

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.8530 OF 2019

Between:

Pushkar Jamnerkar

... Petitioner

And

The State of Telangana

Through Public Prosecutor and another. ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :30.01.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.R.C. No.8530 of 2019

% Dated 30.01.2024

Pushkar Jamnerkar

... Petitioner

And

\$ The State of Telangana

through Public Prosecutor and another

Respondents/Complainants

! Counsel for the Petitioner: Sri K.Vivek Reddy, Senior Counsel for

Sri Keshi Reddy Manoj Reddy

^ Counsel for the Respondents: Addl. Public Prosecutor for R1

Sri T.Niranjan Reddy, Senior Counsel
for Madishetty Ramu for R2.

>HEAD NOTE:

? Cases referred

¹ (2007) 14 SCC 776

² Criminal Appeal No.1224 of 2022, dated 11.08.2022

³ 2021 SCC OnLine Bom 358

⁴ (2023) 2 Supreme Court Cases 195

⁵ (2023) 8 Supreme Court Cases 734

⁶ (2011) 9 SCC 527

⁷ MANU/TN/3412/2014

⁸ 2021 LawSuit (SC) 272

⁹ (2010) 8 Supreme Court Cases 775

¹⁰ (2001) 8 Supreme Court Cases 645

¹² 2013(1) ALD (CrI.) 188 (AP)

¹³ 2022 SCC OnLine SC 360

14(1993) 3 Supreme Court Cases 609

¹⁵ (2011) 9 Supreme Court Cases 527

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.8530 of 2019****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner/A2 in C.C.No.581 of 2017 on the file of XIV Additional Chief Metropolitan Magistrate, Nampally at Hyderabad for the offences under Sections 465, 471, 468 and 420 of IPC.

2. The 2nd respondent filed a private complaint on 13.04.2017 stating that the complainant company is a leading and reputed manufacturer, supplier and importer of fertilizers in India on behalf of Government of India. The petitioner is the Vice-President of A1's company in Dubai. Petitioner was the primary point of contact in Dubai for the representatives of the complainant company in respect of the transactions with A1 Company. On 12.04.2012, complainant and A1 company entered into a Long Term Contract for supply of fertilizers. The said contract period was from 12.04.2012 to 10.02.2013 and the contract was to be renewed from 01.04.2013 subject to

agreement in writing by 31.01.2013. However, there was no written agreement. The then Deputy Manager namely Kalidindi Ravindra and M.N.Bhaskaran, Executive Vice-President of complainant company went to Dubai on 17.02.2013 to resolve the disputes. The petitioner herein on behalf of A1 company made proposals for fresh supply of NPK and DAP type of fertilizers. Accordingly, petitioner in his hand writing outlined the proposed terms of supply of fertilizer. Photocopy of said document which is now in dispute, according to the complainant, was proposed to be taken up for further approval and was not binding in between the parties unless agreed upon. Thereafter, both Kalidindi Ravindra and M.N.Bhaskaran met the petitioner at Ritz Carlton in Chicago on 25.05.2013. However, the petitioner did not make any mention regarding the corrections made in the photocopy and in the proposal given in his hand writing. The original hand written proposal was with the complainant and photocopy was with the petitioner. On 23.05.2013, an e-mail was addressed by Mr.Bhaskaran stating that they would not be able to take up the petitioner's offer made in the hand written document.

3. On 27.05.2013, an e-mail was received by Mr.M.N.Bhaskaran enclosing purported finalized contract for the sale of NPK and DAP fertilizers to the complainant company. However, the said contract was not signed nor accepted by the complainant company.

4. To resolve the issues regarding the alleged proposal, there was a meeting on 15.06.2013 in Mumbai, but the petitioner did not make a mention about any alleged acceptance of the proposal in the hand written note of the petitioner. On 01.10.2013, complainant company issued notice for arbitration as if there was a concluded contract. Since there was a threat of an exparte award being passed, the complainant company submitted itself to the arbitration at London. The petitioner's forgery by encircling on the photocopy of the written note was made as basis for arbitration proceedings. For the first time, according to the complainant, they came to know about the photocopy document in which the price was encircled, which is 50K – US \$ 360 written as

15th June, during the course of cross examination of the witness in the arbitration proceedings.

5. On account of the said fabrication, the complainant company was put to wrongful loss of approximately USD 16 million. It is further the case that when the original itself was available, the question of making any changes in the photocopy amounting to acceptance of proposal would not arise. When both the representatives of the complainant company Mr.Bhaskaran and Mr.K.Ravindra were present, their signatures ought to have been obtained on the document, but there is no such attempt made. On the basis of the said allegation, private complaint was filed which was taken cognizance by the learned Magistrate by order dated 08.05.2017.

6. Sri K.Vivek Reddy, learned Senior Counsel appearing on behalf of Sri K.Manoj Reddy, learned counsel for the petitioner would submit that a false complaint is deliberately made after four years having suffered an arbitral order against them, only to apply undue pressure in the form of criminal case to settle

civil disputes. Learned Magistrate has erred in taking cognizance when no offence was made out. He further argued that there is a categorical statement by the complainant that no fraud was played, before the London Tribunal in which there were three Judges presiding. The complainant company had engaged the best counsel in London in arbitral proceedings. During the arbitral proceedings, no suggestion was made to the petitioner that the markings in the photocopies were made dishonestly. In fact, the present complaint was filed two days after the Delhi High Court directed the complainant to disclose assets since A1 company filed petition before the Delhi High Court to enforce the Award passed. The complainant has deliberately suppressed in the criminal complaint regarding the award passed in London.

7. He relied on the judgment of Hon'ble Supreme Court in the case of **All Cargo Movers (India) Private Limited v Dhanesh Badarmal Jain**¹. The Hon'ble Supreme Court held that it is permissible for the High Court to look into the

¹ (2007) 14 SCC 776

complaint to come to a conclusion that no offence is disclosed. In the said process, the Court can also look into the civil Court record. When the civil suit was pending and criminal complaint was filed one year thereafter, the Hon'ble Supreme Court had set aside the order taking cognizance in the circumstances of the case. Learned Senior Counsel submits that the case on hand is worse. The present complaint was filed 4 ½ years after the alleged act of fabrication of record and having suffered arbitral order in London.

8. Learned Senior Counsel relied on the judgments in the cases of; i) **Wyeth Limited v. State of Bihar**²; ii) **Bhajan and another v State of Maharashtra through its Secretary to Home Department and others**³. He further submits that there is no allegation of fraud in Dubai when the complainant went before the Dubai Court challenging the contract. The award passed in favour of A1 company was not appealed and the award has attained finality. The Hon'ble Supreme Court in

² Criminal Appeal No.1224 of 2022, dated 11.08.2022

³ 2021 SCC OnLine Bom 358

R.Nagender Yadav v. State of Telangana and another⁴, held that when civil remedy was available and in fact, adopted, the High Court ought to have quashed the criminal proceedings for preventing abuse of process of Court. Similar view was taken in **Iqbal alias Bala and others v. State of Uttar Pradesh and others**⁵. It was further argued that when the complainant has subjected himself to the Court in Dubai on the ground that the transaction happened in Dubai, Indian Courts do not have jurisdiction. He relied on the judgment of Hon'ble Supreme Court in the case of **Thota Venkateswarlu v. State of A.P**⁶ and **S.Karthikeyan v. E.Vedavanam & others**⁷. He further argued that the complaint is barred under Section 188 Cr.P.C. Since there is no sanction for prosecution from Central Government, since none of the transactions have taken place in India. For all the above said reasons on factual and legal grounds, the proceedings against the petitioner have to be quashed.

⁴ (2023) 2 Supreme Court Cases 195

⁵ (2023) 8 Supreme Court Cases 734

⁶ (2011) 9 SCC 527

⁷ MANU/TN/3412/2014

9. Sri T.Niranjan Reddy, learned Senior Counsel appearing for the 2nd respondent/complainant would submit that the petitioner and A1 company had indulged in fraudulent act resulting in loss to the complainant company to an extent of US \$ 16 millions which is roughly Rs.250.00 Crores. The way in which the complainant company was deceived, that in itself would go to show that the petitioner, with a criminal intent from the inception had fabricated the photocopy and did not reveal till the proceedings were going on, before the arbitral tribunal in London. For the very first time when cross-examination of witness was going on, the complainant came to know that a photocopy was fabricated and used to cheat the complainant. The complainant company is based in Hyderabad, however, the arbitral proceedings were taken up in London and thereafter executed before the Delhi High Court. The complainant company believed that A1 company would not involve in such fraudulent acts and were taken by surprise when the fabricated photocopy of the hand written note of this petitioner was made basis to sue the complainant company for damages. Both the representatives of the company

Mr.M.N.Bhaskaran and Ravindra were present and if at all there was an agreement, the said two persons would have signed on the document, but there is no such signature. In the circumstances of any hand written proposals between parties, if accepted, there would immediately be a written agreement. The absence of such detailed agreement consequent to the written note proposal would go to show that there was never any acceptance of any kind of proposal that was made by this petitioner in the meeting at Dubai.

10. Learned Senior Counsel further argued that transactions may give rise to both civil and criminal proceedings. Only for the reason of party availing civil remedy, would not wipe away the criminal offence that was committed by a person. The argument advanced by the learned senior counsel for the petitioner cannot be sustained for the reason of transactions being in Hyderabad and also the Head Office of the complainant company being in Hyderabad. Section 188 of Cr.P.C has no application in the present case. Learned Magistrate has considered the fraud committed by the accused

company and has given reasons for taking cognizance and accordingly ordered that this petitioner and the complainant company had to face criminal prosecution. The order summoning the petitioner cannot be found fault with.

11. Learned Senior Counsel relied on the following judgments: i) **M/s.Neeharika Infrastructure Private Limited v. State of Maharashtra and others⁸**; ii) **Kishan Singh (dead) through LRs v. Gurpal Singh and others⁹**; iii) **M.Krishnan v. Vijay Singh and another¹⁰**; iv) **N.Gurucharanam v. State of Andhra Pradesh and another¹¹**; v) **Sartaj Khan v. State of Uttarakhand¹²**; vi) **Ajay Aggarwal v Union of India and others¹³**; vii) **Thota Venkateswarlu v. State of Andhra Pradesh through Principal Secretary and another¹⁴**.

12. On the basis of the aforesaid judgments, learned Senior Counsel argued that quashing a criminal proceeding at the

⁸ 2021 LawSuit (SC) 272

⁹ (2010) 8 Supreme Court Cases 775

¹⁰ (2001) 8 Supreme Court Cases 645

¹¹ 2013(1) ALD (Cr.) 188 (AP)

¹² 2022 SCC OnLine SC 360

¹³ (1993) 3 Supreme Court Cases 609

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initial stage should be in the rarest of rare cases and exceptional circumstances as stated by the Hon'ble Supreme Court. He argued that cognizance can be taken even without previous sanction by the Central Government under Section 188 of Cr.P.C. and further argued that Section 188 of Cr.P.C has no application in the present case. Learned Senior Counsel concluded his argument stating that the acts of this petitioner on behalf of A1 company resulted in wrongful loss to the complainant company and when the ingredients of both cheating and making false documents are made out, it is for the concerned Court to proceed against accused.

13. Any transaction may have an element of criminality. However such claim of criminal offence being made out in a business transaction has to be formally based on the facts reflecting such acts of deception resulting in wrongful loss to a person. Such wrongful loss should have been made deliberately with a fraudulent intention. Every business transaction that does not end in completing the contractual obligation cannot be held to be a criminal offence.

14. In the present case, the genesis of the dispute which attracts both civil and criminal consequences is photocopy of the hand written note which was with the petitioner and allegedly making changes in the said note and thereby claiming that there was an agreement or proposal of business. Since the complainant company failed to adhere to the proposal which was agreed, arbitral proceedings were initiated on the basis of the said photocopy of the hand written note of the petitioner.

15. i) one fails to understand as to why the original hand written note which is now with the complainant company was not made use of for the purpose of concluding proposal during the discussion; and

ii) Why the representatives of the complainant company or petitioner had neither initialed nor made note in the original regarding the alleged claim of acceptance of the proposal which was encircled in the photocopy;

iii) Why there was no written agreement which was entered into in between the complainant company and the accused company immediately after the alleged acceptance of

business proposal. The date mentioned as “15th June” besides encircled portion and the year 2013 beside the 5th line of the hand written note do not find place in the original. If any changes were made in the presence of the representative of the company in the photocopy, the same would have been incorporated in the original which was with the complainant company and handed over to Mr.M.N.Bhaskaran and K.Ravindra.

iv) On 23.05.2013, an e-mail was addressed by Mr.Bhaskaran stating that they would not be able to take up the petitioner’s offer made in the hand written document. However the complainant company sent finalized contract on 27.05.2013 without there being a mention about the photocopy of the alleged proposal and the markings of acceptance. The said photocopy of the proposal was not even filed during the arbitral proceedings and there was no need for suppression, if the proposal was entered into in between both the parties. The document was revealed only during the cross-examination of witness in the arbitral proceedings. The initial suppression and events which are narrated above create a

strong suspicion of the alleged commission of fabrication of record by the company and the representative, who is the petitioner herein.

16. The learned Senior Counsel for the petitioner vehemently contended that when the complainant has not specifically stated that “fraud was committed” before the Arbitral Tribunal, the present criminal complaint is an abuse of process of criminal Court.

17. At the cost of repetition, at the earliest point of time when e-mail dated 23.05.2013, was addressed by Mr.Bhaskaran stating that they would not be able to take up the petitioner’s offer made in the hand written document, the petitioner or the company did not mention about the alleged acceptance of proposal in the photo copy in the reply e-mail dated 27.05.2013, which creates a very strong suspicion, coupled with the fact of producing the photo copy for the very first time during cross-examination of witness in Arbitral proceeding. Not using the words ‘fraud’ or ‘forgery’ in the Arbitral proceedings is of no consequence, when the complainant has

been maintaining that there was never any acceptance of proposal, from the inception.

18. The case is of circumstantial evidence and the trial Court would decide on the basis of circumstances adduced during evidence whether the ingredients of fraud and forgery are made out or not.

19. Though the transactions have civil remedy, the very basis for the entire proposal and subsequent arbitral proceedings is the photocopy which was allegedly fabricated, according to the complainant, resulting in wrongful loss of nearly Rs 250 crores. It is for the trial Court to decide taking into consideration of the said factors during the course of trial. In view of the above facts and circumstances, this Court is not inclined to quash the proceedings against the petitioner.

20. Criminal Petition is dismissed.

K.SURENDER, J

Date : 30.01.2024

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.8530 of 2019

Dt.30.01.2024

kvs