



Crl.M.P.No.4806 of 2023

in

Crl.O.P.No.20154 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 05.04.2023	Orders pronounced on 21.04.2023
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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in

Crl.O.P.No.20154 of 2022

1. M/s. Nano Kernel Limited
Represented by its
Managing Director V.S. Harikumar,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore-560 082.
2. V.S. Harikumar,
Managing Director,
M/s. Nano Kernel Ltd.,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore - 560 082.
3. Anupama Srikantiah,
Director,
M/s.Nano Kernel Ltd.,
480/17, 45th Cross, Jayanagar 8th Block,
Bangalore - 560 082.
4. M.Nandakumar ... Petitioners



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Vs.

M/s. Interlace India Pvt.Ltd.,
Represented by its President
Mr. G. Ambalavanan,
No:40, Sapthagiri colony,
Jafferkhanpet,
Chennai - 600 083.

... Respondent

This Criminal Miscellaneous Petition is filed under Section 482 Cr.P.C. praying to allow the perjury proceedings in the interests of justice against Mr.G.Ambalavanan, President, Interlace India Pvt. Ltd. under Section 340 read with Section 195 (1) (b) (i) of Cr.P.C, 1973 for committing the offences punishable under Sections 193 and 199 read with Section 191 of IPC.

For Petitioners : Mr.V.C.Janarthanam
for
M/s.V.B.R.Menon

For Respondent : Mr.S.Suresh

ORDER

This Miscellaneous Petition is filed praying to allow the perjury proceedings against Mr.G.Ambalavanan, President, Interlace India Pvt. Ltd.



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under Section 340 r/w. Section 195 (1) (b) (i) of Cr.P.C, 1973 for committing the offences punishable under Sections 193 and 199 r/w. Section 191 of IPC.

2. Learned counsel for petitioners submitted that petitioners filed Criminal Original Petition No.20154 of 2022 to quash the proceedings in C.C.No. 5155 of 2013 on the file of learned Metropolitan Magistrate (FTC-III), Saidapet, Chennai. Respondent gave false evidence by filing a false complaint dated 17.01.2013 and recording a sworn statement on oath before learned Magistrate, Saidapet on 17.10.2013, for the purpose of being used to institute and proceed with the criminal proceedings against petitioners under Section 138 of Negotiable Instrument Act, 1881. Respondent falsely stated in his complaint dated 17.01.2013 and thereafter, on oath before the learned Magistrate on 17.10.2013 that M/s. Interlace India Pvt. Ltd. had supplied goods and services to petitioners on various dates and against which, petitioners had issued a cheque bearing No.661755 dated 17.08.2012 for Rs.2,00,00,000/- (Rupees Two Crores only) and it was dishonoured and returned to respondent's Bank in Chennai on 14.11.2012. Petitioner



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Company and respondent Company had entered into a Turnkey Agreement dated 20.01.2011, wherein petitioner Company had agreed to supply goods and services to respondent Company on 100% advance payment basis. Accordingly, petitioner had issued an undated cheque bearing No.661755 for Rs.2,00,00,000/- (Rupees Two Crores only) on 12.01.2011 to respondent as security towards first instalment of advance payment of Rs.2,00,00,000/- (Rupees Two Crores only) received from respondent, as per terms of above Agreement dated 20.01.2011. The above Turnkey Agreement dated 20.01.2011 was subsequently cancelled on mutual consent through the execution of Tri-Party Business Agreement dated 23.05.2011, wherein all the rights and liabilities of petitioner Company, arising out of Turnkey Agreement dated 20.01.2011, were transferred in favour of an incoming party M/s.Applied DSP Pvt. Ltd., Chennai. As per this Agreement, petitioners had been fully discharged from all the rights, liabilities and obligations associated with Turnkey Agreement dated 20.01.2011. It was clearly provided in that Agreement that respondent shall return the Cheque bearing No. 661755 to petitioners. However, respondent did not return the



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cheque even after specific request from petitioners. Respondent fraudulently used this cheque for filing this case by suppressing the material facts like Turnkey Agreement dated 20.01.2011 and Tri-party Business Agreement dated 23.05.2011. Respondent had fraudulently filed the complaint under Section 138 of Negotiable Instruments Act, 1881 on false grounds. Therefore, respondent has committed criminal offence punishable under Sections 193 and 199 read with Section 191 of IPC and liable to be proceeded under Section 340 read with Section 195(1)(b)(i) of Cr.P.C. 1973. Therefore this petition. In support of his submission, he pressed into service the judgment of the Hon'ble Supreme Court in ***Perumal ..vs.. Janaki*** reported in ***(2014) 5 SCC 377***.

3. In reply, learned counsel for respondent submitted that the judgment cited by learned counsel for petitioners is not applicable to the facts and circumstances of the case, for the reason that that was a case, where the victim was wrongly prosecuted and then acquitted. In the said circumstances, the Hon'ble Supreme Court has held that, "*The High Courts being constitutional courts invested with the powers of superintendence*



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over all the courts within the territory over which the High Court exercises its jurisdiction is certainly a court, which can exercise the jurisdiction under Section 195(1).” In the case before hand, the case instituted under Section 138 of Negotiable Instruments Act in C.C.No.5155 of 2013 on the file of learned Metropolitan Magistrate (FTC-III), Saidapet, Chennai, is still pending. The allegations and counter allegations have to be tested before the Court on the basis of evidence. Only after that, it can be stated that whether this is a case based on false complaint or true complaint. This petition filed now is a pre-mature one and liable to be dismissed.

4. Considered the rival submissions and perused the records.

5. Petitioners filed this petition to prosecute respondent for the commission of offences punishable under Sections 193 and 199 read with Section 191 IPC. Section 191 IPC deals with giving false evidence. Section 193 IPC relates to punishment for giving false evidence. Section 199 IPC deals with false statement made in declaration, which is by law,



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receivable as evidence.

6. The offences under Sections 191 to 255 (A) IPC comes under Chapter XI dealing with false evidence and offences against public justice.

7. Section 195 of Cr.P.C., deals with taking cognizance of the offences in prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. This Section reads as follows:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860),

or

(ii)



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or

(iii)

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court,

or

(ii)

or

(iii)

except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

8. This Section makes it clear that in case of the offences punishable under Sections 193 to 196 and 199 IPC, no Court shall take



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cognizance, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which the Court is subordinate.

9. Section 340 Cr.P.C., deals with the procedure in cases mentioned in Section 195 Cr.P.C. This Section reads as follows:-

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court, or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court,



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*such Court may, after such preliminary inquiry, if
any, as it thinks necessary,—*

(a) record a finding to that effect;

*(b) make a complaint thereof in
writing;*

*(c) send it to a Magistrate of the
first class having jurisdiction;*

*(d) take sufficient security for the
appearance for the accused before such
Magistrate, or if the alleged offence is
non-bailable and the Court thinks it
necessary so to do, send the accused in
custody to such Magistrate; and*

*(e) bind over any person to appear
and give evidence before such
Magistrate.*



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(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the



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Presiding Officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

10. This Section requires an application for taking action against the offences referred under Section 195 Cr.P.C., or in the opinion of the Court that it is expedient in the interest of justice that an inquiry should be made into the offences referred to under section 195 (1) Cr.P.C. In either case, it is required that the Court may conduct a preliminary inquiry. After making preliminary inquiry, if the Court thinks it necessary, it shall record a finding to that effect, make a complaint thereof in writing and send it to the Magistrate of First Class having jurisdiction.

11. It is pertinent to refer the judgments of the Hon'ble Supreme Court in,

(i) *Iqbal Singh Marwah and others ..vs.. Meenakshi Marwah*



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and others reported in *MANU/SC/0197/2005*, wherein the Hon'ble Supreme Court observed as follows:-

“18. In view of the language used in [Section 340 Cr.P.C.](#) the Court is not bound to make a complaint regarding commission of an offence referred to in [Section 195\(1\)\(b\)](#), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in [Section 195\(i\)\(b\)](#). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered



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by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. ”



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(ii) ***Amarsang Nathaji as Himself and as Karta & Manager ..vs..***

Hardik Harshadbhai Patel and others reported in ***(2016) 8 Supreme 318***, wherein the Hon'ble Supreme Court observed as follows:-

“6. There are two pre conditions for initiating proceedings under [Section 340](#) CrPC – (i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-Section (1) of [Section 195](#) of the Cr.P.C and (ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

7. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under [Sections 199](#) and [200](#) of the Indian Penal Code (45 of 1860) (hereinafter



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referred to as “the [IPC](#)”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in [Section 340\(1\)](#) of the Cr.P.C, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See [K.T.M.S. Mohd. and Another v. Union of India \(1992\) 3 SCC 178](#)]). The court must be satisfied that such an inquiry is



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required in the interests of justice and appropriate in the facts of the case.

8. *In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under [Section 340](#) of the Cr.P.C has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course.*



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*(See Pritish v. State of Maharashtra and Others
(2002) 1 SCC 253).*”

12. Admittedly, in this case, the case instituted under Section 138 of Negotiable Instruments Act in C.C.No.5155 of 2013 is still pending. Only if the trial is completed, we would be in a position to know whether the complaint allegations are true or false. In the judgment relied by the learned counsel for petitioners reported in **(2014) 5 SCC 377 (Perumal ..vs.. Janaki)** (*cited supra*), the Hon'ble Supreme Court dealt with a case where respondent Sub-Inspector of Police, All Women Police Station, Pollachi, filed a final report against petitioner stating that petitioner had cheated one Nagal on the promise to marry her and had sexual interaction with her several times and made her pregnant. Therefore, final report was filed against petitioner for offences under Sections 417 and 506(i) IPC. This case resulted in acquittal for the reason that Nagal was not at all pregnant. Therefore, petitioner filed a private complaint under Section 200 Cr.P.C., against Sub-Inspector - Janaki for committing the offence under Section 193



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of I.P.C., and that complaint was dismissed by learned Judicial Magistrate on the ground that in view of Sections 195 and 340 Cr.P.C., the complaint of petitioner - Perumal was not maintainable. The appeal was also resulted in dismissal and the matter was taken before the Hon'ble Supreme Court. The Hon'ble Supreme Court found that from the undisputed facts available, prima facie, there is no material to constitute the offence under Section 193 of I.P.C., but the act may constitute the offence under Section 211 of I.P.C. The reason is that despite the evidence to show in the form of medical opinion that Nagal was not pregnant, respondent - Janaki chose to file a final report with the allegation that Nagal was pregnant, because of petitioner - Perumal. In the said circumstances, the Hon'ble Supreme Court observed that in the absence of any specific constitutional limitation of prescription on the exercise of such powers, the High Courts may exercise such powers either on an application made to it or suo-motu in the interest of justice.

13. As already observed, in the case before hand, the trial in cheque



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dishonour case is not completed. Contrary to this, in the judgment relied by the learned counsel for petitioners, there was a trial that resulted in acquittal, giving a cause of action for the accused to file a private complaint for prosecuting the investigating officer. As rightly pointed out by the learned counsel for respondent, this petition is pre-mature and cannot be entertained now. In this view of the matter, this Criminal Miscellaneous Petition is dismissed.

21.04.2023

mra

Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

To

1. The Metropolitan Magistrate (FTC-III)
Saidapet, Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.

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