IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2023

Pronounced on : 13.12.2023

CORAM:

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

Crl.O.P.No.17767 of 2021 and
Crl.M.P.No.9747 of 2021

1. M/s.Focal Merchandising India Private Limited,
Represented by its Director,
Mr.Noel Mohan Ravin,
No.108, Electronic Industrial Estate,
Perungudi, Chennai-600 096.

2. Noel Mohan Ravin ... Petitioners

-Vs-

1. State represented by
Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Chennai.

2. S.Madhavan ... Respondents

<u>PRAYER</u>: Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to call for the records culminated in the impugned summons issued in C.C.No.2210 of 2021 dated 09.09.2021 on the file of the Learned XI Metropolitan Magistrate, Saidapet, Chennai, pursuant to order in Cr.No.183 of 2016 on the file of the Cyber Crime, CCB Chennai Egmore, and quash the same.

For Petitioners : Mr.V.Raghavachari,
Senior Counsel for
Mr.S.Vijayaganesh

For Respondent 1 : Mr.A.Gopinath,
Government Advocate (Crl.Side)

For Respondent 2 : Mr.Gautam S.Raman

ORDER

This Criminal Original Petition is filed to quash the proceedings culminated in the impugned summons issued in C.C.No.2210 of 2021 dated 09.09.2021 on the file of the Learned XI Metropolitan Magistrate, Saidapet, Chennai, pursuant to order in Cr.No.183 of 2016 on the file of the Cyber Crime, CCB Chennai Egmore thereby taken cognizance for the offences under Sections 192,193,211,420,468,470,471,506(ii) of IPC r/w.66 and 66(b) of IT Act, 2008.

2. The case of the prosecution is that the complainant company namely M/s.Indigo Business Services (hereinafter referred as IBS) is an Advertising Company that makes "In Store displays for leading companies in the country. It was managed by the 2nd accused who is none other than the brother-in-law of the Managing Director of IBS. He had joined in the year 1995 as a Marketing

Executive and remained till 1999 and thereafter, joined as Client Service Manager in the year 2000. Thereafter, he was promoted to post of Director during the month of March 2002. He remained as Director of IBS until his resignation in the year 2014. The 4th and 5th accused were the employees of IBS and working as the Client Service Manager and General Manager (Finance & Operation) respectively. While being so, on 20.02.2014, the 2nd accused had sent an email to present his desire to resign from IBC with effect from 15.05.2014. However, the Managing Director asked him if he would be interested in taking a stake in the company subject to the price being agreeable to both parties. Therefore, the 2nd accused requested that his potential partner who is 3rd accused had allowed to review the IBS financials to assess the company. However, it was not materialised. While being so, on 04.04.2014, the 2nd accused had sent an official email to the Directors of IBS wherein he expressed his desire to resign from the IBS with effect from 15.05.2014. Once again, on 14.04.2014, the 2nd accused sent an another email stating that he is commencing a new business with the 3rd accused and it will be a production of centric model that will supply other point of purchaser companies and therefore there will be no conflict of interest. Accordingly, he had resigned from his directorship and handed over the charge to the 5th accused.

Thereafter, the 2nd accused has convinced the other accused in diversion of orders of IBS to the 1st accused company and was in complete collusion with 4th and 5th accused who were acted against the interest of IBS. They had participated in the diversion of the orders and thereafter resigned and joined the service of the 1st accused company. During the month of July 2014, the Managing Director of the IBS came to India and got shocked to see that the 2nd accused had written to the said company on 09.06.2014 asking the said company to transfer the IBS Vendor Registration into the name of the 1st accused company. It was sent much after he resigned from the service of the IBS on 15.05.2014. After checking the emails, found that the 2nd accused had sent several emails and such emails had been deleted and the deletion was for the period from 22.05.2014 to 01.07.2014. The 2nd accused informed to the promoters of the IBS that he had started the 1st accused company on or about 15.07.2014. During the period between 15.05.2014 and 28.07.2014, the 1st accused company had executed several orders for the clients of IBS with the products designed by the IBS. The 2nd accused also had misrepresented to the Defacto-complainant's clients that the IBS had restructured its business and transferred the Merchandising Business to the 1st accused company. He had sent so many emails to so many clients of IBS and diverted the clients to the 1st accused company, thereby IBS will loose the order and the 2nd accused will be able to get order directly or indirectly from its clients. Large orders from the said companies meant for the IBS were diverted to the 1st accused company. The invoices raised and the sales tax returns filed by the 1st accused company after it got registered will show that it had diverted the orders of the IBS for products designed by IBS and executed the same, thereby, there was an approximate loss for the IBS to the tune of Rs.61,76,193/-. Hence, the complaint.

3. On receipt of the said complaint, the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai registered FIR in Crime No.183 of 2016 for the offences punishable under sections 192,193,211,420,468,470,471,506(ii) of IPC r/w.66 and 66(b) of IT Act, 2008. After completion of investigation, the 1st respondent filed a final report thereby suggested for dropping all further action as against the petitioner as the case is civil in nature and closed the FIR. On receipt of the charge sheet, the 2nd respondent filed protest petition in Crl.M.P.No.39 of 2020. After examining the complainant and the petitioners, the learned XI Metropolitan Magistrate, Saidapet had taken cognizance for the offence under section 420,468,471 of IPC r/w.66 & 66(B) of IT Act and issued summons to the

accused 1 to 5.

4. Mr.Raghavachari, the learned Senior Counsel appearing for the petitioner submitted that the entire prosecutions are civil in nature. Therefore, the 1st respondent rightly dropped further action as the allegations are civil in nature. In fact, the 2nd respondent filed a suit in C.S.No.793 of 2014 for the very same set of allegations for recovery of money to the tune of Rs.1,70,00,000/- as compensatory and punitive damages. The injunction application filed by the 2nd respondent was dismissed. When the civil court seized of the entire issues, no criminal prosecution can be lodged and it cannot be simultaneously proceeded with. After closing the FIR as further action dropped, the trial court mechanically without even stating any reasons had directly taken cognizance. Even according to the 2nd respondent, the defacto-complainant filed a suit for recovery of money. Therefore, only after adjudication in the civil suit, it depends upon findings whether criminal prosecution can be lodged or not? Further, the complaint itself is belated one. The alleged occurrence had taken place in the year 2014, whereas the present impugned complaint lodged only in the year 2016, that too after filing the civil suit in C.S.No.793 of 2014. There is absolutely no explanation for the belated complaint lodged by the 2nd respondent. In fact, the 2nd respondent has no

locus to lodge complaint. He lodged complaint on behalf of the Managing Director of IBS. He is only an employee and he resigned from his job in September 2015. Therefore, he cannot represent on behalf of the Managing Director of IBS. The trial court also failed to see the statements recorded under section 161 of Cr.P.C. before taking cognizance. No witnesses had supported the case of the prosecution and as such the 1st respondent rightly closed the FIR as further action dropped. The Investigation Officer also found that even after resignation of the petitioner, he had business transaction with the IBS. During that period under question, cash deposit found in his account which is admitted by the 2nd respondent. Therefore, the 2nd respondent shared ID to the petitioner to enable him to complete the assignment. As such, there was no motive could be attributed as the petitioner was the then director of IBS and acted under his capacity as Director. The alleged diversion of business orders from artwork for Livon standee which has been lakhs of rupees. This has been claim through civil proceedings and to which already the 2nd respondent filed suit and it is pending for disposal. Therefore, the trial court ought to have accepted the report submitted by the 1st respondent. Instead it had taken cognizance for the offence as alleged by the complainant.

5. Per contra Mr.Gautam S.Raman, learned counsel for the 2nd respondent submitted that there are specific allegation as against the petitioners in order to attract the offences. The 1st respondent colluded with the accused, recorded the reasons on the basis of civil suit filed by the 2nd respondent and closed the FIR as further action dropped. The civil suit is completely different and it has been filed for recovery of money as compensation and damages. After considering the statement and on perusal of other records, the trial court rightly had taken cognizance. That apart, the grounds raised by the petitioner cannot be considered under section 482 of IPC, since the documents produced by the 2nd respondent have be tested before the trial court in the manner known to law. Hence, he prayed for dismissal of quash petition.

6. Admittedly, the petitioners are arrayed as Accused No.1 and 2 i.e., the company and its Director namely the 2nd petitioner. The 2nd petitioner expressed his desire to resign from IBC with effect from 15.05.2014. Subsequently, there was a proposal to review the IBC financials to assess the

company. However, it was not materialised due to non-acceptance by the 2nd petitioner herein. Therefore, by email dated 04.04.2014 to the Managing Director of IBS stated that he is commencing new business with the 3rd accused and that will be a production of centric model. That will supply other point of purchasers companies. He resigned from his directorship of IBS with effect from 16.05.2014 and his last working day was 15.05.2014. Thereafter, the 2nd petitioner had sent final email in the ID of IBS to various clients of IBS and thereby diverted the several orders from his clients with the products designed by IBS, thereby IBS occurred huge loss. There are materials produced to prove the offence under sections 192, 193, 211, 420, 468, 470, 471, 506(ii) of IPC r/w.66 and 66(b) of IT Act, 2008 as against the petitioners. The IBS rightly filed suit for recovery of damages in C.S.No.793 of 2014. They also filed an application in O.A.No.981 of 2014 seeking injunction as against the petitioners and those from doing any advertising business with the client of IBS listed in the plaint schedule. Though it was dismissed by the learned single judge of this court, the IBS also filed OSA.No.269 of 2015 and the Hon'ble Division Bench of this Court by order dated 21.03.2016, allowed the appeal and injunction was granted with limited extent as follows:

i) The respondents will not carry on the business seeking to represent themselves in any manner associated with the business activities of the appellants.

ii) The respondents will not communicate on the "letterheads" of the appellants or any other manner seeking to act on behalf of the appellants.

iii) The respondents while dealing with the original clients of the appellants would clearly state that they are disassociated with the appellants, having set up independent business."

Thereby allowed the appeal filed by the IBS. Mere filing of civil suit could not refrain the IBS to lodge complaint for the offences committed by the accused. The 2nd respondent is an employee of IBS and as such he can freely maintain the complaint. In fact, anybody can setting motion under the criminal law. The 1st respondent, after registration of FIR, conducted trial instead of investigation and closed the complaint as further action dropped, in other words acquitted the accused. Duty of investigation officer is to investigate and to see whether prima facie materials available to attract the offences. Instead, in this case, the 1st respondent conducted trial and closed the FIR. Therefore, the complainant filed a protest petition in Crl.M.P.No.39 of 2020. In fact, after registration of FIR, the 1st respondent did not file any report. Therefore, the 2nd respondent filed direction petition in Crl.O.P.No.1776 of 2016 and this court issued direction to the 1st respondent to complete the investigation and file final report. Therefore, in order to wreak vengeance, the 1st respondent closed the FIR as further action dropped. That apart, on perusal of records revealed that the petitioners and other accused persons are former employees of IBS. The petitioners and the 3rd accused are partners. The 2nd petitioner herein had diverted the orders of IBS with the connivance of other accused persons. In the complaint, specific names mentioned companies were diverted in favour of the 1st accused through emails. The 2nd petitioner misrepresented by suppressing the fact of his resignation from IBS as if the IBS was transferred to 1st accused company which is shown as a new company started by him. However, the trial court found that the 1st respondent conducted slavish investigation, that too without recording statement of the witnesses while closing the same. It is also silent about what kind of effort was taken by the 1st respondent to retrieve materials from electronic media alleged to be used by the accused. There is no whisper about the methodology adopted by the 1st respondent to fix non existence of the crime under section 66 or 66(b) of IT Act. There is no expert opinion from the computer department. However, this court cannot act as trial court to consider the documents which are projected before this court, for the charges framed. At this stage, the court has to see only prima facie to be specified about the existence of sufficient grounds for proceeding as against the accused. This Court can evaluate the material documents, but cannot appreciate evidence. Therefore, this court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In order to attract the offence punishable under section 420 of IPC the main ingredients required is that deception or any proceeding fraudulent under property or to sent that any person representative any property and finally, intentionally inducing that person to do or omitted to do nothing which he could not do or omit. In the case on hand, there is a prima facie to the effect that the 2nd petitioner fraudulently and dishonestly induced the clients of IBS and deceived them to deliver orders. Therefore, the trial court rightly had taken cognizance and issued summons.

7. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.2210 of 2021 in Crime No.183 of 2016 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

13.12.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
gvn

To

1) The XI Metropolitan Magistrate,
Saidapet, Chennai,

2) The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Chennai.

3) The Public Prosecutor,
High Court Madras.

G.K.ILANTHIRAIYAN, J.

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