2023:DHC:4010

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

RESERVED ON –4th May, 2023
% ***PRONOUNCED ON -02nd June, 2023***

\+ CRL.M.C. 3250/2022 & CRL.M.A. 13696/2022

SHRI SRINIVASA BALAJI ..... Petitioner

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Dinesh Sharma and Mr. Saran Mittal, Advs.

versus

STATE OF NCT DELHI & ANR. ..... Respondents

Through: Mr. Raguvender Verma, APP for the State with SI Shubhendu Sharma, PS EOW
Mr. Vineet Dhanda, CGSC with Mr. Vedansh Anand, G. P., Mr.Vinay Yadav, Ms. Gurleen Kaur, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. This present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking quashing of FIR No. 290/2019, dated 26.12.2019, under section 420/406/120B of Indian Penal Code, 1860 registered at

Police Station Economic Offences Wing (EOW), Mandir Marg, Delhi, and all proceedings incidental thereto.

A. BRIEF FACTS

2. The Ministry of AYUSH introduced a *'Scheme For Development Of Ayush Clusters'* (herein referred to as "the said scheme") for capacity building through a cluster-based approach for Ayurvedic, Siddhi, Unani, and Homeopathic drugs, inter alia, that- the Scheme would be implemented on the Support from Department of AYUSH and support would be by the way of a grant to the Special Purpose Vehicle (SPV), formed by a group of entrepreneurs from AYUSH sector.

3. Lipakshi Ayush Park Private Limited (herein referred to as "the said company") floated in the year around 2010 to develop an AYUSH cluster near Anantapuram, Andhra Pradesh under the said scheme. The said company submitted the proposal for development of the AYUSH Cluster in Anantapuram and the proposal was accepted by the Scheme Monitoring Committee vide its meeting dated 03.08.2010 and an initial grant of Rs 2,00,00,000/- (Rupees Two crores) was released on 28.08.2010 for setting up a common facility center.

4. The said company couldn't achieve the targets of the said scheme and misappropriated the grant of personal gain and which resulted in the withdrawal of the financial support by Respondent no 2. Further, the initial grant released by the Ministry of AYUSH was sought from the said company vide notice dated 19/22.02.2023. The said company returned back Rs. 1,23,00,000 (One crore twenty-three lakhs) to Respondent no 2.and the remaining amount of Rs. 77,00,000/- (Seventy-seven lakhs) was to be paid within ninety days. However, the

remaining amount was not returned by the said company.

5. Respondent no 2 preferred Civil Suit No. 56/2014 in District Court, Family Court-ADJ, Anantapuram, Andhra Pradesh, wherein vide decree/judgment dated 06 June 2017, the Hon'ble Court passed an *ex-parte* decree in favor of Respondent No. 2. and the said company along with its directors jointly and severally were held liable to pay a sum of Rs. 1,42,59,556/- (Rupees One crore forty-two lakhs fifty-nine thousand five hundred and fifty-six) along with interest thereon at 10% per annum till the date of decree and thereafter 6% till the date of realization. Thereafter an Execution Petition of recovery suit no. 56/2014 was filed in 2018.

6. While the matter rested thus, considering the acts of the said company, Respondent no 2 filed a complaint before Economic Offences Wing regarding cheating the government and not starting any work for implementation of the scheme awarded in their favor in spite of the release of an installment of Rs. 2 Crores. An FIR bearing no. 0290/2019 was registered under sections 420/406/120B of IPC against the company and its directors.

B. SUBMISSIONS ON BEHALF OF PETITIONER

7. Learned counsel for the petitioner submitted that upon receipt of Rs. 1.23 Crores from the Petitioner, Respondent No. 2 was fully aware that the delay in project completion was not due to circumstances within the Petitioner's control, but rather due to change in site. Furthermore, the whole transaction between Respondent No. 2 and Petitioner was completely civil in nature. Respondent No. 2 filed civil suit no. 56 of 2014 titled *"M/s Union of Indian v. M/s Lepakshi Ayush Park, Ltd. and*

Ors." along with an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 to retain assets created by the grant and reclaim the outstanding money.

8. Learned counsel further submitted that the Civil Suit No. 56 of 2014 was decreed *ex-parte* by the Family Court-cum-additional District Judge, Anantapuram vide Judgement dated 06.06.2017 against M/s Lepakshi Ayush Park Pvt. Ltd and its directors jointly and severally for a sum of Rs.1,42,59,556/- with interest @ 10% per annum from the date of suit till the date of decree and thereafter 6% till the realization along with the cost of the suit.

9. Learned counsel further submitted that Respondent 2 did not seek to execute the said decree and issued a demand notice dated 15.11.2017 which was not sent to the address of the Petitioner. Further, Respondent No. 2 chose to file the impugned F.I.R. 290/2019 dated 26.12.2019, after a lapse two years of the decree. It has been submitted that this FIR has been essentially lodged by Respondent No 2 for the execution of a decree obtained from the Family Court- cum-additional District Judge, Anantapuram which cannot be permitted. Learned counsel further submitted that Respondent No. 2 is resorting to the criminal process to execute a civil decree which could have been done through the medium of civil litigation. Furthermore, reliance has been placed upon ***V. Y. Jose v. State of Gujarat 2008*** *17 S.C.R. 588*and ***Sardar Ali Khan v. State of U.P.****(2020) 12 SCC 51*. Learned counsel further submits that the petitioner has already moved an application for setting aside of the *ex parte* order dated 06.06.2017.

10. Learned counsel for the petitioner further submitted that Respondent

No. 2 proceeded to lodge the FIR after the recovery notices were returned as "addressee not found". It is paradoxical that Respondent No. 2 used the same address of the Petitioner during the course of the civil proceedings, which resulted in the suit being decreed *ex-parte*, however, Respondent No. 2 used the same address for sending the recovery notices, despite being fully aware that this is not the correct address and the notices have to be sent to the corporate address. Moreover, this certainly cannot warrant instituting criminal proceedings, as if every civil transaction was sought to be executed using the criminal process, the civil procedure as enshrined in the Code of Civil Procedure would become redundant.

11. The learned counsel further submitted that the Petitioner's conduct was *bona fide* since, out of the grant of Rs. 2 crores, the Petitioner spent Rs. 22,06,000/- (Rupees twenty-two lakhs and six thousand) on employing a project management consultant and Rs. 74,44,422/- as a mobilization advance to the contractor. The Petitioner had taken all necessary steps to complete the project, and delay cannot be attributed to him. Furthermore, when Respondent No. 2 discontinued the project in February 2013, the Petitioner immediately returned the grant's unutilized portion. To invoke the provisions of Sections 406,420, and 120 B of the IPC, it is necessary to prove that the accused had the intent to cheat and *mens rea*. In this case, because the Petitioner had engaged and paid the PMC (ILFS) and Contractor, it is readily apparent that the Petitioner intended to execute the project on time, and the delay was solely due to securing permissions from Respondent No. 2. In absence of the elements, no proceeding is permissible in the eyes of

law with regard to the commission of the offence punishable us 406/420 IPC.

12. Further, the learned counsel for the Petitioner has placed reliance on the following precedents in this regard: (i.)***Hira Lal Hari Lal Bhagwati. v. C.B.I. New Delhi****(2003)3 S.C.R 1118;*(ii.)***Vijay Kumar Ghai&Ors. v. The State Of West Bengal &Ors** 2022 1S.C.R. 884;*(iii.)***Vesa Holdings P. Ltd.&Anr. v. State Of Kerala & Others***2015 4 S.C.R. 27.*

C. SUBMISSIONS ON BEHALF OF RESPONDENTS

13. The learned counsels for the respondents submitted that vide letter no. z14020/1/2010 DCC(AYUSH) dated 25.08.2010, the department sanctioned the proposal with a total approved non-recurring grant-in-aid of Rs. 10 crores in favor of the said company. The petitioner herein was the director of the company and was the active officer for accepting grant-in-aid from Respondent no. 2. The 1st installment of 2 crores was released in favor of the said company.

14. The Learned counsels for the respondents submitted that the said company vide its letter dated 10.03.2011 proposed a new site in Kodour village which had better accessibility and support infrastructure and comments of PMC were sought. The government of Andhra Pradesh agreed to provide the necessary support and concessions to the company. The petitioner requested for extension of one month time for the submission of the revised DPR which was to be submitted to the Department of AYUSH. Learned counsel further submitted that the financial banks were also requested to extend up to 15.12.2012. Further, as per the minutes of the meeting held on 18.09.2012, the said

company was to provide the Revised Detailed Project Report by 18.10.2012 but they failed to submit it. Despite the sincere efforts of SPV, the said company was unable to proceed with the project and constantly sought revised timelines for the implementation of the project. Thereafter the said project was withdrawn from M/s Lepakshi Ayur Pvt. Ltd. and a demand notice for recovery of the installment of 2 crores with an interest of 10% was issued.

15. Learned counsels further submitted that the FIR itself reflects that respondent no. 2/Ministry of AYUSH was fully aware of the pure civil nature of the transaction and knowing that the facts constitute civil wrong sans criminality or fraud or cheating, itself-resorted to civil recourse by the filing of a civil suit in 2014. It is further submitted by the counsel that after the pronouncement of the decree dated 06.06.2017 by the Trail court in favor of the department. The Ministry sent a copy of the judgment/decree to the petitioner and the said company which was returned on 23.1.2017 with the remarks "Address left". This was the reason respondent no 2 construed that the said company had left the said address with the intention to cheat and defraud the ministry. Thereafter, with the common decision of higher dignitaries of the Ministry, a complaint was filed against the act of the company to cheat the government before the Economic Offences Wing of Delhi Police.

D. FINDINGS AND ANALYSIS

16. Having perused the relevant facts and contentions made by the Petitioner and Respondents herein in my considered opinion, the following two key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 420/406 and 120B are prima facie made out?
- Whether the dispute is one of an entirely civil nature and therefore liable to be quashed?

Whether the necessary ingredients of offences punishable under Sections 420/406 and 120B are prima facie made out?

17. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the petitioner herein has been charged with, are prima facie made out. The relevant sections read as follows:-

> *"420. Cheating and dishonestly inducing delivery of property— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*
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> *"405. Criminal breach of trust—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"*
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> *"406. Punishment for criminal breach of trust—Whoever commits criminal breach of trust shall be punished with*

imprisonment of either description for a term which may extend to three years, or with fine, or with both."

18. In the current case, the petitioner is accused of committing crimes of cheating and criminal breach of trust. In accordance to section 405 of the Indian Penal Code, misappropriating or converting another person's property for one's own use with the purpose to defraud is considered a criminal breach of trust, on the other hand, cheating incorporates the ingredient of having a dishonest or fraudulent intention that is intended to persuade the other party to give any property to a specified person is an offence described under section 415 of the Indian Penal Code. "Dishonest intention" was expressly stated in both sections as a prerequisite for even establishing the commission of the aforementioned charges prima facie which remains absent in the complaint.

19. Furthermore, the coordinate bench of this court in ***Mr. Ajay Chopra vs State*** *in Cr. Revision No.:22 of 2015*inter-alia held that:-

"(i) That as per settled 406/409 and 420 IPC cannot subsist in the same transaction. It has been held by Hon'ble Punjab & Haryana High Court in the case titled as Jalpa Parshad Aggarwal Vs. State of Haryana &ors. 1987 (2) RCR 427 that offence u/s 406 IPC is an anti-thesis of the offence u/s 420 IPC."

20. Upon a careful assessment of the facts, by no stretch can it be concluded that the Petitioner herein has deceptively or intentionally tried to cheat and de-fraud the Ministry of AYUSH as the petitioner was not being at fault for the delay caused on account of various

contingencies that arose during the execution of the project. Moreover respondent no 2 accepted the decision of the said company and admittedly received an the unutilized amount totaling to Rs.1,23,00,000/- (Rupees One crore and twenty-three lakhs). Moreover, it was respondent no 2 who withdrew the permission from the said company to complete the project due to the paucity of time. The conduct of the petitioner has been bona fide and the petitioner had himself engaged and paid the PMC (ILFS) and other contractors. Thus in the absence of the intent cheat or defraud the respondent no 2, no proceedings with regard to offence punishable under section 406/420/120B IPC can be permitted in the eyes of law.

Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

21. Having considered the relevant arguments of the parties this court is of the considered view that the existence of intent to cheat or fraudulent intention has not been made out against the Petitioner. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even institute a civil suit, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. It is pertinent to mention here that learned counsel for respondent No.2 has submitted that the Ministry of AYUSH was fully aware of the pure civil nature of the transaction and knowing that the facts constitute civil wrong sans criminality or fraud or cheating, itself-resorted to civil recourse by the filing of a civil suit in 2014.

22. In the landmark judgment of ***State of Haryana &Ors. Vs. Ch. Bhajan Lal and Ors.*** (1992) SCC Cri 426, regarding exercise of inherent powers under section 482 of Cr.P.C, this Court has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice. These are:-

> *"(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;*
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> *(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*
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> *(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."*

23. After applying this dictum to the current factual matrix, it is safe to say that the case in question obviously comes within the first, and third of the seven categories indicated in the aforementioned judgment. This Court should consequently get involved because there has been an attempt to enlarge the scope of a civil matter and thereby give it a criminal tint.

24. Recently, the Apex Court in case of ***Randheer Singh Vs. The State of U.P. &Ors.*** Criminal Appeal No. 932 of 2021 (decided on 02.09.2021), has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

> *"33. ....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the*

criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."

25. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

26. In view of the above facts and discussions, the petition is allowed and the impugned F.I.R. No. 290 of 2019 dated 26.12.2019 and proceedings against the petitioner for offences under Sections 420/406 read with Section 120B of IPC stands quashed and disposed of.

DINESH KUMAR SHARMA, J

JUNE 2, 2023
Pallavi