T. Kannan and Another Vs. Piramal Diagnostics Services Private Limited now known as SRL Diagnostics Private Ltd. and Another

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SooperKanoon Citation : sooperkanoon.com/1190116

Court : Chennai

Decided On : Jun-29-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P.Nos. 9414 of 2016, Crl.M.P.No. 4857 of 2016 & Crl.O.P.No. 23056 of 2012

Appellant : T. Kannan and Another

Respondent : Piramal Diagnostics Services Private Limited now known as SRL Diagnostics Private Ltd. and Another

Judgement :

(Prayer in Crl.O.P. No.9914 of 2016: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and set aside the order passed in Crl.M.P. No.660/2016 in C.C. No.373/2012 passed by the V Metropolitan Magistrate, Egmore, Chennai.

Crl.O.P. No.23056 of 2012: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to C.C. No.373 of 2012 on the file of the V Metropolitan Magistrate Court and quash the same.)

Common Order:

1. For the sake of convenience, the parties will be referred to as Piramal Diagnostics and Kannan.

2. While Crl.O.P. No.9414 of 2016 is filed seeking to call for the records and set aside the order passed in Crl.M.P. No.660/2016 in C.C. No.373/2012 passed by the V Metropolitan Magistrate, Egmore, Chennai, Crl.O.P. No.23056 of 2012 is filed to call for the records relating to C.C. No.373 of 2012 on the file of the V Metropolitan Magistrate Court and quash the same.

3. Kannan was the Sole Proprietor of a Diagnotics Centre by name Isotope Diagnostics in Chennai, which, Piramal Diagnostics, wanted to acquire and so, they entered into an agreement of purchase dated 01.06.2007, under which, Kannan agreed to sell Isotope Diagnostics for a total sale consideration of Rs.4.20 crores out of which Rs.2.52 crores was paid by Piramal Diagnostics to Kannan on 01.06.2007 under the said agreement and the balance amount of Rs.1.68 crores is due to Kannan. Contemporaneously, Piramal Diagnostics and Kannan entered into a consultancy agreement dated 01.06.2007 under which Kannan was appointed as Consultant for Piramal Diagnostics on payment of Rs.12 lakhs per annum and other perks. Thereafter, on 06.11.2007, Piramal Diagnostics and Kannan entered into a loan agreement, under which, Kannan was granted a personal loan of Rs.50 lakhs towards which liability, he appears to have given a cheque to Piramal Diagnostics for Rs.50 lakhs which was dishonoured. Therefore, Piramal Diagnostics has launched a prosecution against Kannan for an offence under Section 138 of the Negotiable Instruments Act, 1881, before the VII Metropolitan Magistrate, Dadar, Mumbai, which Kannan is facing.

4. While so, Kannan has lodged a private complaint against Piramal Diagnostics and its Directors in C.C. No.373 of 2012 before the V Metropolitan Magistrate, Egmore, Chennai, for offences under Section 406 and 420, IPC challenging which Piramal Diagnostics have filed Crl.O.P. No.23056 of 2012 to quash the prosecution.

5. In the meantime, Kannan has obtained a warrant of arrest against the Directors of Piramal Diagnostics for their non appearance before the V Metropolitan Magistrate, Egmore, Chennai, after receipt of summons. During the pendency of

the warrant, the Directors surrendered before the Court and the warrant was recalled by the V Metropolitan Magistrate, Egmore, Chennai by order dated 31.03.2016, challenging which, Kannan has filed Crl.O.P. No.9414 of 2016.

6. Heard Mr. S.S. Kumar, learned counsel for Kannan and Mr.S.Balasubramanian, learned counsel for Piramal Diagnostics.

7. In the private complaint filed by Kannan in C.C. No.373 of 2012 before the V Metropolitan Magistrate Court, Egmore, Chennai against Piramal Diagnostics, he has enclosed the copy of agreements dated 01.06.2007, loan agreement and also, Section 138 prosecution against him pending before the VII Metropolitan Magistrate Court in Mumbai. It appears that Kannan lodged a police complaint against Piramal Diagnostics alleging that they have cheated him by not paying a sum of Rs.1.68 crores that is due under the agreement dated 01.06.2007 and the FIR was closed by the Central Crime Branch as mistake of fact .

8. The question that falls for consideration of this Court is does the private complaint in C.C. No.373/2012 filed by Kannan attract the provisions of Section 406 and 420, IPC.

9. A thorough reading of the private complaint lodged by Kannan shows that the entire transaction is a civil dispute, which Kannan is attempting to give a criminal colour. Even according to Kannan, he entered into business acquisition agreement on 01.06.2007 to sell his laboratory to Piramal Diagnostics for a sum of Rs.4.20 crores and he received a sum of Rs.2.52 crores and the balance of Rs.1.68 crores was treated as deferred consideration.

10. It may be apposite to extract the relevant paragraph from the agreement dated 01.06.2007 that is relied on by Kannan himself, which is as under:

3.1.2 The remaining amount of Rs.1,68,00,000/- (Rs. One crore Sixty Eight Lakhs only) (deferred consideration) shall be payable to Mr. T. Kannan only if, the business coming the Chennai Pathology Division achieves a minimum Operating Profit of Rs.84,00,000/- (Rupees eighty four lakhs only) during the first commercial year.

3.1.3 In case the Operating Profit for the first commercial year is less than Rs.84,00,000/- (Rupees Eighty Four lakhs only), the consideration payable pursuant to Clause 3.1.2 shall be reduced by an amount equivalent to 5 times multiple of the difference between Rs.84,00,000/- (Rupees eighty four lakhs only) and the actual operating profits of the first commercial year.

Provided that no reduction from the deferred consideration of Rs.1,68,00,000/- (Rs. One crore sixty eight lakhs only) shall be made from the deferred consideration if the operating profits of the first commercial year is more than Rs.84,00,000/- (Rupees Eighty Four lakhs only).

By way of illustration, if the operating profits in the first commercial year is Rs.80,00,000/- (Rs. Eighty lakhs only) the deferred consideration payable to the seller will be reduced by Rs.20,00,000/- (Rupees Twenty lakhs only) and accordingly, the deferred consideration payable will be Rs.1,48,00,000/- (Rs. One crore forty eight lakhs only). For reference, the working is set out below:

Deferred consideration:

1,68,00,000 - [5 times (84,00,000 - 80,00,000)

1,68,00,000- [5 times (4,00,0000]

1,68,00,000 - 20,00,000

1,48,00,000

11. The agreement contains an arbitration clause as well, to refer any dispute arising under the agreement for arbitration. It is trite that a person can be prosecuted for offences under Sections 406 and 420, IPC, only if it is shown that he had guilty mind at inception. Mere failure to keep up contractual promise cannot attract Section 420 IPC. The judgment of the Supreme Court on this point are a legion. Suffice to quote the words of the Supreme Court in Indian Oil Corporation vs. NEPC India Ltd. and others, [(2006) 6 SCC 736] which read as under:

13. . . . While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases.

12. In the result, Crl.O.P. No.23056 of 2012 is allowed and the prosecution in C.C. No.373 of 2012 on the file of the V Metropolitan Magistrate, Egmore, Chennai, is hereby quashed. Connected Crl.M.P. is closed.

In the light of the above, the petition in Crl.O.P. No.9414 of 2016 has become infructuous and is accordingly dismissed.