IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.9769 of 2021
and
Crl.M.P.No.6045 of 2021

1.M.Paramasivam
2.P.Prabhu ... Petitioners

/vs/

1.The State
Rep.by Sub Inspector of Police
CCB Police Station,
Coimbatore – 641 018.

2.Ganesh Prabhu GV .... Respondents

PRAYER : The criminal original petition has been filed under Section 482 of Cr.P.C. to call for the records in final report/Charge Sheet No. FR-7/2020 in C.C.No.205/2021 on the file of the Judicial Magistrate – VII, Coimbatore, dated 24.03.2020 and quash the same.

For Petitioners	...	Mr.P.J.Rishikesh
For Respondent No.1	...	Mr.L.Baskaran Government Advocate (Crl.side)
For Respondent No.2	...	Mr.M.Velmurugan

ORDER

Challenging the criminal proceedings dated 24.03.2020 in final report/Charge Sheet No.FR-7/2020 in C.C.No.205 of 2021 on the file of the Judicial Magistrate No.VII, Coimbatore, the present criminal original petition has been filed.

2.The fact of the prosecution case is that the defacto complainant G.V.Ganesh Prabhu is the Managing Director of A.K.M.G.Alloys Pvt. Limited and the company is engaged in the business of purchasing old iron materials and melted it, thereafter, sold the same. The accused persons are running Ogun Steel Rolling Mills Private Limited having their registered office at Coimbatore. On the request of the Director of Ogun Steel Rolling Mills Private Limited Prabhu/Second petitioner, the defacto complainant supplied iron ingots from the year 2012. For that, the accused company made payment through RTGS, cheques and LC. In this regard, as on 31.07.2014, there was a due of Rs.1,74,40,783/- payable by the accused company to the defacto complainant's company. In order to repay that amount, the accused company sold the two properties worth about Rs.57, 76,000/- through two sale deeds viz., 1051 & 1513 to the defacto complainant's company. Further, for the remaining amount, the second accused Prabu on 04.06.2014 executed a registered power of attorney with regard to the property to an extent of 83 acres vide document 1140. After three years, the second accused cancelled the power of attorney on 18.07.2017 vide document 1658 and sold the same to one Jackson Engineers Limited, Delhi, on 26.09.2017 for a sum of Rs.10,32,850/- and thereby, cheated by not paying the balance amount. Therefore, the accused are committed the offence punishable under Section 420 IPC. When the defacto complainant asked to return the money, they threatened over phone, therefore, committed the offence punishable under Section 506(ii) and thereby, both the accused prosecuted for the offences under Sections 406, 420 & 506(ii) IPC.

3.The learned counsel appearing for the petitioners/accused contended that the 1st petitioner is the Managing Director of "Ogun Steel Rolling Mills Pvt. Ltd". The 2nd petitioner is the son of the 1st petitioner and has got nothing to do with the said Company "Ogun Steel Rolling Mills Pvt. Ltd." The said Company is engaged in the business of manufacturing of TMT steel bars. For the purpose of manufacturing the TMT bars, the company requires "Ingots", which is one of the raw materials used for manufacturing TMT steel bars. In the usual course of business, the said company sourced ingots from one "AKMG Alloys Private Limited". The business transactions between Ogun Steel Rolling Mills Pvt. Ltd and AKMG Alloys Private Limited was right from the year 2012 and for several years AKMG Alloys Private Limited supplied ingots to Ogun Steel rolling Mills Pvt. Ltd. The normal procedure that was followed was that pursuant to a supply, AKMG Alloys Private Limited raised invoice and Ogun Steel Rolling Mills Pvt. Ltd makes payments for the said supplies. There were several transactions between the above stated two companies for several years. The Defacto complainant is the Managing Director of AKMG Alloys Private Limited. In the year 2014-15 Ogun Steel Rolling Mills Pvt. Ltd., did not release certain payments to AKMG Alloys Private Limited since there were quality related issues with respect to the ingot supplied by them. However, instead of addressing the quality related issues and replacing the ingots, the said AKMG Alloys Private Limited, preferred a petition as against Ogun Steel Rolling Mills

Pvt. Ltd., under Section 433(e) of the Companies Act, 1956, before this Court vide C.P.No.126 of 2015. The respondent in the Company petition, i.e., Ogun Steel Rolling Mills Pvt., Ltd., also filed their Counter disputing the claims of the Company Petitioner i.e.AKMG Alloys Private Limited. During the pendency of the said Company petition, a new law was enacted, viz., Insolvency and Bankruptcy Code, 2016 (hereafter referred to as IBC, 2016) and all Company Petitions for winding up pending before the High Court were transferred to the National Company Law Tribunal (hereafter referred to as NCLT). Accordingly, the said Company Petition was re-numbered as TCP/408/IB/2017. However, the said AKMG Alloys Private Limited did not comply with the statutory formalities under the IBC, 2016 and hence, their petition stood abated and dismissed vide order of the NCLT dated 26.07.2017.

4.Further, the learned counsel for the petitioners submitted that the said AKMG Alloys Private Limited wanted to revive their pursuit once again before the NCLT and hence issued Form 3 & Form 4 under IBC, 2016 dated 19.08.2017. Form 3 & Form 4 of the IBC, 2016 is nothing but

Demand Notices seeking for payment of the outstanding dues. In response, Ogun Steel rolling Mills Pvt. Ltd gave a notice of Dispute dated 30.08.2017, wherein, they questioned the maintainability of the other round of litigation by AKMG Alloys Private Limited and also disputed the claims on merits. Thereafter, accepting the reply given by Ogun Steel Rolling Mills Pvt. Ltd to the Form 3 & Form 4, the said AKMG Alloys Private Limited, did not pursue their remedy under IBC, 2016 and chose not to file any further petitions for the alleged recovery of money as against Ogun Steel Rolling Mills Pvt. Ltd. The petitioners believed that a quietus was given in the year 2017 itself. To the shock and surprise of the petitioners, the managing Director/Defacto complainant of AKMG Alloys Private Limited, lodged a criminal complaint before the 1st respondent, police on 09.01.2020 and an FIR came to be registered on 11.01.2020 under Sections 406, 420 & 506(2) of the IPC. It will be pertinent to note that the complaint was given by the Defacto complainant in his individual capacity for the transactions as mentioned above between AKMG Alloys Private Limited and Ogun Steel Rolling Mills Pvt. Ltd. The same averments which were raised by AKMG Alloys Private Limited as against

Ogun Steel rolling Mills Pvt. Ltd before the Company Court and NCLT was subject matter of the said Criminal Complaint also. Pertinently the complaint was not given against the Company – Ogun Steel Rolling Mills Pvt. Ltd., but only as against the petitioners. Further, he submitted that the entire transaction and the alleged non payments are only between the two corporate legal entities by the name Ogun Steel Rolling Mills Pvt. Ltd and AKMG Alloys Private Limited. The defacto complainant has indulged in forum shopping by first approaching the Civil Court under the Company jurisdiction by filing company petition before this Court in C.P.No.126 of 2015. However, when the said C.P. was transferred to NCLT under the provisions of IBC, 2016, the defacto complainant failed to comply with certain statutory compliances as contemplated under the IBC Code, 2016 and hence, their Company Petition stood abated by order dated 26.07.2017. Thereafter, the defacto complainant once again attempted to invoke the provisions of IBC Code, 2016, by issuing Demand Notices under Form 3 & Form 4, which were suitably replied by Ogun Steel Rolling Mills Pvt. Ltd, in which a specific stand was taken that once the proceedings before IBC are abated the same cannot be revived by issuing fresh demand notices and the amounts claimed by AKMG Alloys Private Limited was disputed by Ogun Steel Rolling Mills Pvt. Ltd. Accepting this, the Defacto complainant did not pursue the matter further. After several years, the defacto complainant lodged a false complaint on the very same allegations which had attained finality in the year 2017, under the Companies Act and IBC, 2016. A bare perusal of the impugned Charge Sheet, FIR and the complaint would establish that the disputes are civil in nature. The learned Principal District & Sessions Judge in Bail Petition has also given a categorical finding to that effect. The Impugned proceedings is a blatant example of how the 2nd Respondent is seeking to abuse the process of law with an intention of using the Criminal Complaint as a tool to arm-twist the Petitioners to circumvent the judicial process. It is a clear case of malicious prosecution and thus, pleaded to quash the criminal proceedings.

5.To support his arguments, he relied upon the judgments namely (i) ***Prof.R.K.Vijayasarathy and another Vs. Sudha Seetharam and another*** reported in ***(2019) 16 Supreme Court Cases 739 (ii).Mitesh Kumar j.Sha Vs. State of Karnataka and others*** reported in ***2021 SCC OnLine SC 976***

and (iii). Mohammad Wajid & Anr Vs. State of U.P & Ors (Crl.A.No.2340 of 2023 (Arising out of S.L.P.(Criminal) No.10656 of 2022)).

6.The learned counsel appearing for the defacto complainant contended that the execution of the power of attorney by the petitioners on 04.06.2014 is not disputed. Without prior intimation, the power of attorney was cancelled by the petitioners on 18.07.2017 and subsequently, sold the property to Jackson Engineers Limited. Believing the words of the petitioners, the defacto complainant received the power of attorney and not taken any action upon that power of attorney. When the defacto complainant questioned the cancellation of power of attorney, they threatened him over phone. Therefore, all the offences are made out and it has been decided whether the offence is made out or not and it is not appropriate to quash the criminal proceedings and seeking to dismiss the criminal original petition.

7.I have considered the matter in the light of the submissions made by the learned counsel appearing for the parties and perused the materials available on record.

8.On perusal of the materials on record, the fact reveals that the petitioners are accused in C.C.No.205 of 2021 on the file of the Judicial Magistrate No.VII, Coimbatore. In pursuance of the complaint given by the informant/defacto complainant, the case has been registered on 11.01.2020 for the offences punishable under Sections 406, 420 and 506(2) IPC. After investigation, final report has been filed on 24.03.2020 by the respondent police, which was taken on file in C.C.No.205 of 2021 by the Judicial Magistrate No.VII, Coimbatore. Further, on perusal of the materials and final report, the prosecution is that there is a business transaction between the defacto complainant and the petitioners' company in this regard, as on date 31.07.2014, there was a due of Rs.1,74,40,783/-. For that, the property worth about Rs.57,76,000/- was given to the defacto complaint. For the balance amount, according to the prosecution, the petitioners executed a power of attorney on 04.06.2014, subsequently, after three years, which was cancelled on 18.07.2017 besides sold the property to Jackson Engineers Ltd., on 26.09.2017. In respect of the same, when the defacto complainant questioned the petitioners, they threatened him with dire consequences. Further, on perusal of the records, it reveals that the defacto complainant for non payment of due amount filed a petition before this Court in C.P.No.126 of 2015 under Section 433 (e) of the Companies Act, 1956 with a prayer to wind up the company for non payment of the due. Since the Act was amended, the defacto complainant filed a petition before National Company Law Tribunal in petition TCP/408/IB/2017, which was dismissed by the Tribunal by an order dated 26.07.2017 for non-compliance of requirement of the provisions by the defacto complainant.

9.Further, it is noticed that the transactions between the petitioners' Company and the defacto complainant are business transactions, for the outstanding of the amount in the transactions, they entered into agreement and paid sum partial amount and for remaining amount, the alleged power of attorney has been executed for non payment of the due. The informant/defacto complainant also had taken civil action against the petitioners, on failure of that action, the complaint has been given on 11.01.2020. At this stage, the decision of the Hon'ble Supreme Court in ***Mohammad Wajid &Anr Vs. State of U.P. & Ors*** reported in ***2023 INSC 683*** runs as follows:

> ***" At this stage, we could like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to***

constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and if need be. With due care and circumspectionn try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowerred to take into account the overall circumstances leading to the initiation / registration of the case as well as the materials collected in the course of investigation."

10.From the records, it is clear that on failure of civil action against the petitioners, the criminal complaint has been given,which was registered and final report has been filed and now prosecuted. It is clear misused of process of law. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the

High Courts under Section 482 Cr.P.C in the following cases:

(i). In the case of R.P.Kapur Vs. The State of Punjab reported in AIR 1960 SC 866, the Hon'ble Supreme Court has held as follows:

"6. .... It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent

> *jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."*

(ii). Further, in the case of State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors. reported in AIR 1992 SC 604, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

> ***"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.***
>
> ***(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.***

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(iii).Similarly, in the case of M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online SC 315, the Hon'ble Apex Court has observed as follows:

"80. ...., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the 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 complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while

dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

11. It is to be noted that the present case meets the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Therefore, the criminal proceeding is liable to be quashed.

12.In view of the above, the criminal proceedings in C.C.No.205 of 2021 on the file of the Judicial Magistrate No.VII, Coimbatore is hereby quashed. Accordingly, the criminal original petition is allowed.

Consequently, connected miscellaneous petition is closed.

Index : Yes/No **16.08.2023**
Internet : Yes/No
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1.The State
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2.The Judicial Magistrate – VII,
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3.The Public Prosecutor,
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