

IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 9TH DAY OF APRIL, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No 1244 OF 2020

BETWEEN:

1. MRS.G.CHITRA POORNIMA
W/O OF LATE MR.GEORGE THANGIAH
AGED ABOUT 50 YEARS
RESIDING AT No.6, COMMISSARIAT ROAD
BENGALURU-560 075.
2. MR.JAGADISH
S/O MR.GANGADHAR
AGED ABOUT 49 YEARS
RESIDING AT No.926, 2ND FLOOR
KUMARASWAMY LAYOUT
BENGALURU-560 078.

... PETITIONERS

(BY SRI.K.G.RAGHAVAN. SENIOR COUNSEL FOR
SRI.B.M.MOHAN KUMAR ADVOCATE)

AND:

1. STATE BY INDIRANAGAR POLICE STATION
THROUGH STATION HOUSE OFFICER
INDIRANAGAR, BENGALURU URBAN
DISTRICT
BENGALURU-560 038.
COTTONPET MAIN ROAD
SULTANPET, BAKSHI GARDENS
CHICKPET, BENGALURU-560 053.
2. NITESH INDIRANAGAR RETAIL
PRIVATE LIMITED
7TH FLOOR, NITESH TIMESQUARE

No.8, M.G.ROAD
BENGALURU-560 001.
REPRESENTED BY MR.SWAMY K.B
GENERAL MANAGER-LEGAL

... RESPONDENTS

(BY SMT.NAMITHA MAHESH.B.G, HCGP FOR R1;
SRI.K.SUMAN ADV., FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO 1. QUASH THE FIR DATED 24.01.2020 (VIDE ANNEXURE-A) REGISTERED BY THE 1ST RESPONDENT P.S., IN CR.NO.19/2020 PENDING BEFORE THE X A.C.M.M., AT BENGALURU FOR THE OFFENCE P/U/S 427,506, 120B, 420, 435, 447 R/W 34 O IPC BY ALLOWING THE PETITION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.03.2021, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C read with Article 226 of Constitution of India praying this Court to quash the FIR dated 24.01.2020 registered by respondent No.1 in Crime No.19/2020 pending on the file of X Additional Chief Metropolitan Magistrate at Bengaluru for the offence punishable under Sections 427, 506, 120B, 420, 435, 447 read with Section 34 of IPC and quash the complaint dated 06.12.2019 filed on 24.01.2020 by respondent No.2 with respondent No.1 and pass such other orders as deem fit in the facts and circumstances of the case.

2. The factual matrix of the case is that respondent No.1/complainant had filed the complaint dated 06.12.2019 before respondent No.1 and in the complaint an averment is made that the Company is carrying on the business of real estate development and has entered into a registered joint development agreement dated 11.02.2011 with one Sri. George Thangiah, who is the owner of the property, for the joint development of the property bearing non-agricultural converted land bearing Corporation No.2, situated on 80 feet road, Indiranagar, Bengaiuru measuring 2,16,283.50 square feet along with other adjacent lands. The said land owner Sri. George Thangiah also executed a General Power of Attorney in their favour to proceed with the joint development and construction of a Mall therein, which was to be named 'GEORGE THANGIAH NITESH MALL'.

4. Petitioner No.1 herein is said to be the second wife of Sri. George Thangiah and second petitioner herein is the Manager working under her. Even though Sri. George Thangiah was cooperative in enabling them to proceed with the joint development works as per the joint development agreement initially, later on as Sri. George Thangiah has become aged and

the petitioner No.1 took over the affairs and started troubling them. In exercise of their rights under the joint development agreement, they had put up barricade on all four sides of the property, a big hoarding, installed a POTA cabin with adequate lighting being provided to the property, hoarding, POTA etc.

5. Petitioner No.1 with dishonest intention of cheating created a false dispute/discord which led to arbitration proceedings and the same has been adjudicated during the pendency of the arbitration proceedings. The petitioner No.1 along with her goondas and henchmen and with the active connivance of petitioner No.2 herein illegally demolished/dismantled the barricade put up by them in front of the property, which issue had also become the subject matter of the arbitration dispute. After the award was passed on 25.04.2018, and when they have filed the appeal before the City Civil Court Bengaluru, these two petitioners with their goondas, on the last week of October, 2019, with a dishonest intention of cheating and causing loss to them again tried to trespass into the property and caused damage to the barricades on all the remaining three sides by demolishing/removing the said

barricades illegally. When the same was questioned by their representatives, they were subjected to abuse in a filthy language and caused the threat. It is contended that they had paid a huge amount towards deposit of Rs.105 Crores as per the joint development agreement. They incurred huge expenses for the said barricade, putting up of hoardings, erecting POTA Cabin and providing lighting connections and for other allied works such as land leveling, architect fees, consultant charges etc.,

6. In fact, they suffered a loss of approximately Rs.2,00,00,000/- on account of the destruction of the barricade, hoarding, POTA cabin and lighting by the accused persons, which is a result of the criminal conspiracy entered into by the accused persons with common dishonest intentions. Hence, requested the police to take action against the petitioners herein. In view of the registration of the case based on the complaint, the petitioners are before this Court.

7. Learned counsel appearing for the petitioners would vehemently contend that as per the complaint, the incident was taken place in the last week of October, 2019 and the complaint was given on 06.12.2019 and there was a delay in lodging the

complaint. It is also contended that an arbitration award was passed on 25.04.2018 and the same has been questioned before the City Civil Court. The said award was also challenged after several years. It is a clear case of civil dispute between the parties. The award has also been passed against respondent No.2 and in the arbitration award, it is categorically held that respondent No.2 is not in possession. The agreement is also clear that they are not in possession and hence, the question of trespass and causing mischief and cheating the complainant does not arise. Learned counsel also brought to the notice of this Court that an application was also filed before the arbitrator regarding the very same issue and as an afterthought, later the complaint is filed, which is nothing but an abuse of process. Hence, it requires interference of this Court.

8. Learned counsel in support of his arguments, he relied upon the decision of the Apex Court in the case of ***DALIP KAUR AND OTHERS V. JAGNAR SINGH AND ANOTHER*** reported in ***(2009) 14 SCC 696*** and brought to the notice of this Court para Nos.8 and 10, wherein it is discussed with regard to the criminal breach of trust and cheating. It is also observed

that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating.

9. Learned counsel also relied upon the decision of the Apex Court in the case of **PROF. R.K. VIJAYASARATHY AND ANOTHER V. SUDHA SEETHARAM AND ANOTHER** reported in **2019 SCC Online SC 208** and brought to the notice of this Court para No.30, wherein it is held that the jurisdiction under Section 482 of Cr.P.C. has to be exercised with care. The High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of process of the Court.

10. Learned counsel also relied upon the decision of the Apex Court in the case of **G. SUGAR SURI AND ANOTHER V. STATE OF U.P. AND OTHERS** reported in **(2000) 2 SCC 636** and brought to the notice of this Court para No.8, wherein the

Apex Court has reiterated that if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence and criminal proceedings are not a short cut of other remedies available in law.

11. Learned counsel also relied upon the decision of the Apex Court in the case of **INDIAN OIL CORPN. V. NEPC INDIA LTD., AND OTHERS** reported in **(2006)6 SCC 736** and brought to the notice of this Court para Nos.13, 14 and 18, wherein it is held that allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal Code, the petition under Section 482 of Cr.P.C. would be maintainable. However, current practice of misuse of criminal process to put undue pressure in civil dispute be deprecated.

12. Learned counsel also relied upon the decision of the Apex Court in the case of **V.Y.JOSE AND ANOTHER V. STATE OF GUJARAT AND ANOTHER** reported in **(2009) 3 SCC 78** and brought to the notice of this Court para Nos.21 to 24, wherein it is held that the matter which essentially involves dispute of civil nature should not be allowed to become subject-matter of criminal proceedings which may be resorted to as a

short cut to execution of a non-existent decree. It is also observed that under Section 482 of Cr.P.C. states the inherent powers of the Court and serves a salutary purpose that a person should not undergo harassment of litigation even though no case has been made out against him.

13. Learned counsel also relied upon the decision of the Apex Court in the case of **VINOD NATESAN V. STATE OF KERALA AND OTHERS** reported in **(2019) 2 SCC 401** and brought to the notice of this Court para No.10, wherein it is held that the dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into a criminal dispute and under such circumstances, the Court can invoke Section 482 of Cr.P.C.

14. Learned counsel also relied upon the decision of the Apex Court in the case of **STATE OF HARYANA AND OTHERS V. BHAJAN LAL AND OTHERS** reported in **1992 Supp (1) SCC 335** and brought to the notice of this Court para No.84, wherein it is held that the investigation can be quashed if any cognizable offence is disclosed by the FIR.

15. Learned counsel also relied upon the decision of the Apex Court in the case of **BOARD OF CONTROL FOR CRICKET IN INDIA V. KOCHI CRICKET PRIVATE LIMITED AND OTHERS** reported in **(2018) 6 SCC 237** and brought to the notice of this Court para Nos.19 and 59, wherein the Apex Court referred to the decision of the Apex Court in the case of *Satish Kumar v. Surinder Kumar* reported in *AIR 1970 SC 833*, wherein it is held that an award is not mere waste paper when it is delivered and before it becomes a decree, as it decides the rights of the parties and therefore, being final and binding on the parties, is a judgment delivered between the parties, which may become executable on certain conditions being met, but which do not detract from the fact that the award itself has "vitality". In para No.59, it is held that the mandate of the Arbitral Tribunal terminates with the termination of arbitral proceedings, save and except for correction and interpretation of the award within the bounds of Section 33, or the making of an additional arbitral award as to claims presented in the proceedings, but omitted from the award. Once this is over, in cases where an arbitral award is delivered, such award shall be final and binding on the

parties and persons claiming under them, under Section 35 of the 1996, Act.

16. Learned counsel also relied upon the decision of the Apex Court in the case of **SATISH KUMAR AND OTHERS V. SURINDER KUMAR AND OTHERS** reported in **(1969) 2 SCR 244** and brought to the notice of this Court para No.8, wherein it is held that after an award is pronounced, no action can be started on the original claim which had been the subject matter of the reference and second reference would be incompetent.

17. Learned counsel also filed the additional judgments of this Court passed in Criminal Petition Nos.65653 and 6564 of 2016 decided on 26.09.2019, wherein an observation is made that while no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and its remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can

be taken by the Courts, to curb unnecessary prosecutions and harassment of innocent parties.

18. Learned counsel also relied upon the judgment of this Court passed in W.P.No.21974/2016 decided on 22.07.2019, wherein also the same principles has been reiterated. Learned counsel also relied upon the judgment of this Court passed in W.P.Nos.12122/2017 and 11069/2017 decided on 30.08.2018 wherein by referring to the case in *U.Y.Jose v. State of Gujarat*, it is observed that a matter which essentially involves disputes of civil nature, should not be allowed to be subject matter of a criminal offence.

19. Learned counsel also relied upon the order of this Court in W.P.Nos.29586-29587 of 2018 decided on 28.09.2018 wherein an observation is made that the suit for partition and for permanent injunction has been filed respectively. After his failure in his attempt upto the Hon'ble Apex Court, wherein his special leave petition was also dismissed, he has once again attempted to put the law into motion in the form of a criminal complaint against the petitioners by lodging a criminal complaint with a

delay and the same is nothing but an act of harassment by respondent No.2.

20. Learned counsel also relied upon the decision of the Apex Court in the case of ***KISHAN SINGH (DEAD) THROUGH LRS. V. GURPAL SINGH AND OTHERS*** reported in ***(2010) 8 SCC 775***, wherein discussed with regard to finding of facts recorded by Civil Court if binding in criminal trial or vice versa and principles were summarized. It is also observed that filing the complaint after the delay, which is unexplained, that too, after losing civil suit, held, not bona fide and amounted to abuse of process of law.

21. Per contra, learned counsel for respondent No.2 in his arguments, he would vehemently contend that the civil dispute has not yet reached its finality and suit is pending before the City Civil Court. In the arbitration, an award is being adjudicated with regard to the penalty. An application was filed under Section 17 by narrating the same. The issue involved between the parties is not covered by the arbitration. Learned counsel also brought to the notice of this Court para Nos.7 and 10 of the complaint, wherein a specific allegation is made that

the act is a criminal offence and prima face criminal culpability of the petitioners herein has been made out in the complaint. Hence, the matter has to be investigated by the Investigating Officer.

22. Learned counsel also relied upon the judgment of the Apex Court which is produced as Annexure-R1. The Apex Court in **Crl.A.No.255/2019** decided on **12.02.2019**, at para No.5 held that quashing of criminal proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere. The Apex Court considering the material comes to the conclusion that the High

Court ought not to have set aside the order passed by the Trial Court issuing summons to the respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process, it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted.

23. Having heard the learned counsel for the petitioners and learned counsel for the respondent No.2, this Court has to analyse the material available on record as to whether this Court can quash the FIR or not. Having considered the material available on record and also the principles laid down in the judgments referred supra, it is clear that if the material indicates that if it is a civil dispute between the parties, the Court can invoke Section 482 of Cr.P.C. when the criminal colour is given

to the civil dispute. It is also settled law that merely because there is a civil dispute between the parties, the criminal prosecution cannot be quashed, if criminal culpability is found in the complaint.

24. It is also important to note that the Apex Court also in the case of **DINESHBHAI CHANDUBHAI PATEL v. THE STATE OF GUJARAT** reported in **2018 (3) SCC 104**, held that High Court should not venture to probe the matter and also should not sit as an Appellate Court to appreciate the material on record and go to collect the evidence while exercising the powers under Section 482 of Cr.P.C. when the FIR is the context of the matter.

25. In view of the principles laid down the judgment referred supra and also principles laid down in the judgments referred by the learned counsel for the parties, this Court has to consider the case on hand. Now this Court has to look into the contents of the complaint since the law is set into motion only by registering the case. On perusal of the complaint, it is not in dispute that the joint development agreement was entered into between the parties and the arbitration proceedings were

adjudicated between the parties. It is also not in dispute that the award has been passed and same has been questioned before the Court by filing the arbitration suit, but the fact is that in para No.7 of the complaint, a specific allegation is made that after the award has been passed on 25.04.2018 when the appeal was filed in the last week of October, 2019 with a dishonest intention of cheating the petitioners herein and caused loss to them by damaging the barricade illegally, caused damage to the hoardings put up by them and also dismantled the POTA cabin installed by them. When the representatives went and questioned the same, they were subjected to abuse and caused the threat.

26. Learned counsel appearing for the petitioners also brought to the notice of this Court the averment made in the joint development agreement and would contend that no possession was delivered and also arbitration award is also clear that no possession has been delivered. Having perused the contents of the joint development agreement, in clause(f) there was an understanding for the development of the schedule property and the developer has undertaken to develop the

schedule property into the Mall and to operate, manage and maintain the Mall so developed as set out in the joint development agreement. It is also important to note that in clause-14 consent for development was also given i.e., subject to fulfillment of the conditions and given license to the developer to enter the schedule property and undertaken to develop the schedule property in terms thereof. It is not in dispute that arbitration award is also challenged. It is an allegation that during the pendency of the said arbitration appeal, the incident of criminal trespass was taken place and caused the mischief. When such being the averments made in the complaint and when the parties have entered into the joint development agreement and payment was made and so also when the specific allegations are made that they have illegally entered into property and caused loss by dismantling the POTA cabin, the Court has to look into the averments in the complaint in order to invoke Section 482 of Cr.P.C. If the complaint does disclose the commission of a cognizable offence, then the Investigating Officer should be allowed to investigate the matter and unearth the crime. As this Court had already pointed out, the High Court should not venture to interfere with the investigation in the case

on hand. It is also to be noted that the law was set into motion based on the complaint given by the complainant and the same has requires to be probed. In view of the principles laid down in the judgment referred supra and if the complaint, prima facie does not discloses the commission of a cognizable offence, then Court can invoke Section 482 of Cr.P.C.

27. Having perused the contents of the complaint, it prima facie discloses the commission of a cognizable offence. Under the circumstances, I do not find any material to interfere and quash the proceedings initiated against the petitioners herein. As I have already pointed out that it is also the settled law that merely the fact of a civil dispute pending before the Court cannot be a ground to quash the proceedings. The Apex Court also in CrI.A.No.255/2019 between **Sau. Kamal Shivaji Pokarnekar v. The State of Maharashtra and Others** held that on perusal of the complaint if it discloses the prima face offences that are alleged against the respondents, there cannot be any quashing of the proceedings. The correctness or otherwise of the said allegations has to be decided only in the trail. The criminal complaint cannot be quashed only on the

ground that the allegations made in the complaint appear to be of a civil nature. It is further held that if the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceedings shall not be interdicted. The Apex Court also in the recent decision rendered in ***PRITI SARAF AND ANOTHER V. STATE OF NCT OF DELHI AND ANOTHER*** reported in ***2021 SCC Online SC 206***, wherein it is held that mere pending of Arbitration proceedings cannot be a ground to quash the charge sheet and set aside the order of High Court in quashing the charge sheet. In the present case, petitioners have sought quashing of the FIR and the Investigating Officer has to probe the crime as per the procedure established under Code of Criminal Procedure. Hence, there is no merit in the petition to invoke Section 482 of Cr.P.C. to quash the proceedings.

28. In view of the discussions made above, I pass the following:

ORDER

The petition is hereby rejected. However, the petitioners are given liberty to file a petition after filing the charge sheet, if need arises.

In view of rejection of the main petition, I.As, if any does not survive for consideration and the same stands disposed of.

**Sd/-
JUDGE**

PYR