



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

S.B. Criminal Misc(Pet.) No. 6068/2021

1. Alok Dhir S/o Shri L P Dhir, Aged About 61 Years, R/o C 361 Defence Colony, New Delhi.
2. Sasi Madathil S/o Shri Kondooli Raman Nair, Aged About 61 Years, working for gain at A 270 1st and 2nd Floor, Defence Colony, New Delhi.

----Petitioners

Versus

1. State Of Rajasthan, Through PP
2. Harendar Singh S/o Dilip Singh, R/o C 22 Vaishali Marg, Vaishali Nagar, Jaipur.

----Respondents



For Petitioner(s)

: Dr. Abhishek Manu Singhvi, Sr. Adv through VC
Mr. Sudhir Nandrajog, Sr. Adv
Mr. Ravi Bhansali, Sr. Adv
Mr. Vikas Balia
Mr. Saket Sikri
Mr. Ashu Kansal
Mr. Karan Batura
Mr. Nikhil Singhvi
Mr. Abhishek Mehta
Mr. Vipul Singhvi
Mr. Shubham Modi
Mr. Vipul Dharnia
Mr. Dhanesh Saraswat

For Respondent(s)

: Mr. Saransh Saini through VC
Mr. Devendra Mahalana
Mr. S.K. Bhati, PP
Mr. M.S. Bhati, PP

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
Order

09/11/2021

Heard learned counsel for the parties.

Mr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the petitioner submits that on identical facts, an FIR bearing No. 605/2017 was registered at Jaipur, wherein the same transaction was questioned and the Hon'ble Supreme Court vide its order dated 23.10.2017 passed in Civil Appeal No. 16929 of



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2017 arising out of SLP (C) No. 18195/2017 quashed the FIR No. 605/2017. Learned Senior Counsel submits that even in the present FIR No. 37/2015, the police after investigation has filed the negative final report stating therein that the case is of civil nature. He further contends that the chronology of events shows that the matter is of civil nature and the allegations levelled in the FIR have already been adjudicated right up to the Hon'ble Supreme Court and the same has been decided in their favour. Learned Senior Counsel further submits that the petitioners are ready and willing to appear before the trial court but the petitioners have been summoned by issuing the warrant of arrest straightaway without having been summoned earlier to this.

Matter requires consideration.

Issue notice to the respondents.

Mr. S.K. Bhati and Mr. M.S. Bhati, learned Public Prosecutor put in appearance on behalf of the respondent no.1. Mr. Saransh Saini, learned counsel accepts notice on behalf of respondent No.2. Service is, therefore, sufficient. The petitioners shall supply a copy of the petition along with requisite document to the counsel for the respondents within a period of three days from today.

Mr. Saini seeks four weeks' time to file reply to the petition.

Time prayed for is allowed.

Put up 13.12.2021.

I have considered the submissions made at Bar and also gone through the order dated 23.10.2017 passed by the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court while quashing the FIR No. 605/2017 held as under:-

"This being the case, we are surprised that an arbitration proceeding has been purported to be



started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that this effect of Section 14 (1) (a) is that the arbitration that has been instituted after the aforesaid moratorium is not est in law.

Mr. Jayant Bhushan, learned Senior Counsel, also informs us that criminal proceeding being F.I.R No. 0605 dated 06.08.2017 has been taken in a desperate attempt to see that the IRP does not continue with the proceeding under the Insolvency Code which are strictly time bound. We quash this proceeding."

From the overall facts and circumstances of the case, it is borne out that the present proceedings arise out of the FIR No. 37/2015, wherein, the allegations levelled against the petitioners are almost the same as that of the FIR No. 605/2017 and are related to the same transactions. It is noted that the proceedings arises out of the non-repayment of the loan of Rs. 25 Crores, the proceedings undertaken before the NCLT, NCLAT, and the Hon'ble Supreme Court appear to be of civil nature. Further in FIR No. 37/2015, the police after thorough investigation has given the negative final report.

Taking into account all the facts and circumstance of the case, it is ordered that in the meantime and till the next date of hearing, effect and operation of the order dated 12.02.2020 and consequential orders dated 31.03.2021 and 01.10.2021 passed by the Chief Judicial Magistrate, Jaisalmer shall remain stayed to the extent of summoning the petitioners through warrant of arrest.

(VINIT KUMAR MATHUR),J

233-Shahenshah/-