

QUASHMENT OF CRIMINAL
PROCEEDINGS:- SUPREME
COURT'S VIEW IN THE EVENT OF
NON-ARRAY OF COMPANY IN THE
COMPLAINT

**CASE: - SUSHIL SETHI AND ANOTHER
VERSUS
STATE OF ARUNACHAL PRADESH AND
OTHERS
CRIMINAL APPEAL NO. 125 OF 2020**

➤ **FACTS IN BRIEF:-**

The brief facts of the case were that Appellant No.1 was the Managing Director and Appellant No.2 was the Director, of a Public Ltd. Company namely M/s SPML Infra Limited (hereinafter referred to as "**Company**").

The said Company was awarded the tender for the supply, construction and commissioning of Nurang Hydel Power Project (hereinafter referred to as "**Project**") by the Government of Arunachal Pradesh and pursuant thereto, it entered into a contract with the Govt. of Arunachal Pradesh on 18.03.1993.

Pertinently, in the said contract, the clause of "Defect Liability Period" was incorporated, which stipulated 18 months

period as the period within which the contractor will remain liable under the contract for dealing with any defects which become apparent. The project was made operational and started generating electricity since July, 1996. The time frame of the Defect liability lasted till January 1998.

Subsequently, the dispute regarding the payment of maintenance charges arose between the parties, which led the Appellants to send a notice dated 09.03.2000 to the State of Arunachal Pradesh to take over the project by 31.03.2000 on account of non-payment of maintenance charges. Post thereafter, the State of Arunachal Pradesh lodged one Criminal Complaint against the U/s 420 read with 120-B of IPC, 1860 alleging that the Appellants connived between themselves and provided sub-standard turbines whose compositions were not in accordance with the specifications discussed in MoU and hence, resulted in frequent damage of the runner turbine bucket.

Based on this written complaint, an FIR was registered. An investigation was made by the Investigating Officer who

filed final report/chargesheet in the year 2004 charging Appellants of Section 420 read with Section 120-B of Indian Penal Code, 1860. Although, the appellants were not aware about the FIR and chargesheet against them till the year 2017 and only after they got aware of the same, they filed the Petition before the High Court of Guwahati for quashing the criminal proceedings under section 482 Cr.P.C which Petition got dismissed by the Hon'ble High Court.

➤ **ISSUE BEFORE SUPREME COURT:-**

Whether a case was made out to quash the FIR and the chargesheet against the Appellants for the offences under Section 420 read with Section 120B of the IPC, in exercise of powers under Section 482 Cr.P.C?

➤ **ARGUMENTS OF THE APPELLANTS:-**

The contentions raised by the Appellants are reproduced herein:-

- a) The matter was related to breach of conditions of contract which leads to civil liability but the respondents had tried to convert a purely civil matter into the criminal case.

- b) The FIR prima facie, does not disclose any commission of an offence, much less a cognizable offence.
- c) The FIR does not remotely suggest any fraudulent and dishonest intention of the Appellants from the beginning of the transaction.
- d) The FIR was lodged with a malafide intention with the motive for seeking private vendetta and as an instrument of harassment.
- e) The allegations were only against the Directors of the Company and the main Company has not been joined as an Accused and therefore, the criminal proceeding only against the Directors of the Company is not maintainable.
- f) There was a margin difference between the purported manufacturing cost of turbines and rates quoted by Company.

➤ **ARGUMENTS OF THE RESPONDENTS:-**

The Respondents in the present case made the following submissions:-

- a) The Appellants were having a malafide intention to dupe the government with the huge public money.

- b) Although the proceedings had a civil nature does not mean that no criminality exists.
- c) The Appellants were naturally in charge of management and administration and therefore, are vicariously liable for the acts of the Company.

➤ **JUDGMENT:-**

The Hon'ble Supreme Court made the following observations:-

- a) Bare reading of the FIR and chargesheet nowhere shows that there was a fraudulent and dishonest intention to cheat the government from the very beginning of the transaction. It was further observed that in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out.
- b) There were no specific allegations and averments in the FIR/chargesheet that the Appellants were in-charge of administration and management of the Company and thereby, vicariously liable.
- c) The main allegations of the Complainant were against the

Company. However, the Company was not a party to the said Criminal Complaint & there were no specific allegations against the Appellants so as to constitute the vicarious liability.

- d) The FIR was lodged in the year 2000 and the chargesheet was submitted on 28.5.2004. However, 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 chargesheet.
- e) Even after the expiry of defect liability period, the Appellants replaced three turbines in the year 2000 and therefore, no ingredients of Section 420 IPC are fulfilled.

On the basis of above said observations, the Hon'ble Supreme Court had quashed the impugned FIR as well as the chargesheet.

➤ **KEY TAKEAWAYS**

- a) The Criminal Complaint/FIR shall contain specific averments to show that since the beginning of the very transaction, the intention of the Accused was to cheat and play fraud.
- b) In order to make a case against the Directors of the Company, it has been

time and again reiterated by the Hon'ble Supreme Court in numerous decisions that there should be specific averments stating that the said Directors are handling and managing the day to day affairs of the Company.

- c) One of the frequent blunders committed by the parties is that they do not array the Company as an Accused in their Complaint/FIR. This Judgment clearly settles the position of law that in respect of non-array of the Company in the Complaint/FIR, the Complaint against the Directors is bad in law as the Directors only have vicarious liability for the Company.

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The present Note intends to provide brief and general information on the above mentioned subject & in no manner provides exhaustive details on the same. This document shall not be construed as a legal advise & further, shall not form as a base to take any decision without seeking proper legal advise from us. We shall not be responsible for whatsoever sustained by any person relying on this material.

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