

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 10TH DAY OF MARCH, 2020

BEFORE

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

CRIMINAL PETITION NO.100018/2015

BETWEEN

1. M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT RAY
COMPOUND, PLOT NO.2, BLOCK NO.2,
IIT MARKET, POWAI, MUMBAI-4000076
RPTD.BY ITS MANAGING DIRECTOR
M K VARGHESE
2. SRI.M K VARGHESE S/O M T KOCHUKUNJU
MANAGING DIRECTOR
M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT RAY COMPOUND, PLOT NO.2,
BLOCK NO.2, IIT MARKET, POWAI,
MUMBAI-4000076
3. SRI.M T KOCHUKUNJU
CHAIRMAN, M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT RAY COMPOUND, PLOT NO.2,
BLOCK NO.2, IIT MARKET, POWAI,

- MUMBAI-4000076
4. SRI.SANJAY S BOKARE
EXECUTIVE DIRECTOR,
M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT RAY COMPOUND, PLOT NO.2,
BLOCK NO.2, IIT MARKET, POWAI,
MUMBAI-4000076
 5. SRI.UNNIKRISHNAN
ASSOCIATE VICE-PRESIDENT,
M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT RAY COMPOUND, PLOT NO.2,
BLOCK NO.2, IIT MARKET, POWAI,
MUMBAI-4000076
 6. SRI.M K THOMAS
DIRECTOR,
M/S RAY CONSTRUCTIONS LTD.,
A PUBLIC LIMITED COMPANY
INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT RAY COMPOUND, PLOT NO.2,
BLOCK NO.2, IIT MARKET, POWAI,
MUMBAI-4000076
 7. SRI.SHARANAPPA S GODEN
ASSISTANT GENERAL MANAGER,
M/S RAY CONSTRUCTIONS LTD.,
JSW WORKS SITE, TORANAGALLU
 8. SRI.V J REJI
ASSISTANT GENERAL MANAGER,
M/S RAY CONSTRUCTIONS LTD.,
JSW WORKS SITE, TORANAGALLU

9. SRI.DINESH SHETTY
SENIOR ACCOUNTANT,
M/S RAY CONSTRUCTIONS LTD.,
JSW WORKS SITE, TORANAGALLU

... PETITIONERS

(BY SRI.T BASAVANA GOUD, ADV.)

AND

1. THE STATE OF KARNATAKA,
RPTD.BY THE POLICE SUB-INSPECTOR
OF POLICE (LAW & ORDER)
TOWN POLICE STATION,
HOSPET, BELLARY DIST.
2. M/S RACHANA OKAY INFRA TECH PRIVATE LTD.,
A PRIVATE LIMITED COMPANY
INCORPORATED UNDER THE
COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE,
AT H.NO.1943, RACHANA AKSHARA NAGAR,
HOSPET, BELLARY DIST.,
REPTD.BY ITS CHAIRMAN
& MANAGING DIRECTOR
SRI NALINA KUMAR NAIR

... RESPONDENTS

(BY SRI.PRAVEEN K UPPAR, HCGP, FOR R1,
SRI.ANANT HEGDE, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C.
SEEKING TO QUASH/SET ASIDE ENTIRE PROCEEDINGS IN
C.C.NO.948/2014 (P.C.NO.318/2014) ON THE FILE OF THE PRL.
CIVIL JUDGE & JMFC COURT, HOSPET.

THIS CRIMINAL PETITION COMING ON FOR FINAL
HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the petitioners' counsel, the learned HCGP appearing for respondent No.1-State and the learned counsel for respondent No.2.

2. This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the entire proceedings in C.C.No.948/2014 on the file of the Prl. Civil Judge and JMFC, Hospet.

3. The factual matrix of the case is that the respondent No.2, who is the complainant before the trial Court has filed the complaint contending that the petitioner No.1-Company availed the services of the complainant and got the major work done amounting to an extent of Rs.45,45,000/- for the work executed by the complainant and thereafter did not pay the amount and hence, in the complaint made an allegation that the petitioners have committed offences punishable under Sections 405, 406, 415, 503 and 420 of IPC. Based on

the said complaint, the trial Judge referred the matter to police under Section 156(3) of Cr.P.C. and the case was registered and after the investigation the police have filed the charge sheet which is numbered as C.C.No.948/2014. The trial Judge after filing of the charge sheet, took the cognizance and issued process against the petitioners herein and hence, the present petition is filed invoking Section 482 of Cr.P.C.

4. The learned counsel appearing for the petitioners would contend that the trial Judge has failed to appreciate that the said Mr.Mohan Nair who was at the helm of affairs at the material time of petitioner No.1-Company as Managing Director and his son Sri.Rajesh Mohan Nair, as Deputy Managing Director were responsible for any payments made and they did not made the payment. The trial Judge also failed to appreciate that there is no provision under law for conversion of any proprietorship concern into a

Company and as on the date of filing of the complaint i.e. on 18th June, 2014 M/s. Rachana Constructions does not exist and the complaint filed by Sri.Nalina Kumar Nair as Chairman and Managing Director of M/s. Rachana Infra Tech Private Limited which was converted from proprietorship operating in the name and style of M/s. Rachana Constructions is not tenable in law. The trial Judge also failed to take note of the fact that it is nothing but civil nature litigation and there is no any prima facie case to initiate the criminal case against the petitioners herein and civil litigation is converted as criminal proceedings and hence, the impugned order is not sustainable in the eye of law. The learned counsel in respect of his contention also relied upon the order passed by this Court in Criminal Petition No.101191/2015 dated 9th October, 2015. Referring to this judgment, the learned counsel would contend that the parties in that petition and the present petition are same and earlier when the matter has come

up before this Court, this Court while allowing the petition made an observation that the dispute is purely civil in nature with regard to the payment of the amount and the same does not attract the penal provisions invoked against the petitioners. If there is any dispute between the parties as to the payment of the amount, it is purely a civil dispute for which civil proceedings has to be initiated and not the criminal proceedings.

5. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court reported in *2014 AIR SCW 6310* in the case of *Binod Kumar and Others Vs. State of Bihar and Another*. By referring to this judgment, the learned counsel would contend that the Hon'ble Apex Court in para Nos.18 and 19 of the judgment in detail discussed that there is no any criminal breach of trust or cheating and mere fact that the petitioners did not pay the bill amount to the complainant, it does not amount to criminal breach of

trust and hence, the criminal prosecution cannot be continued against the petitioners.

6. Per contra, the learned counsel appearing for the respondent No.2/complainant would contend that in the criminal petition referred supra, this Court while considering the matter and taking note of the reference made to the I.O. exercised its powers and not after filing the charge sheet. The other contention that in the complaint it is specifically alleged that with dishonest intention and also with an intention to cheat the complainant after getting the work done by him, the petitioners did not make the payment and when the specific allegation is made in the complaint with regard to dishonest intention they did not make the payment and also having an intention to cheat the complainant and also inducement made to the complainant, the principles laid down in the judgment referred supra are not applicable to the case on hand.

7. The learned HCGP appearing for respondent No.1-State also relied upon the judgment reported in (2014) 3 SCC 389 in the case of *Vijayander Kumar and Others Vs. State of Rajasthan and Another*. Referring to this judgment, the learned HCGP would contend that the Court cannot invoke Section 482 of Cr.P.C. for quashment when there is a criminal as well as civil liability and given set of facts which makes out a civil wrong as also criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash the criminal proceedings whether the allegations under the complaint discloses criminal offence or not.

8. Having heard the arguments of the petitioners' counsel, the learned HCGP and the learned counsel for respondent No.2, the point that arises for consideration of this Court is whether this Court can

exercise the powers under Section 482 of Cr.P.C. to quash the proceedings initiated against the petitioners.

9. In keeping the contentions raised by the counsels for the respective parties, this Court has to analyze the material on record. The respondent has filed the complaint which is numbered as P.C.No.318/2014 and on filing of the said complaint, the matter was referred to the police under Section 156(3) of Cr.P.C. On perusal of the complaint, it is stated that accused No.1 is a Public Limited Company incorporated under the Companies Act, 1956 and having its registered office and the Company is involved in the business of providing engineering services and also undertaking construction work involving civil constructions in industrial establishments. The accused No.2 is the Managing Director of accused No.1-Company, accused No.3, is its Chairman, accused No.4 is its Executive Director, accused No.5 is its Associate Vice-President

and accused No.6 is its Director and accused Nos.7 and 8 are its Assistant General Managers of JSW Work Site, Toranagallu and accused No.9 is its Senior Accountant and at JSW Work Site, Toranagallu. It is specifically mentioned that accused Nos.2 to 9 are managing day to day affairs of accused No.1-Company.

10. On perusal of the entire averments made in the complaint, particularly, in para Nos.5 and 10 of the complaint it is specifically contended that the accused No.1-Company in the directions of accused Nos.2 to 9 have cheated the complainant by making false representations and induced the complainant to deliver the goods and services. These facts clearly indicate that accused Nos.2 to 9 with dishonest intention and with an intention to cheat the complainant have made false representations that he would be paid for the work done by him and have thereby dishonestly induced him without work order to operate stone crusher, conduct

constructions and interiors and also to hire machineries and lorries. The police also after referring the matter to the Investigating Officer, investigated the matter and filed the charge sheet and while filing the charge sheet in column No.17 of the charge sheet opined that the accused persons cheated the complainant and statement of witnesses prima facie discloses that they have committed an offence punishable under Section 420 of IPC. Based on the charge sheet, process has been issued against these petitioners.

11. Having considered the material on record, there is no dispute with regard to the transaction taken place between the complainant and the accused persons. The main contention of the petitioners before this Court is that the balance amount payable is only a civil dispute and there cannot be a criminal proceedings against the petitioners. Having taken note of the principles laid down in the judgments referred supra

and no doubt this Court in Criminal Petition No.101191/2015 while exercising the powers under Section 482 of Cr.P.C. made an observation that the dispute started after completion of the work entrusted to the complainant by the accused-Company and the dispute is purely in respect of payment of amount. The averments made out in the complaint taken at their face value do not make out the ingredients of the offences under Sections 417 and 420 of IPC. There is neither cheating nor dishonest intention on the part of the accused while entrusting the work to the complainant. This Court also referring to the judgment of the Hon'ble Apex Court in *Binod Kumar's* case allowed the petition. The Hon'ble Apex Court in the judgment of *Binod Kumar's* case made an observation that no allegations made attracting ingredients of Section 405 of IPC and there was no allegation as to cheat or dishonest intention of the appellants in retaining money in order to wrongfully gain or cause wrongful loss to the

complainant and only bald allegation that the appellants utilized the amounts either by themselves or for some other work and hence quashed the same.

12. The learned HCGP appearing for the State referring to the judgment in *Vijayander Kumar's* case, would contend that when given set of facts may make out a civil wrong as well as criminal offence and only because a civil remedy is available to the complainant that itself cannot be a ground to quash the criminal proceedings. The judgment of the Hon'ble Apex Court reported in *2014 AIR SCW 6310* is of the same year 2014 and the same is delivered by two Bench Judges and the judgment reported in *(2014) 3 SCC 389* is by three Bench judges and the larger Bench forms an opinion that when the given set of facts may make out a civil liability as also criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash the criminal

proceedings and it is further observed that real test is whether the allegations in the complaint disclose a criminal offence or not.

13. Having considered the principles laid down in the judgments referred supra and also considering the factual aspects of the case and this Court has considered the factual matrix of the case above that the petitioners have got the work done through the complainant but did not make the payment and instead the making the payment, it is the allegation that they have cheated and not only cheated and induced the complainant to do the work but did not make the payment. This Court has already pointed out that in para Nos.5 and 10 of the complaint a specific allegation is made against the petitioners that they have cheated the complainant and also induced to get the work done through the complainant but did not make payment. The larger Bench of the Hon'ble Apex Court in

Vijayander Kumar's case has categorically held that the Court has to make real test whether the allegations in complaint disclose a criminal offence or not and while exercising the powers under Section 482 of Cr.P.C., the Hon'ble Apex Court categorically held that the contents of the complaint are to be taken note of.

14. This Court has already pointed out that in para Nos.5 and 10 of the complaint a specific allegation has been made and apart from that investigation has been conducted by the Investigating Officer and after the investigation, charge sheet has also been filed and recorded statement of witnesses and taking note of the principles laid down in the judgment in *Binod Kumar's* case, the Hon'ble Apex Court while coming to the conclusion to quash the proceedings made an observation that there was no any allegation as to cheating or dishonest intention of the appellants in retaining the money in order to have wrongful gain to

themselves and the allegations are very bald and having considered the factual aspects of the case, when the specific allegations is made in the complaint and thereafter when the matter is referred to the Investigating Officer and the Investigating Officer also after collecting the material has filed the charge sheet and the trial Court had applied its mind while issuing the process vide order dated 11.01.2015 and passed an order that “perused the charge sheet and papers filed along with the charge sheet” and thereafter only cognizance was taken for the offence punishable under Section 420 of IPC and the police report also discloses that the charge sheet is filed only for the offence under Section 420 of IPC and when such being the case, the very contention of the petitioners that there is no any material before the Court to proceed against the petitioners and it is only a civil dispute as contended by the petitioners cannot be a ground to invoke Section 482 of Cr.P.C.

15. The larger Bench of the Hon'ble Apex Court has categorically held that when the contents of the complaint establishes both the offence of criminal and civil nature and taking note of the facts set out in the complaint, if it emerges that the complainant has got both the civil remedy and also criminal offence is made out, the Court cannot exercise the powers under Section 482 of Cr.P.C. In view of the principles laid down in the *Vijayander Kumar's* case and also considering the facts and circumstances of the case on hand and when a specific allegation is made in the complaint that with dishonest intention the petitioners did not make the payment to the complainant and also when an allegation is made that they induced to get the work done through the complainant and after completion of the work they did not make the payment, this Court is of the opinion that it is not a fit case to invoke Section 482 of Cr.P.C. to quash the proceedings initiated against the petitioners. Having considered the material

on record, the judgment of the larger Bench of the Hon'ble Apex Court is aptly applicable to the case on hand.

16. In view of the discussions made above, this Court proceed to pass the following:

ORDER

The petition is dismissed.

Sd/-
JUDGE

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