

JUDGMENT

MOHSIN AKHTAR KAYANI, J. Through the instant Writ Petition, the petitioners/Mirza Nadeem Hafeez and Dr. Faisal Khan have prayed for quashing of complaint titled [Messrs KMA International Import and Export Company v. Mirza Nadeem Hafeez and another] filed before learned Special Court (Offences in Banks), Islamabad in terms of Section 4 of the Offences in Respect Of Banks (Special Courts) Ordinance, 1984, whereby, respondent No.1/KMA Import and Export Company has alleged that the appellants have provided fake bank guarantees of Messrs J/S Bank Limited, Said Pur Road Branch, Rawalpindi while procuring the supply orders.

2. Learned counsel for the petitioners contended that respondent No.1 has claimed itself as a company, though it is not registered with SECP under the Companies Ordinance, 1984 or under the Companies Act, 2017, neither the same is in association of partners under the Partnership Act, 1932 and as such respondent No.1 has no legal authority to represent itself being juristic person to lodge the complaint before the Special Court (Offences in Banks); that any resolution whatsoever in nature has been appended with the complaint, through which it could be assumed that Messrs KMA International Import and Export Company could be allowed to produce prosecution witnesses to record their testimony in cursory statements for initiation of process of complaint, even the addresses of the company are fake; that learned Special Court (Offences in Banks), Islamabad has no jurisdiction to entertain the said complaint, as the deal was matured at Rawalpindi and even the alleged forged bank guarantees were prepared from Messrs J/S. Bank Limited, Said Pur Branch, Rawalpindi.

3. Conversely, learned counsel for respondent No.1 contended that Messrs KMA International Import and Export Company is not a registered company nor even in association of the partners under the Partnership Act, 2017, rather it is a title, who have entered into an agreement with Messrs Apical Ways, registered partnership of the petitioners for supply of certain classified stores; that the petitioners have submitted the bank guarantees, which were further confirmed through letter issued by respondents Nos. 2 and 3, who are officials of the Messrs J/S Bank Limited, but when the supplies were not provided, the complainant/respondent No.1 has applied for encashment of the bank guarantees, as a result whereof, respondents Nos. 4 and 5, who are also officials of Messrs J/S Bank Limited confirmed that the said bank guarantees provided by the petitioners' company/Messrs Apical Ways are fake.

4. It has further been argued that any person can initiate criminal prosecution on the offences in terms of section 11 of the P.P.C., even the said offence was committed at Islamabad, as the addresses of the petitioners as well as of respondent No.1 are of Islamabad and it has nothing to do with the issuance bank guarantees, which could be issued anywhere in Pakistan.

5. Respondents Nos. 2 and 3 have not put appearance before this Court not even before learned Special Court (Offences in Banks), Islamabad, rather are on watching brief.

6. Learned counsel for respondents Nos. 4 and 5 contended that respondents Nos. 4 and 5 have been impleaded as accused in the said complaint without any legal basis, especially when they have confirmed that the bank guarantees are fake and their status in the entire complaint is of witnesses and even they have supported the case of respondent No.1. It has further been contended that respondents Nos.4 and 5 have filed application under section 265-K, Cr.P.C., which is pending with learned Special Court (Offences in Banks), Islamabad.

7. Arguments heard, record perused.

8. Perusal of the record reveals that entire case revolves around issuance of fake bank guarantees, which were submitted by Messrs Apical Ways, run by the petitioners before Messrs KMA International Import and Export Company/respondent No.1 against the supply of order and as such the agreement on the part of petitioner was not complied with, respondent No.1 has applied for encashment of said bank guarantees, resultantly, respondents Nos. 4 and 5/officials of J/S Bank Limited, Said Pur Branch, Rawalpindi apprised respondent No.1 that

the said bank guarantees are fake, as result whereof, respondent No. 1 has filed a criminal complaint in terms of section 4 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 read with sections 405, 409, 467, 468, 471, P.P.C. with the allegation that supply orders were given to Messrs Apical Ways/petitioners on 23.10.2013, 24.10.2014, 18.11.2014, 05.12.2014, 14.07.2014 and 22.05.2015 for supply of defence related stores of sensitive nature, whereby, the Messrs Apical Ways have furnished six bank guarantees issued by Messrs Silk Bank Private, Limited and Soneri Bank Private Limited, but later on Messrs Apical Ways has submitted fake bank guarantees vide letters dated 31.03.2016 and 20.4.2016 issued by Messrs J/S. Bank Limited, Said Pur Branch, Rawalpindi, which were signed by respondents Nos. 2/ Syed Muhammad Ali and 3/Muhammad Murad Khan, the then Operations Manager and Manager Asset, Messrs J/S. Bank Limited, Said Pur Branch, Rawalpindi.

9. That After non-compliance of supply orders by the petitioners, respondent No.1 applied for encashment of said bank guarantees, whereby, respondent No. 4/Muhammad Afraz Javed/Manager Assets and respondent No. 5/M.A. Abdullah Doggar/Area Manager, Messrs J/S. Bank Limited, Said Pur Branch, Rawalpindi vide their letters dated 09.10.2017 and 17.10.2017 apprised respondent No.1 that the bank guarantees submitted by Messrs Apical Ways are fake, as result whereof, the complaint was filed.

10. The primary arguments raised by the petitioners, who are accused before the learned Special Court (Offences in Banks), Islamabad are that the offence was committed within the territorial jurisdiction of Rawalpindi and as such learned Special Court (Offences in Banks), Islamabad has no territorial jurisdiction in this regard.

11. In order to deal with the proposition in hand, it is necessary to go through the allegations levelled by Messrs KMA International Import and Export Company/respondent No.1 in its complaint regarding failure of supply orders on the part of petitioners, which reveals that both the parties i.e. Messrs KMA International Import and Export Company/ complainant as well as M/s. Apical Ways/petitioners are residents of Islamabad and their business transactions have been carried out at Islamabad, whereby, the said bank guarantees have been provided.

12. While considering the above referred aspects, the concept of cognizance has to be considered in terms of section 154, Cr.P.C. at the first instance regarding information in cognizable cases, whereby, it is the primary requirement that matter could only be agitated within the territorial jurisdiction of the particular police station, where the offence is committed and this analogy has to be kept in mind while filing the criminal complaint and as such contents of the complaint discloses the territorial jurisdiction of Islamabad where prima-facie offence was committed, though the fake bank guarantees contains stamp and seal of Messrs J/S Bank Limited, Said Pur Road Branch. Rawalpindi.

13. The second question raised by the petitioners reveals that Messrs KMA International Import and Export Company is not registered under the Companies Ordinance, 1984 or the Companies Act, 2017 with the SECP, neither the same is in association of partnership registered under the Partnership Act, 1932 and as such the complaint could not be filed by a non juristic person.

14. While considering the said aspect, we are inclined to go through the provision of section 11 of P.P.C., which defines the concept of person, which includes any company or association or body of persons whether incorporated or not, therefore, the objection raised by the petitioner is not maintainable under the law, as the requisite definition of word "person" excludes the non-registered or body of person, which is incorporated under the law is also permissible to lodge a complaint.

15. The entire claim of the petitioners is based upon these two questions for quashing of the proceedings before learned Judge Special Court (Offences in Banks), Islamabad, though the criteria for quashing of any FIR or proceedings has now been settled by the Superior Courts, where it has been held that if from the bare reading of the complaint if no offence is made out or where the case is of no evidence or the very registration of the case is proved to be mala fide on the face of record or where the case is purely of civil nature and criminal proceedings have not warranted under the law or the matter is based upon serious jurisdictional defect, the matter can be quashed, but all these grounds have not been demonstrated by the petitioners in this case, even it has not been denied that an alternate remedy in terms of section 249-A, Cr.P.C. or section 265-K, Cr.P.C. is still available to the petitioners, therefore, quashing of the proceedings have not been justified. Reliance is placed upon cases reported as 1963 PCr.LJ 2222 [Rashid Ahmed Gardee v. The State], 2016 MLD 278 [Trust Investment Bank Limited

through Authorized Officer v. Government of Sindh through Secretary Home and 3 others] and 2006 SCMR 276 [Col. Shah Sadiq v. Muhammad Ashiq and others]. Even there is no cavil to proposition that quashing of FIR or proceedings could only be permissible in exceptional cases, which has not been demonstrated by the petitioners in any manner.

16. Besides, the above referred position, it has also been observed that respondents Nos. 4 and 5/officials of Messrs J/S. Bank Limited, Said Pur Road Branch, Rawalpindi have only supported the case of the complainant/Messrs KMA Import and Export Company and confirmed that the said bank guarantees are fake, which are not available in their record, but despite this fact they have been arrayed as accused in the complaint without any justifiable reason, especially when they are witnesses to support the case of the prosecution.

17. Respondents Nos. 4 and 5 have filed application under section 265-K, Cr.P.C., before the learned Judge Special Court (Offences in Banks), Islamabad and as such the same has not yet been adjudicated.

18. In this backdrop, all the grounds which have been raised by the petitioners require deeper appreciation, which is not permissible at this stage and as such the petitioners have an alternate remedy under the law and it has not been denied by the counsel for petitioners that civil proceedings are also pending with the competent Civil Court, therefore, in this eventuality it is not appropriate to allow this writ petition, therefore, the same is hereby dismissed. However, learned Special Court (Offences in Banks), Islamabad is directed to decide the pending application of respondents Nos. 4 and 5 at the first instance within a period of 30 days, by all means.

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