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

\+ **<u>W.P.(CRL) 2484/2022</u>**

M/S BOOM BUYING PVT LTD & ORS. .....Petitioners

Through: Mr. Manish Pratap Singh, Adv.

versus

STATE & ANR. .....Respondents

Through: Mr. Amol Sinha, ASC for the State
Inspector Rakesh Roshan, PS- EOW, Mandir Marg

**CORAM:**
**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

% **19.05.2025**

1. The present petition is filed seeking quashing of FIR No. 111/2020 dated 24.08.2020, registered by Economic Offences Wing (‘**EOW**’), for offences under Sections 420/468/471/120B of the Indian Penal Code, 1860 (‘**IPC**’).

2. The brief facts of the case are as follows:

2.1. The FIR was registered pursuant to the order dated 07.08.2020, in Case No.13053/2017, whereby the learned Magistrate had allowed the application filed by the complainant under Section 156(3) of the Code of Criminal Procedure, 1973 and directed EOW to register an FIR after observing that investigation was necessary for collection of evidence.

2.2. It is the case of the complainant that Petitioner No.1 company had placed an order for 2000 MT of Bitumen on 20.07.2010 for delivery to Myanmar and M/s. Fedders Lloyd Corporation Ltd. was designated as the consignee. The said consignee further assigned the product to M/s. Myanmar

Economic Corporation, Myanmar. Bills of Lading were prepared accordingly. It is alleged that an agreement to sell and purchase was signed between Respondent No.2 and Petitioner No.1, and all the goods were supplied on the assurance of payment given by M/s. Fedders Lloyd Corporation Ltd. as well as the purchase order placed by Petitioner No.1.

2.3. It is alleged that a total of 2006.583 Mts. of Bitumen worth USD 11,39,738.15/- were shipped by Respondent No.2 to Yangoon Port Myanmar, however, a payment of only USD 2,04,767.38/- was received against the same.

2.4. It is further alleged that instead of making the balance payment, the accused persons reported that 500 Mts of Bitumen out of the total shipment were of wrong grade. Accordingly, the complainant had additionally shipped 487 Mts of Bitumen of the appropriate grade worth USD 2,72,916.64/- as replacement. It is alleged that the accused persons sold the entire quantity of the wrong grade Bitumen at a good price but did not make any payment for the same to the complainant company.

2.5. It is alleged that the shipments of Bitumen were made in consignments and the complainant company asked the accused persons to make further payments before release of goods from Cargo. It is alleged that in order to secure the title of the goods in favour of M/s. Fedders Lloyd Corporation Ltd., Petitioner No.2 sent a copy of SWIFT codes through email showing transmittal of payment of USD 95,000/-, however, the payment was never credited to the account of the complainant company and it was later found that the SWIFT codes were forged and fabricated to cheat the complainant company.

2.6. It is further alleged that the accused in order to secure the title of the goods had also induced the complainant company by issuing two post-dated cheques of ₹6 crores which were dishonoured on presentation.

3. The learned counsel for the petitioner submits that the complainant company has been given a criminal colour to a civil dispute. He submits that the complainant company had also initially concealed the receipt of a portion of the alleged due amount.

4. He submits that no *prima facie* case is made out against the petitioners and the purpose of the proceedings is to only arm twist the petitioners.

5. He submits that the transactions took place in the year 2012 and the FIR was registered belatedly in the year 2020. He submits that no explanation has been given for the delay and the investigation is still ongoing after 4 years.

6. The learned Additional Public Prosecutor for the State opposes the quashing of the present FIR as the matter pertains to serious allegations of cheating and forgery.

7. He submits that substantial evidence has been found against Petitioner No.2, who is also involved in several other criminal cases of similar nature involving allegations in relation to the same *modus operandi*. He submits that the investigation is almost complete and the chargesheet will be filed shortly.

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

9. The petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the CrPC. It is settled law that High Court needs to exercise restraint in stifling prosecution before the parties have had an opportunity to lead evidence. High Court, however, is empowered to quash proceedings if it is found that continuance of criminal proceedings would be a clear abuse of process of law.

10. In the case of ***State of Haryana v. Bhajan Lal*** **: 1992 Supp (1) SCC 335**, the Hon'ble Apex Court had illustrated the category of cases where the Court may exercise its extraordinary power under Article 226 of Constitution of India or inherent jurisdiction to quash the proceedings. The relevant portion of the judgment is reproduced hereunder:

> *"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *(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 concerned Act (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 concerned Act, 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."*

(emphasis supplied)

11. 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…. The principles, relevant to our purpose are:*

*(i)* ***A complaint can be quashed where the allegations made in the complaint, <u>even if they are taken at their face value and accepted in their entirety</u>, do not prima facie constitute any offence or make out the case alleged against the accused.***

***<u>For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations.</u> 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)

12. As opined in the aforesaid cases, the test is whether the uncontroverted allegations in the FIR *prima facie* disclose commission of a cognizable offence.

13. In the present case, categorical allegations have been made in the FIR that forged and fabricated SWIFT codes were emailed in order to secure title of the goods, however, no payment was credited in the bank account of the complainant company. It is further alleged that the complainant company was also induced by way of two post dated cheques for a sum of ₹6 crores, but the cheques were dishonoured on presentation.

14. The status report mentions the facts that have emerged during the course of the investigation. It is verified that no payment was credited against the SWIFT codes emailed to the complainant company. It is further pointed out that the wrongly supplied 500 Mts of Bitumen were sold in the market for a consideration of USD 2,07,300/- by M/s. Fedders Lloyd Corporation Ltd. and the entire payment was remitted to Petitioner No.1 company.

15. This Court does not consider it apposite to comment upon the findings as the chargesheet is yet to be filed, however, at this

stage, it does not appear that the allegations levelled in the FIR are improbable or malicious and there is no material to proceed against the accused.

16. It is argued that there is delay in registration of FIR and certain subsequent payments were concealed by the complainant company. The said arguments are in the nature of defence and cannot be looked into in the present proceedings before the complainant has had an opportunity to establish its case. It is not open to the Court to delve into the merit or veracity of the allegations at this stage.

17. *Prima facie*, while the allegations relate to a commercial transaction, the same disclose an element of criminality and commission of cognizable offences when taken at their face. The allegations do not seem so improbable or perverse that they merit the exercise of the jurisdiction of this Court under Section 482 of the CrPC or Article 226 of the Constitution of India.

18. In view of the above, this Court finds no reason to quash the subject FIR.

19. The present petition is dismissed in the aforesaid terms.

**AMIT MAHAJAN, J**

**MAY 19, 2025**