IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 10.07.2025
Pronounced on: 14.08.2025

CRM(M) No.729/2024
c/w
CRM(M) No.721/2024

RAMAN PURI
HINDUSTAN CONSTRUCTION COMPANY LTD.

... PETITIONER(S)

Through: - Mr. Z. A. Shah, Sr. Advocate, with
Mr. Arif Sikandar, Advocate (in CRM(M) No.721/2024)
Mr. Syed Faisal Qadiri, Sr. Advocate, with
Mr. Salih Pirzada, Advocate (in CRM(M) No.729/2024)

Vs.

SENIOR SUPERINTENDENT OF POLICE AND OTHERS ...RESPONDENT(S)

Through:- Mr. Mohsin Qadiri, Sr. AAG, with
Ms. Nadiya Abdullah, Assisting Counsel, vice

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of this common judgment, afore-titled two petitions filed under Section 528 of BNSS challenging FIR No.23/2024 for offences under Section 5(1)(d) read with 5(2) of J&K Prevention of Corruption Act [for short "the PC Act"] and Section 120-B of RPC registered with Police Station Anti-Corruption Bureau, Srinagar, are proposed to be disposed of. Petition bearing CRM(M) No.721/2024 has been filed by M/S Hindustan Construction Company Ltd whereas petition bearing

CRM(M) No.729/2024 has been filed by Shri Raman Puri, retired Chief Engineer.

2) As per the impugned FIR, communication dated 15.09.2023 along with a communication from the office of Advocate General, J&K, relating to award of payments in respect to construction of Mughal Road from Bafliaz to Shopian Pulwama was received by the respondent Investigating Agency. Vide the said communication, it was conveyed that Arbitral Tribunal has passed an award to the tune of Rs.21,52,66,414/ on account of principal sum along with interest to the tune of Rs.11,27,40,624/ against which the State has filed a petition under Section 34 of the Arbitration and Conciliation Act. It was further conveyed that during pendency of the case, when the matter was argued by the learned Advocate General before the High Court, it was noticed that the claimant company has based its entire claim upon a letter dated 18.10.2014 wherein the then Chief Engineer purportedly had admitted the claims of the company which was controverted by the Department. It was further conveyed to the respondent Investigating Agency that the matter involves serious financial stake resulting in huge loss to the government exchequer.

3) The respondent Investigating Agency conducted a preliminary verification and during the course of verification, it came to the fore that on 15.03.2005, tenders for construction of Mughal Road were floated through Joint Commissioner, Works/Chief Engineer, Mughal Road Project, PWD(R&B) Department and after following due procedure, the work for the an estimated amount of Rs.2.14,40,00,000/ was allotted to M/S Hindustan Construction Company Ltd. after approval/recommendation of the State Contract Committee. Accordingly, an agreement to this effect was executed vide agreement No.61-PW(R&B) of 2006 on 06.02.2026, wherein the date of commencement of works was mentioned as 01.03.2006 and the date of completion was fixed as 36 months i.e. 28.02.2009. It was also found that a supplementary agreement was drawn on 25.01.2010 for an estimated amount of Rs.126.64 crores with the date of completion as 31.03.2011. The extension of time in completion of the project was granted upto 15.02.2012. It was also found that when the petitioner company could not complete the project within the prescribed time limit, it raised the issue with regard to grant of extension of time for its reference to the Arbitrator and, accordingly, the matter was referred to the Arbitral Tribunal.

4) During verification, it was revealed that the critical document, on the basis of which award for claim No.(iii)was granted by the Arbitral Tribunal, was a communication dated 18.10.2014 of M/S Hindustan Construction Company upon which the then Chief Engineer, Shri Raman Puri, had recorded his remarks pertaining to certain conditions which were bearing his signatures. It was found that Shri Raman Puri was interacting/meeting with the representatives of M/S Hindustan Construction Company Ltd. outside his office. The aforesaid communication was treated as mutual acceptance of conditions contained therein by the Arbitral Tribunal. It was found that these mutual conditions were casually processed without following codal procedure with an intention to extract undue benefit in the form of claim No.(iii) which was conceived by drafting the conditions clandestinely in violation of the terms of the agreement. It was also found that the then Chief Engineer in connivance with M/S Hindustan Construction Company Ltd. took undue advantage of prior escalation clause and signed a letter which was drafted on the letter head of the Construction Company thereby agreeing to mutual conditions including acceptance of prior escalation for the period with effect from 15.02.2012 to 31.12.2012, which resulted in arbitration award of Rs.21.52 crores plus 11.27 crores in favour of M/S Hindustan Construction Company Ltd. and corresponding loss to the government exchequer.

5) It is alleged in the impugned FIR that by acting in the aforesaid manner, the then Chief Engineer, PWD(R&B), Shri Raman Puri (petitioner in CRM(M) No.729/2024), by abuse of his official position and in conspiracy with beneficiary company, exceeded his power/competence and accepted the terms and conditions of the contractor M/S Hindustan Construction Company Ltd. (petitioner in CRM(M) No.721/2024) which formed basis of the award dated 28.03.2019 passed by the Arbitral Tribunal thereby conferring undue benefit to the company with extension of time for which no prior order/communication was issued. It is alleged that by this action of petitioner Raman Puri, the State was prevented from imposition of liquidated damages to the tune of Rs.54.00 crores on the petitioner company for its inability to complete the projected within the stipulated time. Thus, according to the Investigating Agency, offences under Section 5(1)(d) read with Section 5(2)of the J&K PC Act and Section120-B of RPC stand established against petitioner Raman Puri, the then Chief Engineer, Mughal Road Project, PWD(R&B) and petitioner-M/s Hindustan Construction Company Limited.

6) The petitioner M/S Hindustan Construction Company Ltd. has challenged the impugned FIR and the proceedings emanating therefrom on the grounds that the material on record establishes that there was no conspiracy between the petitioner company and the Chief Engineer. It has been further contended that the respondent Investigating Agency has suppressed the material documents, which, in fact, prove that there was no conspiracy between the petitioner company and the Chief Engineer. It has been further contended that the issues raised by the respondent Investigating Agency in the impugned FIR were adjudicated upon by the Arbitral Tribunal, whereafter an arbitral award came to be passed in favour of the petitioner company, which is presently under challenge before the Court of learned Principal District Judge, Srinagar. According to the petitioner company, lodging of the impugned FIR is nothing but an abuse of process of law as respondent No.2-Department is trying to wriggle out of the arbitral award passed against it. It has been contended that no undue benefit has accrued to the petitioner company on the basis of the mutually agreed terms contained in letter dated 18.10.2014.

7) It has been further contended that the aforesaid letter was within the knowledge of respondent No.2 (the complainant) ever-since the year 2015 but in spite of this, it did not lodge any complaint with regard to authenticity of the said letter during all these years and it is only after having suffered the arbitral award, that communication dated 15.09.2023 came to be addressed by it to the respondent Investigating Agency. It has been contended that the object of lodging impugned FIR is only to scuttle the arbitration proceedings which are pending at the stage of challenge under Section 34 of Arbitration and Conciliation Act.

8) It has also been contended that the contentions raised in the impugned FIR have been adjudicated upon by the learned Arbitral Tribunal and, as such, the respondent Investigating Agency cannot sit over the award passed by the learned Arbitral Tribunal. Finally, it has been contended that the dispute which is subject matter of the impugned FIR is purely of civil nature and that there is delay of nine years in lodging the complaint by respondent No.2 which has not been satisfactorily explained and, therefore, the impugned FIR and the proceedings emanating therefrom deserve to be quashed.

9) Petitioner Raman Puri has, besides challenging the impugned FIR and the proceedings emanating therefrom on the aforesaid grounds, further contended that the terms and conditions contained in communication dated 18.10.2014 have not been refuted by the Government during arbitration proceedings and vide communication dated 21.09.2016, the Government has only disputed point No.(ii) contained in communication dated 18.10.2014. It has been further contended that the entire discussion on record was within the knowledge of the Government and petitioner Raman Puri had conveyed the same to the Government vide his communication dated 19.05.2015.

10) The respondents in their reply to the petitions, besides narrating the allegations made in the impugned FIR, have submitted that that during the course of investigation, the record pertaining to verification conducted, on the basis of which impugned FIR was lodged, was seized. It has been submitted that the statements of the witnesses are to be recorded and the records are to be sought from the petitioner company and the Presiding Arbitrator. It has been contended that the final extension of time was granted to the petitioner company upto 15.02.2012 and despite there being no further extension, the petitioner company continued to execute the work upto 31.12.2012. Thus, there was a delay of approximately ten months in execution of the work. It has been submitted that as per the terms and conditions of the contract, it was the responsibility of the department to assess the delay and implement the penalties in the form of liquidated damages for the period beyond 15.02.2012. However, no such penalty was enforced on account of the terms contained in letter dated 18.10.2014. It has been submitted that the said letter raises concerns about its legitimacy. It has been further submitted that until 19.05.2015, when petitioner Raman Puri addressed his communication to the government, no formal response or clarification was sought by him and this inaction of the department allowed the petitioner company to rely on communication dated 18.10.2014 and it pursued the arbitration proceedings by misrepresentation of facts.

11) According to the respondents, the scope of the criminal investigation initiated against the petitioners is beyond the scope and ambit of arbitration and because cognizable offences are, prima facie, disclosed against the petitioners, as such, the criminal proceedings have to go ahead. It has been contended that the criminal proceedings operate in a separate domain and are not barred merely because there is a civil suit or arbitration proceedings going on. It has also been contended that the findings of the Arbitral Tribunal are not determinative of criminal liability and, as such, the respondent Investigating Agency cannot be precluded from undertaking investigation of the case.

12) Regarding delay in lodging the FIR, the respondent Investigating Agency has submitted that it was made aware about the allegations of criminal misconduct only on 15.09.2023 when it received vital documents and information from the respondent department and immediately thereafter, verification of the allegations was undertaken, thus, there is no delay in lodging of the FIR. It has been contended that petitioner Raman Puri was not having authority and competence to enter into negotiations with the construction company so as to alter the terms and conditions of the contract and it is only with the approval of the competent authority that he could have entered into negotiations for altering the terms and conditions of the contract. Therefore, petitioner Raman

Puri has clearly abused his official position with a view to confer undue benefit upon the petitioner company.

13) I have heard learned counsel for the parties and perused the material on record.

14) The dispute, which has given rise to the present proceedings, owes its origin to contract agreement dated 08.02.2006 executed between the petitioner company and respondent PWD(R&B) Department for construction of Mughal Road from Bafliaz District Poonch to Shopian (Pulwama). The original date of completion of the project was 28.02.2009. It appears that a supplementary agreement was executed between the parties in March, 2009, whereby the date of completion was extended to 31.03.2011. Another extension was granted for completion of the project upto 15.02.2012. However, the project was completed only on 31.12.2012. Regarding extension of time upto 15.02.2012, it appears that the petitioner company had filed an arbitration claim for damages on account of alleged delays caused by the employer for an amount of Rs.103.92 crores.

15) The record shows that at this stage, communication dated 18.10.2014 was addressed by the petitioner company to the Chief Engineer of the project. This communication is the critical document, on the basis of which the present proceedings have originated. The contents of the said communication are reproduced as under:

> The Chief Engineer
> Mughal Road Project
> Lalmandi, Srinagar
>
> Sub: Construction of Mughal Road from Bafliaz (Poonch) to Shopian (Pulwama): Defect Liability Certificate - reg
>
> Ref Your letter no. CEMRP/1228-32 dated 17.10.2014
>
> Dear Sir,
>
> At the outset we take this opportunity to thank you for the issue of the Defect Liability Certificate and release of the bank guarantees which marks a significant event with regard to the satisfactory closure of the project.
>
> However, we would like to clarify that the issue of Defect Liability Certificate was consequent to the discussions mutually agreed between the Contractor and Employer with the following understanding:
>
> 1. The whole of the works shall be treated as completed with effect from 31.12.2012
> 2. The escalation payment for the works executed beyond 15.02.2012 shall be regulated as per the indices prevailing during 15.02.2012.
> 3. The employer shall not resort to invocation of liquidated damages clause for the period between 15.02.2012 to 31. 12. 2012.
> 4. The Contractor will not pursue his claim for extension of time (which is subject matter of Arbitration) in view of point no. 3 above.
> 5. The Contractor shall also not pursue the claim for extra cost for the period from 15.02.2012 to 31.12. 2012.
>
> The aforesaid understanding and agreement between the Contractor and Employer is placed on recordfor the sake of good order and record to ensure that the Contractor and Employer are in a position to give effect to the mutually agreed suggestions for closure of the project
>
> Thanking you and assuring you all our cooperation.
>
> Yours faithfully.
> For Hindustan Construction Co. Ltd
>
> Sunil Bagga
> Project In-charge
> Copy
>
> 1. The Superintending Engineer, Mughal Road Project, Lalmandi, Srinagar.
> 2 The Executive Engineer, Mughal Road Division. Shopian.
> 3 The Executive Engineer, Mughal Road Division, Bafliaz.
>
> **"The conditions S.No. 1 o 5 agreed by the Deptt"**

(Endorsement in the handwriting of Chief Engineer)

Sd/
Chief Engineer Raman Puri
18.10.2014

16) In terms of the aforesaid communication, petitioner Raman Puri had agreed to conditions at serial Nos.1 to 5 on behalf of the department. As is clear from these conditions, the department had treated the works to be completed with effect from 31.12.2012, the contractor had agreed to receive payment for the works executed even beyond 15.02.2012 on the basis of indices prevailing during 15.02.2012, meaning thereby that the petitioner company had given up its claim in respect of price escalation beyond 15.02.2012. As per condition No.3, the department had given up its claim regarding liquidated damages between 15.02.212 to 31.12.2012. As per condition No.4, the petitioner company had agreed to forego its claim which was subject matter of arbitration and it had also agreed to give up its claim for extra cost for the period between 15.02.2012 to 31.12.2012. From this it is clear that the petitioner company and the Chief Engineer had mutually agreed to certain conditions, some of which were beneficial to the contractor and the others of which were beneficial to the department.

17) During the arbitration proceedings, the petitioner company while projecting its claims against the respondent department placed reliance upon the aforesaid communication dated 18.10.2014. A perusal of the arbitral award passed by the Arbitral Tribunal reveals that while considering the claims of the petitioner company and the statement of defence given by the department, the learned Arbitral Tribunal framed the following issues:

> Issue No.1: Whether it is factually correct that discussions took place between the claimant and the respondent's Chief Engineer and both had agreed to certain conditions?
>
> Issue No.2: Whether any of the mutually agreed terms were bad in law?
>
> Issue No.3: What was the agreement between the parties with respect to the price adjustment/price escalation?
>
> Issue No.4: Whether the respondent has estopped from acting otherwise from that what was agreed to mutually? If yes, then whether the doctrine of promissory estoppel will act against the respondent?

18) While deciding issue No.1, the Arbitral Tribunal concluded that discussions had taken place between the claimant and the Chief Engineer and that both had agreed to the terms contained in communication dated 18.10.2014. While deciding issue No.2 quoted above, the Arbitral Tribunal concluded that the agreement reached between the parties vide communication dated 18.10.2014 is not vague, unfeasible or against the law. The Arbitral Tribunal while deciding issue No.3 concluded that there was an agreement between the parties with respect to price adjustment payment and that the price adjustment payment was payable to the petitioner company till 31.12.2012. The award of the Arbitrator further reveals that while deciding issue No.4, the Tribunal had opined that a promise enforceable by law was made by the respondent department to the claimant in terms of letter dated 18.10.2014 and even if the said promise was made without formal consideration, the claimant had relied upon the said promise and the respondent department backed out of the said promise in respect of price adjustment/price escalation payments.

19) It is pertinent to mention here that in the statement of claims put up by the petitioner company before the Arbitral Tribunal, a specific mention was made about alleged mutually agreed terms contained in communication dated 18.10.2014 in paras (3.8) to (3.10) of the claim petition, which are reproduced as under:

> ***<u>3.8</u>**) Later, the Claimant vide letter no. 2263 dated 18.10.2014 had placed on record the mutually agreed conditions between the Claimant and Respondent for closure of the project. In doing so, the Respondent was fully aware that the Claimant had given up some of his claims/extended numbers of concessions in respect of the financial benefits to the Respondent. The Respondent had also given its acceptance to mutually agreed conditions in the said letter dated 18.10.2014. The relevant excerpt from the agreement is reproduced below:*

__1.__) The whole of the works shall be treated as completed with effect from 31.12.2012.

***2.**) The escalation payment for the works executed beyond 15.02.2012 shall be regulated as per the indices prevailing during 15.02.2012*

__3.__) The Employer shall not resort to invocation of liquidated damages clause for the period between 15.02.2012 to 31.12.2012.

__4.)__ The Claimant will not pursue his claim for extension of time (which is subject matter of Arbitration) in view of point no. 3 above.

__5.)__ The Claimant shall also not pursue the claim for extra cost for the period from 15.02.2012 to 31.12.2012.

…..The conditions Sl. No. 1 to 5 agreed by the Dept. (C.E.)"

A copy of the Claimant's letter no. 2263 dated 18.10.2014 is enclosed herewith as Exhibit C-3/3.

__3.9__) Thus, the Claimant had given up/agreed to forego his entitlements under point no. 2, 4 & 5. The conditions agreed upon were subject to the Respondent's acceptance on point no. 1, 2 & 3, which was agreed to by the Respondent on 18.10.2014.

__3.10.__) From the above agreement, it is evident that the issue of price adjustment was settled between the parties in following manner:-

i. The escalation payment for the works executed beyond 15.02.2015 shall be regulated as per the indices prevailing during 15.02.2012, and

ii. In view of the agreement on point no. 1, 3, 4 & 5, it is settled that the issue of extension of time till 31.12.2012 is no longer a dispute. Accordingly, the price adjustment is payable till 31.12.2012.

20) In answer to the aforesaid assertions of the petitioner company, the respondent department, in its statement of defence, responded in the following manner:

3.7 to 3.9*) In reply to para 3.7 to 3.9 it is submitted here that there has been no mutual agreement alleged. There nothing on record to suggest that there has been any prior meeting of minds on the subject which has been given a formal shape in the shape of formal agreement. The communication placed record by on the claimant cannot be construed as that of an agreement any legal having force. The communication is not part of the contract. In fact, the farce of respondent having rescinded from the so called mutually agreed terms as being projected by the claimant, is only an anxious attempt by the claimant to raise such claims which are otherwise barred by law, in addition to being in complete derogation from the terms of contract agreement.*

3.10 to 3.21*) In reply to the averments made in it is submitted here the paras 3.10 to 3.21, that there being no agreement which is legal and in accordance with law, claimant cannot claim that there is an issue of price adjustment which is required to be settled between the parties. The stand taken by the claimant contrary to the terms and conditions under of the contract All as per the It is law is not permissible. admissible price variations/escalation have been paid to the claimant formula and indices applicable. submitted here that revised rates cannot be made applicable to the works completed and paid before publication of rates with base year of 2004-2005 became effective. It is specifically denied that the respondent had certified the price adjustments as per the revised index. The objections raised by the claimant cannot be taken note of and were found without any merit as the payments were made strictly in accordance with the terms and conditions. of contract as well as the price adjustment due at the time of payment.*

21) From the above, it is clear that the respondent department had raised a specific plea before the learned

Arbitrator that there was no formal agreement between the parties whereby the conditions contained in letter dated 18.10.2014 were accepted and that the said communication is not part of the contract. In fact, the respondent department had disputed the legality of the said communication. Therefore, the Arbitral Tribunal was seized of the issue as to whether communication dated 18.10.2014 has been formulated by a competent person or whether the terms and conditions contained therein are binding upon the respondent department. After considering these issues, the learned Arbitral Tribunal came to the conclusions as narrated hereinbefore.

22) The respondent department, while challenging the arbitral award dated 28.03.2019 by way of a petition under Section 34 of the J&K Arbitration and Conciliation Act, 1977 has specifically raised the contention that letter dated 18.10.2014 has no legal value on which the claimant could have relied upon. It has also been contended by the respondent department in its petition u/s 34 of the Act of 1997 that the Chief Engineer could not have accepted/altered the conditions of contract of his own and that the contents of the communication are contrary to the terms and conditions of the contract. The respondent department has gone one to contend that the said letter is in-effective, in-operational and not binding upon it.

23) From the above narration of the facts, which are not in dispute, it is clear that legality and validity of letter dated 18.10.2014 was subject matter of adjudication before the Arbitral Tribunal and it is presently subject matter of adjudication before the Court in proceedings under Section 34 of the Arbitration and Conciliation Act. The question that arises for determination is as to whether it would be open to the respondent Investigating Agency to launch criminal prosecution against the petitioners on the basis of the same very letter.

24) The legal position on the aforesaid aspect has been deliberated upon by the Supreme Court and various High Courts of the Country in a number of precedents. The Supreme Court in the case of **Paramjeet Batra vs. State of Uttarakhand,** (2013) 11 SCC 673, has held that, while a complaint disclosing civil transaction may also have a criminal texture to it yet the High Court has to see whether a dispute, which is essentially of a civil nature, has been given a cloak of criminal offence. In this regard it would be apt to refer to the observations made by the Supreme Court in para (12) of the said judgment, which read as under:

> *"12.While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."*

25) A similar view has been taken by the Supreme Court in the case of **Usha Chakraborty and Anr. vs. State of West Bengal and Anr,** 2023 SCC OnLine SC 90.

26) In **Sarabjit Kaur vs. State of Punjab and Anr,** (2023) 5 SCC 360, the Supreme Court, while drawing a distinction between an offence of cheating and a mere breach of contractual obligation, held that every breach of contract would not give rise to the offence of cheating and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

27) From the foregoing analysis of law on the subject, it is clear that a particular set of facts can give rise to both civil consequences as well as a criminal offence. Therefore, a duty is cast upon the High Court while exercising its powers under Section 528 of BNSS to ascertain from the allegations made in the FIR/complaint or the material collected by the Investigating Agency as to whether criminal proceedings have been initiated with an oblique motive so as to give a criminal colour to a purely civil dispute. If it is found that from the material on record a particular fact situation would give rise to both remedies under criminal law as well as in civil law, then both the remedies can be pursued by the aggrieved person as the object of the criminal law is to punish the offender who commits an offence whereas the object of the civil law remedy is to provide monetary compensation to the person wronged.

28) With the aforesaid legal position in mind, let us now advert to the facts of the present case. As has been already noted, the bone of contention between the parties is the communication dated 18.10.2014. While the respondent department claims that petitioner Raman Puri was not competent to vary the terms of the contract unless he had the approval of the competent authority, the petitioner company claims that the Chief Engineer was the authorized signatory and had, in fact, signed the contract on behalf of the government, as such, he was authorized to execute the aforesaid letter. It is also the case of the petitioner company that the respondent department has raised objection only with respect to one of the agreed terms contained in letter dated 18.10.2014 and they have not disputed the authenticity of the said communication as a whole.

29) All the aforesaid rival contentions that have been raised by the parties are also the subject matter of arbitral award and are presently subject matter of adjudication in a petition under Section 34 of the Arbitration and Conciliation Act, which is pending before the learned District Judge. The allegation made in the impugned FIR that petitioner Raman Puri had no authority to vary the terms and conditions of the contract as contained in letter dated 18.10.2014, is a matter of adjudication in the arbitration proceedings. Similarly, the question whether the respondent department was entitled to claim liquidated damages from the petitioner company was also a subject matter of adjudication before the Arbitral Tribunal and is now subject matter of arbitration before the District Judge in Section 34 proceedings.

30) If the respondent Investigating Agency is allowed to investigate the aforesaid aspects of the matter, it would amount to permitting the said agency to sit in appeal over the findings of the Arbitral Tribunal, which is impermissible in law. If the respondent Investigating

Agency is allowed to proceed with the investigation of the case, there may be a situation where ultimately the arbitral proceedings may end up in a judgment in favour of the petitioner company but still it will have to face the criminal prosecution despite its stand having been vindicated by the courts at various levels. If the result of the arbitration proceedings goes against the petitioner company, in that case there would be no loss to the State exchequer on account of execution of letter dated 18.10.2014 by petitioner Raman Puri as the petitioner company would not be entitled to any compensation from the department and the department would be entitled to recover liquidated damages from the petitioner company provided the same is permissible under the terms of the agreement. Thus, in both the eventualities, no offence can be stated to have been made out against the petitioner and, as such, the petitioners cannot be prosecuted for a criminal offence in respect of a matter which appears to be purely civil in nature.

31) The Supreme Court in the case of **Prakash Aggarwal vs Ganesh Benzoplast Limited and another,** (2023) 20 SCC 323, while being seized of an issue of somewhat similar nature, dealt with the legal position on the said issue in an elaborate manner. In the said case, the

Supreme Court while agreeing with the proposition that where a complainant participates in the arbitration proceedings and an arbitral award has been passed which was under challenge under Section 34 of the Arbitration and Conciliation Act at the instance of the complainant, continuation of the criminal proceedings would amount to abuse of process of law, observed as under:

> ***35.*** *It is thus clear that Respondent 1 complainant was having knowledge of the sale of shares in the year 2001 itself when the arbitration proceedings were initiated. In the complaint, it is alleged that, during the pendency of the arbitration proceedings, Respondent 1 complainant became suspicious of the illegalities committed by the accused persons/appellants and sought for certain information. However, since the accused persons/appellants did not give the information, Respondent 1 complainant applied to Bombay Stock Exchange (for short "BSE") and National Stock Exchange (for short "NSE") in the year 2006 for details of sale of its shares by the accused persons/appellants on 24-8-2001, 31-8-2001, 3-9-2001 and 12-9-2001. It is stated in the complaint that only thereafter, in the year 2006, Respondent 1 complainant came to know of the fact that most of the shares were sold at the closing time of the share market and at the lowest price of the day. It is averred that, only at that point in time, Respondent 1 complainant came to know that the shares were sold by the accused persons/appellants to their own companies.*
>
> ***36.*** *It could thus be seen that, though Respondent 1 complainant was aware about the sale of shares as early in the year 2001, he did nothing till the year 2006 when, according to it, it had applied to BSE and NSE for details. Even after the year 2006, Respondent 1 complainant waited till the year 2011 to lodge the complaint. Though, it is sought to be urged by Respondent 1 complainant before us that it came to know about the fraudulent act of the accused persons/appellants in the year 2009, which gave a cause of action to it to file the complaint, there is no averment to that effect in the complaint.*

> ***37.*** *Insofar as the other contention that the shares were sold at a lesser price than the market price is concerned, there is no averment in the complaint in that regard. In any case, the transactions have been made through the BSE and NSE. As such, the contention in that regard is without substance. In any case, a specific finding has been given by the learned arbitrator in that regard. As already informed to us, the said arbitral award is under challenge in the proceedings under Section 34 of the Arbitration Act. We do not wish to observe anything about the merits or demerits of the said award as the competent court is seized of the same.*
>
> ***38.*** *However, it would clearly reveal that Respondent 1 complainant has attempted to turn a purely contractual dispute between the parties into a criminal case. Not only that, there is an inordinate delay in lodging the complaint. Though Respondent 1 complainant was aware about the sale of the shares in the year 2001, it did not do anything except filing an application before the learned arbitrator. According to Respondent 1 complainant, it received the information from the BSE and NSE in the year 2006, which fortified its suspicion about the fraud being played. Even thereafter, for a period of 5 years, it was silent and filed the complaint only in the year 2011. As already stated hereinabove, though an attempt was made at the time of hearing to contend that it has only filed the complaint after it came to know about the fraud in the year 2009, there is no averment to that effect in the complaint.*
>
> ***39.*** *We find that the complaint, taken at its face value, does not disclose that any of the ingredients of the offence complained of have been made out. In the totality of the circumstances, we find that the present complaint is nothing else but an abuse of process of law. We, therefore, find that the appeals deserve to be allowed.*

32) From the foregoing analysis of law on the subject, it is clear that once the allegations made in the complaint/FIR have been adjudicated upon by way of an arbitral award, which is under challenge in proceedings under Section 34 of the Arbitration and Conciliation Act, the attempt of the respondent department to turn a purely contractual dispute into a criminal case cannot be sustained.

33) There is yet another aspect of the matter which is required to be noticed. The letter, which is subject matter of controversy, has been issued on 18.10.2014. Admittedly, petitioner Raman Puri had sought clarification from the department about the said letter on 19.05.2015 and thereafter, during arbitration proceedings, existence of letter dated 18.10.2014 had come to the notice of the respondent department and, in fact, they responded to the same in their statement of defence which they filed before the learned Arbitral Tribunal on 28.12.2017. The respondent department suffered the arbitral award after the legality and validity of the said letter was deliberated upon and determined by the Arbitral Tribunal vide its award dated 28.03.2019. All along during this period, the respondent department slept over the matter and did not choose to file any complaint with regard to letter dated 18.10.2014 before any authority including the respondent Investigating Agency. It seems that the respondent department, with a view to avoid the arbitral award which had been passed against it, has, on the basis of the letter addressed by the learned Advocate Genera, proceeded to lodge the impugned FIR, which, in the facts and circumstances of the case, appears to be nothing but a ploy to create a defence against the arbitral award.

34) The Supreme Court has, in **Prakash Agarwal's** case (supra), while dealing with somewhat similar circumstances, proceeded to quash the criminal proceedings. The effect of delayed lodging of the complaint has been dealt with by the Supreme Court paras (35) to (37) of the said judgment, which have already been reproduced hereinbefore.

35) When we apply the aforesaid legal position to the facts of the present case, it is clear that the respondent department has slept over the matter and proceeded to lodge the complaint after nine years of issuance of the disputed letter dated 18.10.2014, when during all these years the department was having knowledge about the same. It is not a case where the respondent department all of a sudden came to know about the existence of letter dated 18.10.2014 when the learned Advocate General addressed a communication to the department in the year 2023 but it is a case where the said communication was subject matter of adjudication before the Arbitral Tribunal and the respondent department all along knew about its existence. No explanation has been tendered by the respondent department for not lodging the FIR during all these nine years. The explanation tendered by the respondent Investigating Agency that the matter was brought to its notice only in the year 2023, therefore, there is no delay in lodging of the FIR, cannot come to the rescue of the complainant who has slept over the matter for about nine long years. The only inference that can be drawn from the unexplained delay in lodging the FIR is that the respondent department is trying to create a defence against the claim of the petitioner company which is under adjudication in the proceedings under Section 34 of the Arbitration and Conciliation Act.

36) For what has been discussed hereinbefore, this Court has no doubt in holding that the impugned criminal proceedings have been lodged against the petitioners at the instance of respondent department only with an oblique motive of creating a defence to the arbitral award. The dispute between the petitioner company and the respondent department is purely of a civil nature having no criminal texture to it and, as such, the continuation of criminal proceedings against the petitioners, in these circumstances, would be nothing but an abuse of process of law.

37) Accordingly, both the petitions are allowed and the impugned FIR and the proceedings emanating therefrom are quashed.

(Sanjay Dhar)
Judge

Srinagar,
14.08.2025
"Bhat Altaf-Secy"

Whether the judgment is speaking: YES

Whether the judgment is reportable: YES