

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19<sup>TH</sup> DAY OF FEBRUARY, 2021

BEFORE

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

CRIMINAL PETITION No.154/2021

BETWEEN:

- 1 . M/S. SABRE TRAVEL TECHNOLOGIES PRIVATE LIMITED  
HAVING ITS REGISTERED ADDRESS AT:  
UNIT NO.1 AND 2, LEVEL NO.2  
NAVIGATOR BUILDING  
INTERNATIONAL TECH PARK  
SADARMANGALA PATTANDUR AG  
BENGALURU-560066  
REPRESENTED BY ITS MANAGING DIRECTOR  
KULAKADA JAYAKUMAR
- 2 . MR. VIKRAM KOLAR  
AGED ABOUT 48 YEARS  
VICE PRESIDENT  
SABRE TRAVEL TECHNOLOGIES PRIVATE LIMITED  
S/O KOLAR JAGANNATHA RAO  
CURRENTLY RESIDING AT 141  
SOBHA LAVENDER, GREEN GLEN LAYOUT  
BELLANDUR, BENGALURU-560103.
- 3 . MR. KULAKADA JAYAKUMAR  
AGED ABOUT 56 YEARS  
VICE PRESIDENT AND MANAGING DIRECTOR  
SABRE TRAVEL TECHNOLOGIES PRIVATE LIMITED  
S/O K BALAKRISHNAN  
CURRENTLY RESIDING AT 11 C D EAST TOWER  
KLASSIK BENCHMARK APARTMENT  
KAMANAHALLI MAIN ROAD  
BENGALURU-560076.
- 4 . MR. ARUN REVI  
AGED ABOUT 37 YEARS  
PRINCIPAL COMPLIANCE COUNSEL

R

SABRE TRAVEL TECHNOLOGIES PRIVATE LIMITED  
S/O REVI EASHWARAN  
RESIDING AT SOORYA  
PANICAL LANE  
KARIYAM, SREEKARYAM  
POWDIKONAM, PO: 695587.

... PETITIONERS

(BY SRI C.V.NAGESH, SENIOR COUNSEL FOR  
SMT.ANURADHA AGNIHOTRI, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA  
THROUGH MARATHAHALLI POLICE STATION  
REPRESENTED BY THE STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGLAURU-560001.
- 2 . MR. SHAIL DINESH MANIAR  
AGED ABOUT 51 YEARS  
SON OF DINESH HARIDAS MANIAR  
VILLA 319, PHASE II  
DEVARABEESANAHALLI  
ADARSH PALM RETREAT  
OUTER RING ROAD  
BENGALURU-560 103.

... RESPONDENTS

(BY SRI K.S.ABHJITH, HCGP FOR R1;  
SMT.JYANA KOTHARI, SENIOR COUNSEL FOR  
SRI ROHAN KOTHARI, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE PROCEEDINGS IN CR.NO.417/2020 REGISTERED BY THE MARATHHALLI POLICE STATION, BENGALURU AND ITS CONSEQUENT INVESTIGATION AGAINST THE PETITIONERS PENDING ON THE FILE OF THE LEARNED 4<sup>TH</sup> ACMM, MAYO HALL AT BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.02.2021 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the FIR in Crime No.417/2020 registered by the Marathahalli Police and pass such other orders as deem fit in the circumstances of the case.

2. The factual matrix of the case is that respondent No.2 herein has filed the complaint with the police vide his complaint dated 3.11.2020 that in the year 1992, he had joined Sabre at its head quarters in South Lake, Texas, USA and he was transferred in various capacity to serve the Sabre office locations. He was also offered a position as a Director on 12.01.2005 and he accepted the offer and moved to Bengaluru. He had already completed 13 years of service with Sabre. In May 2017, all of a sudden the decision was made to terminate his employment. By that time, he had nearly completed 25 years of service in Sabre. The decision of terminating was without any cause and hence, he would be entitled to a minimum severance pay equal to 12 months of their last drawn salary. His annual fixed salary was Rs.1,42,32,107/- and in addition, he was also entitled to his full tenure gratuity for 25 years of service

amounting to Rs.96,36,325/-. Besides the above, he was terminated without cause. He would have been entitled to the payment of the above mentioned amount. Apart from that he had a total of Rs.8,837/- RSU of Sabre, which was valued at Rs.1,24,60,170/-. Hence, he was entitled to a minimum payment of cash of Rs.3,49,15,782/-. He entered into the negotiations in good faith with Sabre India for his voluntarily separation and in the pursuance of the same, the mutual separation agreement was entered into on 31.05.2017. By virtue of the MSA, he was made to forego and forfeit all his claims against Sabre and agreed to pay the amount by way of part-I payment of Rs.52,89,399/- and part-II payment of Rs.2,06,69,245/- on or before 10.12.2017.

3. It is alleged that however, soon after the first tranche of payments was completed. They began behaving in a suspicious and odd manner. He was alerted to this behaviour when he began seeking one set of originals of the executed MSA. The MSA was executed in two originals and both of the originals were retained by Sabre India. When he insisted one copy, they did not furnish in its entirety. By surprise on 13.12.2017, he

received an email that they have conducted an internal inquiry after his departure from the Company and came to the purported conclusion that he breached Sabre's Code of Business Ethics. In the complaint, specific allegation is made that with dishonest intention in order to cheat and defraud him, the MSA was entered and the same was with criminal and mala fide intent and deceived him in forgoing his valuable statutory and contractual claims against them.

4. It is also urged in the complaint that the petitioners herein never intended on performing the MSA and fraudulently and dishonestly induced him in executing the said agreement, for which he was deceived to forego his valuable post-employment claims and he was cheated by executing the MSA. Hence, it attracts the ingredients of the offence alleged in the complaint. Based on the complaint, the police have registered the case against these petitioners for the offence punishable under Sections 120B, 406, 415, 418 and 420 read with Section 34 of IPC. Hence, the present petition is before this Court.

5. Learned counsel appearing for the petitioners would vehemently contend that the averments made in the complaint

does not constitute an offence of cheating and breach of trust. The learned counsel referring clause No.8 of the MSA, made a specific allegation with regard to withholding the same and the right was given to the petitioners herein. Learned counsel also would vehemently contend that an application was filed before the National Company Law Tribunal (NCLT) and the same was dismissed. Thereafter, a civil suit was also filed for recovery of amount, the specific defence was taken in the written statement and the Trial Court also while rejecting the IA No.1 filed by the complainant, held that the defendants have made out the grounds to contest the summary suit. Learned counsel also vehemently contend that complaint was given afterthought that is after the complainant has exhausted the remedy before the NCLT and also while the suit is pending before the Court, which is nothing but an abuse of process.

6. In support of the said contention, learned counsel appearing for the petitioners relied upon the judgment of the Apex Court in the case of ***Sushil Sethi and Another v. State of Arunachal Pradesh and Others*** reported in (2020)3 SCC 240. Referring to this judgment, learned counsel brought to the

notice of this Court para No.8 of the judgment, wherein the Apex Court has held that there are no specific allegations against the Managing Director or even the Director. The Apex Court also in ***Maksud Saiyed v. State of Gujarat and Others*** reported in **(2008) 5 SCC 668** held that the penal code does not state any provisions for attracting the vicarious liability on the part of the Managing Director or the Director of the Company when the accused is a Company.

7. Learned counsel also brought to the notice of this Court para No.8.3, wherein the Apex Court has held that though the FIR was filed in the year 2000 and the charge sheet was submitted as far back as on 28.05.2004, the appellants were served with the summons only in the year 2017 i.e., after a period of approximately 13 years from the date of filing the charge sheet. Under the circumstances, the High Court has committed a grave error in not quashing and setting aside the impugned criminal proceedings and has erred in not exercising the jurisdiction vested in it under Section 482 of Cr.P.C.

8. Learned counsel referring to this judgment would submit that the complainant/respondent has exhausted the

remedy before the NCLT and also filed a civil suit when the right is given to withhold the claims of the respondent as per the agreement, the same is in civil in nature and there cannot be any criminal proceedings.

9. Learned counsel further relied upon the judgment of the Apex Court in the case of **Prof. R.K. Vjayasarathy and Another v. Sudha Seetharam and Another** reported in **(2019) 16 SCC 739** wherein the Apex Court has held that prima facie absence of ingredients of offence would leads to abuse of process of Court. Attempt to cloak a civil dispute with a criminal nature despite absence of ingredients necessary to constitute the criminal offence, the criminal proceedings has to be quashed.

10. The learned counsel also relied upon the judgment in the case of **Binod Kumar and Others v. State of Bihar and Another** reported in **(2014) 10 SCC 663**, wherein the Apex Court has held that the Civil liability cannot be converted to criminal liability and it would amounts to abuse of process of court. Learned counsel also referring to this judgment would contend that the Apex Court has reiterated the principles with



regard to exercising the inherent powers to quash the proceedings only in case where the complaint does not disclose any offence.

11. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Commissioner of Police and Others v. Devender Anand and Others*** reported in **2019 SCCOnline SC 996**, wherein the Apex Court has held that when the dispute between the parties is of civil in nature, the initiation of the criminal proceedings by the original complainant is nothing but an abuse of process of law. It is further observed that even considering the nature of allegations in the complaint, no case is made out for taking cognizance of the offence and when the case involves the civil dispute and for settling the civil dispute, the criminal complaint has been filed, which is nothing but an abuse of process.

12. Learned counsel also relied upon the judgment in the case of ***Satishchandra Ratanlal Shah v. State of Gujarat and Another*** reported in **(2019) 9 SCC 148**. Referring to this judgment, learned counsel brought to the notice of this Court the principles laid down in the judgment while quashing of FIR

making an allegation of breach of contractual obligation criminalization of civil disputes is impermissible.

13. Learned counsel also relied upon the judgment in the case of **Medmeme, LLC and Others v. Ihorse BPO Solutions Private Limited** reported in **(2018) 13 SCC 374** and brought to the notice of this Court para No.11 of the judgment, wherein the Apex Court has observed with regard to whether dispute between the parties is essentially of a civil nature or any case is made out against the appellants for launching the criminal prosecution has to be looked into.

14. Learned counsel also relied upon the judgment of the Apex Court in the case of **Joseph Salvaraj A. v. State of Gujarat and Others** reported in **(2011) 7 SCC 59**. Referring to this judgment, learned counsel would submit that the Apex Court has summarized the principles with regard to quashing of FIR invoking Section 482 of Cr.P.C. When the FIR clearly discloses that civil dispute between the parties are summary civil suit and also related to the matter filed by the person with proper locus standi, still pending and unconditional leave to defend was granted to the complainant, absence of locus standi of the

complainant to file either civil or criminal proceedings would effect in exercising the powers under Section 482 of Cr.P.C.

15. Per contra, learned counsel appearing for the respondent No.2 would vehemently contend that the complaint averments is very specific that with the dishonest intention, the petitioners have entered into the MSA and also in terms of MSA made part-I payment and failed to make part-II payment as mentioned in the complaint. After the expiry of the period within 10 days, utter surprise, an email was sent complaining the misleads of the respondent.

16. Learned counsel would vehemently contend that first of all entire MSA is not supplied even though request was made. Learned counsel also would vehemently contend that the statement was filed before the Company Board for the year 2016-17 and 2017-18 and they themselves have declared that the employees have not indulged in any fraud and also they have not declared the same as envisaged under Section 134 of Companies Act. The report of the auditor is also clear that no fraud was played. When such being the case, the allegation made in the email, subsequent to the expiry of the period, it

clearly discloses that with dishonest intention, the petitioners have entered into MSA. The complainant averments is specific with regard to fraud and cheating done by the petitioners instead of making the payment in terms of MSA. Hence, the matter has to be probed.

17. Learned counsel for the respondent No.2, in support of her contention, relied upon the judgment of the Apex Court in the case of ***K.Jagadish v. Udaya Kumar G.S.*** reported in **2020 SCC Online SC 318** and brought to the notice of this Court para Nos.9 to 14, wherein the Apex Court has held that it is thus well settled in certain cases the very same set of facts may give rise to civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he has not precluded from setting in motion the proceedings in criminal law.

18. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Kamal Shivaji Pokarnekar v. State of Maharashtra and Others*** reported in **(2019) 14 SCC 350**. Learned counsel referring to this judgment brought to the notice of this Court para Nos.5 and 9 with regard to quashing of criminal proceedings and wherein, the Apex Court has held that

the same is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

19. Learned counsel referring this judgment would vehemently contend that the contents of the complaint is very specific and it is stated that with the dishonest intention, the petitioners have entered into MSA and only after the period of payment, they have indulged in making the allegation against respondent No.2.

20. Learned counsel also relied upon the judgment in the case of **Mohd. Allauddin Khan v. State of Bihar and Others** reported in **(2019) 6 SCC 107** and brought to the notice of this Court para Nos.8 to 14, wherein the Apex Court has held that High Court did not examine the case with a view to find out as to whether the allegations made in the complaint prima facie make out the offences. Instead, the importance was given to the fact that the dispute was pending between the parties in the civil Court in relation to a shop as being landlord and tenant, it is

essentially a civil dispute between the parties. Further, it is held that High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of Cr..P.C.

21. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Syed Askari Hadi Ali Augustine Imam and Another v. State (Delhi Administration) and Another*** reported in ***(2009) 5 SCC 528*** and brought to the notice of this Court para Nos.21 to 25 and 29, wherein, the Apex Court has observed that a civil proceedings as also a criminal proceedings may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal Court upon arriving at the satisfaction that there exists a prima facie case. It is also held that where a question as to whether a civil suit or a criminal case should be stayed, it mainly depends upon the factual circumstances of the each case.

22. Learned counsel also relied upon the judgment in the case of ***Som Mittal v. Government of Karnataka*** reported in ***(2008) 3 SCC 753***. Referring to this judgment, learned counsel brought to the notice of this Court para No.17, wherein the Apex Court has observed that 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, under such circumstance, the Court can exercise the powers under Section 482 of Cr.P.C. If the complaint do constitute a cognizable offence, the Court can proceed with the case. The Apex Court has laid down 7 steps with regard to exercising the powers under Section 482 of Cr.P.C. and none of the steps as enumerate therein attracts the present case on hand.

23. Learned counsel also relied upon the judgment in the case of **Indian Oil Corporation v. NEPC India Limited and Others** reported in **(2006) 6 SCC 736** and brought to the notice of this Court para Nos.12, 15 to 18, 34 to 36 and 38, wherein the Apex Court has held that if allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed.

24. Learned counsel relied upon the judgment in the case of **Devender Kumar Singla v. Baldev Krishan Singla**

reported in **(2005) 9 SCC 15** and brought to the notice of this Court para Nos.7 and 8, wherein the Apex Court held that cheating and dishonest inducement, and making of a false representation which are the essential ingredients of Section 420 of IPC may be inferred from all the circumstances including the conduct of the accused in obtaining the property. In the true nature of things, if it is not always possible to prove dishonest intention by any direct evidence. It can be proved by a number of circumstances from which a reasonable inference can be drawn showing the mens rea.

25. Learned counsel also relied upon the judgment in the case of **Lalita Kumari v. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1**, wherein the Apex Court has held that when the complaint discloses the cognizable offence, it is mandatory on the part of the Station House Officer to register the FIR. Learned counsel referring to this judgment would contend that the complaint given by respondent No.2 discloses the commission of a cognizable offence and when such being the case, the Station House officer has to register the case as mandated under Section 154 of Cr.P.C. In the case on hand,



taking the contents of the complaint, the case has been registered.

26. In reply to the arguments of the learned counsel appearing for respondent No.2, learned counsel for the petitioners would vehemently contend the complainant had approached the NCLT and exhausted the alternative remedy which was available to him. The petitioners have come to know the omissions and commissions only after the internal enquiry. Hence, they withheld the amount. Learned counsel also would submit that Section 134 of the Companies Act cannot be relied upon and the fact of commissions and omissions has come to the light of the petitioners only after holding the internal enquiry. The civil suit has also been filed by the complainant by availing the remedy available to him. When such being the case, there cannot be any criminal proceedings.

27. Having heard the learned counsel for the petitioners and learned counsel appearing for respondent No.2, this Court has to examine as to whether it is a fit case to exercise the powers under Section 482 of Cr.P.C. for quashing the FIR. Having perused the principles laid down in the judgments

referred supra, no doubt, it is settled law that when the civil remedy is available and the contractual liability is violated, the party can opt the remedy of civil remedy. It is also settled law that if the criminal culpability is found in the allegations made in the complaint, there is no bar to prosecute the same and simultaneously, the same can be proceeded as held by the Apex Court. This Court has to examine whether the criminal culpability is found in the case on hand or not. Before analyzing the same this Court would like to refer to the judgment of the Apex Court in the case of ***Dineshbhai Chandubhai Patel v. The State of Gujarat*** reported in **2018 (3) SCC 104**, wherein the Apex Court has summarized the principles as to how to deal with regard to the context of challenge to FIR. In this judgment the Apex Court has held that in order to examine as to whether factual contents of FIR disclose any prima facie cognizable offence or not, High Court cannot act like an investigating agency and nor can exercise powers like an Appellate Court. The question is required to be examined, keeping in view, contents of FIR and prima facie material, if any, requiring no proof. At such stage, High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied

on. It is more so, when the material relied on is disputed. In such a situation, it becomes the job of investigating authority, at such stage, to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material. Once the Court finds that FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Cr.P.C.

28. Keeping in view of the principles laid down in the judgments referred above, and also the judgments referred by the respective counsel, the Court has to examine whether the contents of the complaint makes out a case to initiate the criminal proceedings against the petitioners. It is not in dispute that civil suit is filed and that there was an agreement between the parties to MSA and so also part-I payment was made but the dispute is in respect of part-II payment as contemplated under the MSA.

29. The main contention of the learned counsel for the petitioners is that the dispute is civil in nature. It is also important to note that the payment was ought to have been made within the stipulated time as per the agreement. It is also noticed by this Court that the said amount was not paid within the stipulated time except the part-I payment. The main contention of the learned counsel for the petitioners that there was some omissions and commissions on the part of the complainant and as a result, the Company has suffered loss. It is further important to note that this defence is forthcoming only during the course of the arguments and no material is on record with regard to such omissions and commissions on the part of the complainant.

30. Learned counsel appearing for respondent No.2 brought to the notice of this Court with regard to fraud is concerned, there is no such report in respect of the same. It is also important to note that the allegations with regard to omissions and commissions are raised after the expiry of the period of part-II payment as agreed upon. The complainant in the complaint made the specific allegations that with dishonest

intention, the MSA was executed and such dishonest intention was at the inception. When it is brought to the notice of the Court that when the dishonest intention is forthcoming at the inception of entering into the contract, then the criminal culpability is found to proceed against the petitioners.

31. On perusal of the entire complaint, the dishonest intention and fraudulent act was narrated in para No.8 and so also in para No.12 with respect to presence of mens rea to cheat and defraud the complainant. The said aspect has to be probed by conducting the investigation. The complainant also specifically urged in the complaint in para No.13 that the petitioners herein never intended of performing the MSA and fraudulently and dishonestly induced the complainant in executing the said agreement. When such criminal culpability is alleged at the inception of entering into the contract, there was a dishonest intention and the same has to be considered while invoking Section 482 of Cr.P.C.

32. This Court also in the judgment in ***Criminal Petition No.3197/2020*** between ***Yogesh Agarwal and Ors. v. State of Karnataka and Ors*** vide order dated **24.9.2020** referred

several judgments of the Apex Court and held that when both the remedies are available, one under the civil and another under the criminal law and allegations constitute an offence, then under such circumstances, it is not a case to quash the proceedings. It is trite law that on plain reading of the contents of the complaint, if no case is made out and the investigation and trial are not going to serve any purpose, then under such circumstances, the Court can quash the proceedings.

33. In the case on hand, the complaint is specific that with dishonest intention, the MSA was entered into between the parties. This Court would also like to refer to the principles laid down in ***Criminal Appeal No.255/2019*** between ***Sau. Kamal Shivaji Pokarnekhar v. The State of Maharashtra and Ors.*** at para No.9, the Apex Court has held that criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.

34. Having perused the material on record, this Court already pointed out that there was MSA between the parties and

also an agreement between the parties. No doubt, there is a clause to withhold the amount. The question before the Court is that whether there was dishonest intention at the inception of the entering into contract and if so, the said question has to be probed by the Investigating Officer if the complaint prima facie discloses the cognizable offence and hence, once the cognizable offence is found in the allegations made in the complaint, the Investigating Officer has to be probe the matter as established under law.

35. In view of the discussion made above, I proceed to pass the following:-

ORDER

The petition is hereby ***dismissed***.

**Sd/-  
JUDGE**

PYR