



Crl.O.P.No.19615 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.07.2023

Pronounced on : 10.08.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.19615 of 2022

and

Crl.M.P.No.12918 of 2022

1.Orion Security Solutions Pvt.Ltd.,
Rep.By its Managing Director,
Major.Ashutosh Jha,
Having office at
Plot No.5E, 1st Floor, Dada Jungi House,
Street No.05, Near BSES Power Station,
Shahpur Jat, Siri Fort,
South Delhi, New Delhi 110 049.

2.Major.Ashutosh Jha,
Managing Director,
Orion Security Solutions Pvt.Ltd.,
No.78, Poorvi Marg,
Vasant Vihar,
New Delhi 110 057

... Petitioners

Vs.

Central Bureau of Investigation,
Economic Offences Wing,
“A” Wing, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

... Respondent



CrI.O.P.No.19615 of 2022

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the case pending investigation in charge sheet/Final report bearing No.02/2021 dated 29.07.2021 on the file of the respondent and quash the same as against the petitioner.

For Petitioners : Mr.N.R.Elango, Senior counsel
for Mr.B.Arvind Srevatsa

For Respondent : Mr.K.Srinivasan, Senior counsel
Special Public Prosecutor (CBI)

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the criminal proceedings, which is the subject matter of C.C.No.347 of 2021, on the file of the Chief Judicial Magistrate, Puducherry.

2. Based on the source of information, CBI, EOB, Chennai registered FIR in RC.No.02/E/2020 on 28.08.2020. As per the FIR, M/s.Orion Security Solutions Pvt.Ltd.,[A1] represented by its Directors, Major.Ashutosh Jha [A2] and Smt.Kundan Jha [A3] engaged in manpower management for providing security services, participated in



CrI.O.P.No.19615 of 2022

the tender called for providing security at JIPMER complex, Puducherry for the period from 01.04.2017 to 30.03.2018. The said contract was further extended upto 31.10.2018.

3. It was alleged that in collusion and connivance with the staff of JIPMER, without remitting the contribution of ESI/EPF for the employees engaged by the company for providing security for JIPMER, had submitted a false/fabricated certificate about the remittance of their contribution to ESIC/EPFO and got released the payment of the tender amount without paying the mandatory contribution towards ESI and EPF, a sum of Rs.63,34,503/- and R.1,88,47,631/- respectively for the period from 01.04.2017 to 30.04.2018 payable as contribution for 410 workers engaged by them at JIPMER. Induced the JIPMER management to release the payment and thereby obtained wrongful gain. On completion of investigation final report filed against Orion Security Solutions Pvt.Ltd., [A1] represented by its Managing Director, Major.Ashutosh Jha [A2], Harsh Kumar Goyal, General Manager, HR Compliance of M/s.Orion Security Solutions Pvt.Ltd., for preparation of fake/fabricated



Crl.O.P.No.19615 of 2022

Pay roll, ESI remittance chellan, ESI schedule etc., in connivance with other accused persons and Smt.Kundan Jha.

4. As per the final report, the terms and condition of the tender contract is that the contractor should submit the clearance/NOC from the respective competent Labour Authorities, EPF officers, ESI organizations, etc before raising the bill. Whereas, by creating false/fabricated documents as if the mandatory contribution is remitted into the account of ESI/EPF, the bills were withdrawn. In order to get the bills to be passed, Major.Ashutosh Jha [A2] conspired with Harsh Kumar Goyal [A3], General Manager, HR Compliance of A1 company and in furtherance of the criminal conspiracy with intention of cheating JIPMER, Puducherry, they prepared fake and forged debit instruction notes addressed to ICICI bank, New Delhi for transfer of wages, acquittance roll, ESI contribution remittance chellan, ESI schedules, salary transfer sheet, etc., and fraudulently/dishonestly submitted it to JIPMER, Puducherry along with the invoice and the attendance sheet as if they complied the terms and conditions imposed in the work order and



Crl.O.P.No.19615 of 2022

WEB COPY

contract agreement without making any remittance towards the mandatory contribution on behalf of employees.

5. The petition to quash is filed on the ground that the ingredient of Sections 406, 420, 201, 467, 468 & 471 IPC not been made out. There is no breach of trust or allegations of cheating is alleged in the final report. No material evidence to implicate the accused 1 and 2 for making false documents to attract offence under Sections 467, 468 & 471 IPC. Further, contended that the mandatory contribution had been paid belatedly with penalty and interest. The ESI has issued a letter in the month of February 2022 that the 1st accused company had cleared all its ESI contribution due as on 08.02.2022 and therefore, the following judgment of Hon'ble Supreme Court held in ***M/s.Kothari Polymers Limited Vs. SIU(X)/SPE/CBI***, this criminal complaint is liable to be quashed.

6. The CBI has filed detailed counter wherein, it is narrated how the JIPMER, Puducherry been induced to release the bill based on



CrI.O.P.No.19615 of 2022

the fake remittance of ESI and EPF contribution and further submitted that having committed fraud and cheating to avoid prosecution under the respective Act namely EPF/ESI Act, the 1st accused company has come forward to clear all the dues belatedly. This will not exonerated the accused company and its Managing Director from criminal prosecution under IPC for breach of trust, cheating and making false documents and using it as genuine.

7. The 1st petitioner company being engaged to provide security had specifically agreed that 10% of the bill amount will be retained till providing the proof for payment of statutory contribution. To get that 10% of the bill amount, fraudulently without paying mandatory contribution, the 1st petitioner company through the accused 2 to 4 had created false documents as genuine and induced the JIPMER, Puducherry to make payment. Kothari Polymers case will not apply to the petitioner herein, since the payment made to ESI and EPF belatedly with penalty will not take away the crime of fabricating false documents and cheating, which is the subject matter of the case pending trial.



Crl.O.P.No.19615 of 2022

WEB COPY

8. Heard the learned counsel for the petitioner, the learned Special Public Prosecutor (CBI) for the respondent and perused the records.

9. The substance of allegations found in the final report is as below:

“A-1 company M/s.Orion security Solutions Pvt Ltd., paid wages to their employees engaged to JIPMER for security services in third/fourth week of the month and failed to remit the ESI contribution of the employees. But, in order to get the bills to be passed, Major Ashutosh Jha (A-2) conspired with Shri Harsh Kumar Goyal (A-3), HR-Compliance and in furtherance of the criminal conspiracy and with the criminal intention to cheat JIPMER, Puducherry, they colluded together and prepared fake/forged debit instruction notes addressed to ICICI Bank, New Delhi for transfer of wages, acquittance roll, ESI contribution remittance challans, ESI schedules, salary transfer sheet, etc. and



WEB COPY



Crl.O.P.No.19615 of 2022

fraudulently/dishonestly submitted to JIPMER, Puducherry along with the invoice and attendance sheet as if they complied the terms & conditions imposed in the work order and contract agreement. Whereas, they never paid or remitted any mandatory ESI contribution of the employees employees i.e both employees contribution and employer contribution, though deducted from their respective salary engaged to JIPMER, Puducherry and further no wages was transferred through ICICI Bank, New Delhi as claimed. Further A-2 and A-3 with the criminal intention to cheat JIPMER, Puducherry and ESIC, Puducherry created fake/forged ESI remittance challans. They also got prepared one fake round rubber seal in the name of ICICI Bank, Basement Solutions, Videocon Tower, Sec-3, New Delhi and affixed in the debit instruction note as if it was acknowledged by ICICI Bank, whereas the A/c No. mentioned in the debit instruction note is invalid number. They destroyed the fake rubber seal once their purpose was over.



WEB COPY



CrI.O.P.No.19615 of 2022

16. Investigation revealed that A-2 Major Ashutosh Jha, Managing Director of M/s Orion Security Solutions Pvt Ltd (A-1) and A-3 Shri Harsh Kumar Goyal, General Manager, HR-Compliance of M/s Orion Security Solutions Pvt Ltd. (A-1) failed to remit ESI contribution of Rs. 75,37,909/- to ESIC, Puducherry for the period from May 2017 to Oct 2018 of employees engaged for security services to JIPMER, Puducherry and thus they caused wrongful loss to the tune of Rs. 75,37,909/- with interest of Rs. 15, 21,994/- as applicable as on 11.03.2021 (Total Rs.90,59,903/-) and corresponding wrongful gain to themselves.

17. THAT, the aforesaid acts committed by Major Ashutosh Jha (A-2), Director of M/s Orion Security Solutions Pvt Ltd (A-1) and Shri Harsh Kumar Goyal (A-3) constitutes commission of offences punishable U/s 120-B r/w 406, 420, 201, 467, 468, 471 IPC and substantive offences thereof as mentioned against each accused.



CrI.O.P.No.19615 of 2022

<i>Sl. No.</i>	<i>Name of the Accused</i>	<i>Substantive Offences</i>
1.	A-1 M/s.Orion Security Solutions Pvt.Ltd	U/s.420 IPC
2.	A-2 Major Ashutosh Jha	U/s.406, 420, 201, 467, 468 & 471 IPC
3.	A-3 Harsh Kumar Goyal	U/s.420, 201, 467, 468 & 471 IPC

10. The learned Senior Counsel appearing for the petitioners submitted that the contribution for the employees under ESI and EPF Act been paid and same is admitted by the ESI Corporation vide order dated 04.02.2022, which has revoked the garnishee order on receipt of the entire due from the defaulter, M/s.Orion Security Solutions Pvt.Ltd.

11. The statement of witnesses and the documents clearly show that, while getting the bills from JIPMER, Puducherry false documents has been produced as if contribution payable to the employees remitted to the respective authorities. It is now contended that the said falsification of documents been done by one of the employee by name Manoj Sharma and against him the company has preferred complaint at



Crl.O.P.No.19615 of 2022

WEB COPY

Huz Khas police station, New Delhi. It is contended that the documents forged to get the bills cleared from JIPMER, Puducherry was done by the staff without the knowledge of the company management.

12. This complaint against their staff to disown his conduct cannot be accepted on the face value, but it has to be tested. Records indicate that money has been gone to the account of the company and JIPMER Puducherry had cleared the bill believing that 410 employees engaged by the 1st accused company had been paid their contribution for ESI and EPF. When the documents show contrary, the option for the petitioner is either to prove that they are not beneficiary of the act of forgery and they had no knowledge about the act of forgery or to compound the offence if law permits or even go for plea bargain. In case they are inclined to contest the trial. The complaint cannot be quashed because of the subsequent payment of dues when *prima facie* material available regarding production of false documents and inducement to release bills in favour of the company.



CrI.O.P.No.19615 of 2022

WEB COPY

13. The final report against this petitioner is not mere breach of payment of statutory contribution, it is a breach of payment of statutory contribution coupled with forgery and cheating. Therefore, the petition to quash under Section 482 of Cr.P.C., in the given facts and circumstances not maintainable. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

14. It is always open to the petitioner to approach the trial Court to explore the possibility under Chapter XXI A of Cr.P.C., to give quietus to the prosecution or otherwise if the petitioner wants to take advantage of the judgment rendered by the Hon'ble Supreme Court in Kothari Polymers case then the petitioner may opt for compounding of offence, if law permits.

10.08.2022

rpl
Index: Yes/No
Speaking Order/Non Speaking Order



Crl.O.P.No.19615 of 2022

To
WEB COPY

1.The Central Bureau of Investigation,
Economic Offences Wing,
“A” Wing, 3rd Floor,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

2.The Public Prosecutor (CBI),
High Court of Madras, Chennai.



WEB COPY



Crl.O.P.No.19615 of 2022

Dr.G.JAYACHANDRAN, J.

rpl

order in

Crl.O.P.No.19615 of 2022

10.08.2023