

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.14524 OF 2022 (GM-RES)
CONNECTED WITH
CRIMINAL PETITION NO.4393 OF 2022

IN WRIT PETITION NO.14524 OF 2022

BETWEEN

OM DHAR ENGINEERING PVT LTD
PLOT NO. 67, SECOND FLOOR
SRINIVAS SQUARE, GAFOORNAGAR
MADHAPUR, HYDERABAD
TELANGANA STATE - 500 081
REP BY ITS MANAGING DIRECTOR
DHARMESH KUMAR KOTHURI

... PETITIONER

(BY SRI PRAKASH M H, ADVOCATE)

AND

- 1 . THE STATE OF KARNATAKA
BY CYBER/ECONOMIC AND NARCOTIC
CRIME POLICE STATION
CHIKKABALLAPUR
THROUGH THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE 560 001
- 2 . SRI. LASKHMIKANTH
S/O RAMASHASTRI
AGED 46 YEARS
INTERNAL AUDITOR
AMRUTHA CONSTRUCTIONS PVT LTD

R/AT RAMACHANDRAPURA
SANJAYNAGAR
BANGALORE 560 094

3 . ICICI BANK LTD
NO.10, TITUS BUILDING
MIND SPACE
RAHEJA IT PARK PVT LTD
MADHAPUR
HYDERABAD 500 081
REP. BY ITS BRANCH MANAGER

... RESPONDENTS

(BY SRI B.J. ROHITH, HCGP FOR R1
SRI PARASHURAM AJJAMPUR LAKSHMAN, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C PRAYING TO QUASH THE FIR DATED 01.05.2022 REGISTERED BY THE R-1, CEN CRIME POLICE, CHIKKABALLAPUR, IN CRIME NO.0021/2022 FOR THE OFFENCES PUNISHABLE UNDER SECTION 66 OF THE INFORMATION TECHNOLOGY ACT 2000 AND UNDER SECTIONS 406 AND 420 OF IPC, WHICH IS PENDING BEFORE THE 2ND ADDL. SENIOR CIVIL JUDGE AND JMFC, COURT, CHIKKABALLAPURA VIDE ANNEX-C. DECLARE THAT THE PROHIBITORY ORDER DATED 06.07.2022 IN NO. DCB/CEN PS CC NO.212022 ISSUED BY THE R-1 TO R-3 TO FREEZE THE ACCOUNT OF THE PETITIONER IN RESPECT OF ACCOUNT BEARING NO. 059851000003 VIDE ANNEX-D AS ILLEGAL.

IN CRIMINAL PETITION NO.4393 OF 2022

BETWEEN

1 . MAHAVEER JAIN
S/O INDERCHAND D JAIN
AGED ABOUT 28 YEARS
R/AT NO. 18, G.B LANE
NEXT TO MEDI SURGE
COTTONPET CROSS,
CHICKPET,
BENGALURU 560 053

2 . SRI. NIKHIL KUMAR I
S/O INDERCHAND D JAIN
AGED ABOUT 30 YEARS,
R/AT NO. 303, 12th A MAIN
NEXT TO DATTATREYA TRADING
6th BLOCK RAJAJINAGAR,
BENGALURU 560010

... PETITIONERS

(BY SRI MADHUKAR M DESHPANDE, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY CEN CRIME POLICE STATION,
CHIKKABALLAPURA 562101
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR

2 . SRI. LAKSHMIKANTH
S/O RAMASHASTRI
OCC. INTERNAL AUDITOR
IN AMRUTHA CONSTRUCTION
PRIVATE LIMITED
R/AT RAMACHANDRAPURA
BENGALURU 560 021

... RESPONDENTS

(BY SRI B.J. ROHITH, HCGP FOR R1
SRI PARASHURAM A.L., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE FIR IN CR.NO.21/2022 (ANNEXURE-A) REGISTERED BY THE RESPONDENT NO.1 (CEN POLICE STATION AT CHIKKABALLAPUARA) FOR THE OFFENCE P/U/S 66 OF I.T ACT AND SEC.406, 420 OF IPC AS AGAINST THE PETITIONERS PENDING ON THE FILE OF THE II ADDL. SENIOR CIVIL JUDGE AND JMFC, CHIKKABALLAPURA.

THIS WRIT PETITION ALONG WITH CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.12.2022, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Crl.P.No.4393/2022 is filed by the petitioner-accused Nos.1 and 2 under Section 482 of Cr.P.C. and W.P.No.14524/2022 is filed by the petitioner-accused No.3 under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing the FIR in Crime No.21/2022 registered by CEN Crime Police Station, Chikkbhallapura for the offence punishable under Section 66 of the Information Technology Act, 2000 (for short 'I.T. Act') and Sections 406, 420 of IPC, now pending on the file of the II Additional Senior Civil Judge and JMFC, Chikkabalapura.

2. Heard the arguments of learned counsel for the petitioners, learned High Court Government Pleader for respondent No.1-State and learned counsel for the respondent No.2.

3. The case of the prosecution is that respondent No.2-Lakshmikanth filed a complaint to the Chikkbhallapura CEN Crime Police on 01.05.2022 alleging

that he is working in M/s. Amrutha Constructions Pvt. Ltd. as an Internal Auditor for last ten years and he knew accused Nos.1 and 2 i.e., Mahaveer Jain and Nikhil Kumar from last one year. About two years back, he has obtained BDA property through tender for the development purpose and accused Nos.1 and 2 are said to be introduced and recommended nine constructions companies for doing sub-contract work. Accordingly, they have given sub-contract work to including accused No.3-the writ petitioner in 14524/2022. They have transferred Rs.27,75,64,683/- to all seven companies. But they have not taken up the work for development, therefore, complaint came to be filed against them. The police registered the FIR against the petitioners and other companies. Being aggrieved with the same, they are before this Court.

4. Learned counsel appearing for the petitioners-accused Nos.1 and 2 has contended that absolutely there is no case against the petitioners except the petitioners said to have introduced accused No.3 to nine companies

and the company of respondent No.2 by handing over the order, entrusting the work to the companies, they are not party to the contract and the work order is said to be given to accused No.3 and other companies in the month of April 2022. But within the span of 15 days, they lodged the complaint and even otherwise, the petitioners-accused Nos.1 and 2 have not received any money from the complainant or other companies of the accused Nos.3 to 9 except recommending at the request of the complainant, he has not acted anything against the complainant. There is no letter correspondence between accused Nos.1 and 2 and the complainant for recommending the companies. Even otherwise, it is a civil contract that if one person has not performed the contractual obligation, the remedy is available by going before the Arbitrator. The criminal case cannot be filed against these petitioners-accused Nos.1 and 2 as they are not at all involved in the commission of any offence. Hence, conducting investigating is abuse of process of law. Hence, prayed for quashing the FIR.

5. Learned counsel for the petitioner-accused No.3 in the Writ Petition has also contended that there was a contract between accused No.3 and the company represented by respondent No.2. The amount has been transferred in the month of April 2022, but, immediately, the complaint came to be filed against accused No.3. The agreement between accused No.3 and the complainant-Company in respect of construction of bridge and roads at Hosadurga Taluk, Chitradurga District, there is no contract between accused No.3 and respondent No.2 in respect of development of BDA Layout. Even otherwise as per the work order agreement, the dispute if any, that has to be placed before the Arbitrator for resolving the dispute. Therefore, filing criminal complaint does not arise. Hence, prayed for quashing the criminal proceedings.

6. *Per contra*, learned counsel for the respondent objected the petitions and contended that the respondent have transferred more than Rs.27.00 crores to the seven companies which were recommended by accused Nos.1

and 2 and more than Rs.5.00 lakhs has been transferred to accused No.2 through Bank transfer. In spite of receiving huge amount, the accused has not taken up the work for developing the BDA layout at Bengaluru namely Nadaprabhu Kempegowda layout. Therefore, matter requires investigation. Hence, prayed for dismissing the petition.

7. The learned High Court Government Pleader also objected the petition and contended that the matter requires investigation as the complainant paid crores of rupees for developing the layout, but, work was not taken up, therefore, prayed for dismissing the petition.

8. *Per contra*, learned counsel for the petitioners-accused Nos.1 and 2 contended that previously the Coordinate Bench of this Court did not grant stay and subsequently, this Court granted stay in favour of the petitioner No.2 and thereafter, the complainant transferred Rs.5,40,000/- to the account of accused No.2 in order to

falsely implicate accused No.2 in this case. Hence, prayed for allowing the petition.

9. Having heard the arguments and on perusal of the records, especially the complaint filed by the respondent No.2 where the complainant has stated in his complaint that accused Nos.1 and 2 was acquainted with him for last one year and the complainant-company is a construction company who obtained the tender from the BDA to develop the Nadaprabhu Kempegowda Layout and on the recommendation of accused No.1, he has contacted nine construction companies and had given work order to the seven companies for development of the Layout and paid Rs.27,75,64,683/-, but, those companies have not taken up the work. During the argument, it is brought to the notice of this Court by the learned counsel for accused No.3 that there was work order given to accused No.3 by the Amruth Constructions Pvt. Ltd. belongs to the complainant as per the agreement No.4/20-21 dated 29.07.2021. The said work order has been issued on

18.11.2021. On perusal of the same, it clearly reveals that the work order has been given to the accused No.3- Company for Rs.18,65,00,000/- for Sub Contract Work as per the agreement dated 29.07.2021, but there is no document produced by the learned counsel for respondent to show that there was any agreement between accused Nos.1 and 2 and the complainant- Amrutha Constructions for handing over the development work to accused No.3 or any other companies, but, they have produced the document to show the amount has been transferred to the seven companies out of nine companies said to have been recommended by the accused Nos.1 and 2 but absolutely there is no document to show that accused Nos.1 and 2 were party to any of the agreements or to show that they are witnesses for this agreement held between accused No.3 or any other construction companies and respondent No.2. But it is an admitted fact that the amount has been paid by the company belong to respondent No.2 to the worth of more than Rs.27.00 crores. That apart, the work order given to accused No.3 was construction of road, road

bridge, approach road from Bevinahalli village and Hunasekatte village at Chitradurga District, Hosadurga taluk for development of Vani Vilas Sagara, but, not for the development of Kempegowda Layout at Bengaluru. Of course, there is some document to show that accused No.3 received money from the complainant and he has to appear for the investigation. But absolutely there is no document to show that accused Nos.1 and 2 recommended accused No.3 and other companies to the complainant to show their involvement in the case. That apart, accused No.2 is an Auditor and it is brought to the notice of the Court that the complaint has been filed by respondent No.2 before the Police on 01.05.2022 and thereafter, accused Nos.1 and 2 filed petition before this Court on 11.05.2022 along with the affidavit stating that the petitioner has not received any amount and subsequently, the complainant has deposited Rs.5,40,000/- to the account of accused No.2 through online transfer with Axis Bank in order to implicate accused No.2 in this case. Once the complainant filed complaint against accused Nos.1 and

2 as on 01.05.2022 itself, the question of transferring amount on 13.05.2022 does not arise. Respondent No.2 with an ulterior motive has transferred the amount to accused No.2 for falsely implicating him in this case. Absolutely, there is no evidence or statement or material against the accused Nos.1 and 2 in respect of entrustment of work by the complainant-company to accused Nos.3 to 9 companies for development of BDA Layout. If at all, the petitioners-accused Nos.1 and 2 have recommended accused No.3 to nine companies, they may be enquired and they may be witnessed to the prosecution case, but, without any basis, implicating accused Nos.1 and 2, merely, he has recommended them is not a ground for prosecuting them neither they are received any money from the accused nor a party to the agreement with accused Nos.3 to 9 either by taking commission / brokerage / consultation fees even from the complainant-company. Such being the case, the matter is pertaining to a civil contract between the complainant and other construction companies for development programs, such

being the case, the complainant can approach the Arbitrator for resolving the dispute or approach the Civil Court for remedy for specific performance of contract. Therefore, filing the complaint against accused Nos.1 and 2 and investigation is abuse of process of law. In spite of this Court waiting from a week, the complainant has not produced the agreement held between accused No.3 and the complainant, accused No.3 received money from respondent No.2 through bank transaction. Therefore, the investigation against accused No.3 shall be continued and if requires, he may approach this Court after filing the charge-sheet. In view of the above reasons, I pass the following

ORDER

Crl.P.No.4393/2022 filed by accused Nos.1 and 2 is ***allowed.***

The FIR against accused Nos.1 and 2 in Crime No.21/2022 registered by CEN Crime Police Station, Chikkaballapura is hereby quashed.

W.P.No.14524/2022 filed by accused No.3 is hereby ***dismissed.*** However, liberty is granted to approach the Court after the charge-sheet.

Sd/-
JUDGE

GBB