, the Hon'ble Supreme Court of India, dealing the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the



accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

11. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been



complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.4302 of 2020 on the file of the Metropolitan Magistrate, Exclusively for Trial of CCB and CBCID, Egmore, Chennai. However, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges,



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questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order. It is made clear that the Trial Court is directed to dispose of the C.C.No.4302 of 2020 without any influence of the observations made by this Court.

13. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petitions are also closed.

17.10.2023

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Index: Yes/No
Internet: Yes/No

To

1. The Metropolitan Magistrate
Exclusively for Trial of CCB and CBCID,
Egmore, Chennai.

2. The Sub Inspector of Police,
EDF-II, Team-III,
Central Crime Branch,
Chennai.

3. The Public Prosecutor,
High Court, Madras.



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