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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 3699/2024, CRL.M.A. 14179/2024 & CRL.M.A. 14180/2024

SANDEEP KUMAR .....Petitioner

Through: Mr. Shrey Sharawat, Mr. Sahil Yadav, Mr. Vikrant Singh, Mr. Nitish Osha, Mr. Himanshu Sihag & Mr. Archit Singh, Advocates.

versus

STATE (NCT OF DELHI) THROUGH, SHO, & ANR. .....Respondents

Through: Mr. Ajay Vikram Singh, APP for the State alongwith Inspector Raman Kumar Singh & SI Somvir Singh (P.S. Cyber Police Station Outer North).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **04.07.2024**

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (‘**CrPC’**) read with Article 227 of the Constitution of India, *inter alia*, seeking quashing of FIR No. 50/2023 dated 25.11.2023, registered at Cyber Police Station Outer North, for offence under Section 420 of the Indian Penal Code, 1860 (‘**IPC’**) and all consequential proceedings arising therefrom.

2. The present FIR was registered on a complaint made by the complainant, namely, Rahul Sood, on the NCRP portal. It is alleged that a person named Deepak had called the complainant and stated that he was the logistic head of a company named

Freight System Pvt. Ltd. It is alleged that the said person duped the complainant into believing that the company was legitimate by providing certain documents. It is alleged that the complainant entered into an agreement with the said company. It is alleged that as per the agreement, the said person hired 10 trucks from the complainant for which the complainant was to get payment on 10.11.2023.

3. It is alleged that when the complainant did not receive the payment, he tried to get in touch with Deepak, who was found to be absconding. It is alleged that when the complainant tried to trace the placement of the vehicles, he found that two companies, namely, Spyder Logistics Pvt. Ltd. and Omiron Delivery Networks Pvt. Ltd., both based in Gurgaon, were common to almost all transactions. It is alleged that the vehicles of the complainant were being placed by the accused persons to common logistical service providers like Delhivery, DARCL, VTRANS, etc.

4. During investigation, it was found that the accused Ritik communicated with the complainant as Deepak. Further, the majority portion of the defrauded amount was paid to the account of Omiron Pvt. Ltd., which is owned by the petitioner.

5. It was found that accused Ritik was the Vice President of Spyder Logistics Pvt. Ltd., which is a company that is owned by the father of accused Ritik. The father of accused Ritik has been chargesheeted and his name is kept in Column 12.

6. The co-accused Ritik was granted bail by the learned Trial Court by order dated 29.02.2024 on account of the settlement between accused Ritik and the complainant whereby he had paid a sum of ₹10 lakhs to the complainant. It was also noted that the investigation *qua* the said accused almost stands completed.

7. The petitioner was arrested in the present case on the basis of the statement of accused Ritik. He was also granted bail by the learned Trial Court *vide* order dated 29.02.2024.

8. It was also found that the accused Ritik and the petitioner had created a WhatsApp group and added the complainant to the same to facilitate the day to day functioning of the fleet hired from the complainant. Further, the accused persons were in touch with each other regularly through WhatsApp.

9. During investigation, it was also found that the petitioner and the accused Ritik purchased the domain name used to defraud the complainant.

10. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He submits that no specific role has been assigned to the petitioner regarding commission of either cheating or forgery and no *prima facie* case is made out against the petitioner.

11. He submits there is no evidence of misrepresentation or inducement by the petitioner. He submits no communication has been unearthed between the petitioner and accused Ritik or the complainant to establish a criminal conspiracy.

12. He submits that the petitioner was not privy to the terms of the contract signed between the complainant and accused Ritik through his fraudulent company Freight System India Pvt. Ltd.

13. He submits that the petitioner has been defrauded by the accused Ritik and the said accused person has been operating under the guise of a false identity – 'Deepak Khandelwal'. He submits that the payments were only received in the account of Omiron Pvt. Ltd. (the petitioner's company) at the inducement of the accused Ritik.

14. He submits that an amount of approximately ₹24,01,250/-

was received in the account of Omiron Pvt. Ltd. from various customers of Freight System India Pvt. Ltd., out of which ₹21,95,000/- has already been transferred to the accused Ritik.

15. He submits that the present dispute is primarily civil and commercial in nature and the same has been given a criminal color so as to strong-arm the petitioner.

16. The learned Additional Public Prosecutor for the State submits that serious allegations of commission of a cognizable offence have been made against the petitioner.

17. I have heard the counsel and perused the record.

18. It is the case of the prosecution that the petitioner along with the accused Ritik cheated the complainant by not making the payment of the consideration for hiring 10 of the complainant's trucks.

19. Even though it is argued that the petitioner was not privy to the contract between the complainant and accused Ritik, it cannot be ignored that it is alleged that the cheated amount was transferred to the bank account of the petitioner's company as well. It is also alleged that the petitioner was present on a common WhatsApp group between the accused Ritik and the complainant which was created to manage the transportation through the fleet of the hired trucks.

20. The same is not denied by the petitioner. It is only argued by the learned counsel for the petitioner that the account of the petitioner was used at the instance of accused Ritik and majority of the transferred sum was further transferred to the account of accused Ritik.

21. Furthermore, it is relevant to note that the arguments on charge are ongoing before the learned Trial Court.

22. Instead of addressing arguments on charge, the petitioner

has invoked the inherent powers of this Court seeking quashing of the FIR. On being asked, the learned counsel for the petitioner submits that the proceedings before the Trial Court take more time.

23. While the exercise of power under Section 482 of the CrPC is not barred when there is an alternative remedy, a litigant cannot be allowed to circumvent or subvert the due procedure of law on mere apprehension of a long drawn litigation.

24. The Hon'ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others*** **: (2006) 6 SCC 736** has discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

> "***12.*** *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:*
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> *(i)* ***A complaint can be quashed where the allegations made in 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 the case alleged against the accused.***
>
> ***For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the***

material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) ***The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.***

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. ***A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.*** *As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*"

(emphasis supplied)

25. At this stage, it cannot be said that no case is made out against the petitioner. No argument is made as to why the complainant would seek to falsely implicate the petitioner either. While it is argued that the complaint is an attempt to give a criminal color to civil proceedings, it cannot be ignored that allegedly the accused Ritik was in contact with the complainant under the false alias of Deepak Khandelwal.

26. *Prima facie*, the allegations taken at their face value, disclose an element of criminality and commission of a cognizable offence. The same do not seem so improbable or

perverse that they merit the exercise of the jurisdiction of this Court under Section 482 of the CrPC.

27. This Court does not consider it apposite to comment further on the facts at this stage when charges are yet to be framed.

28. Needless to say, it is open to the petitioner to take all his defences before the learned Trial Court.

29. The present petition is dismissed. All pending applications also stand disposed of.

AMIT MAHAJAN, J

JULY 4, 2024/*'Aman'*