IN THE COURT OF THE DISTRICT JUDGE, ANGUL.

District-Angul.

Present :-

Sri A. K. Das, LL.B.,
District Judge, Angul.

Dated 26th July, 2019.

Criminal Complaint No.01/2018
(Arising out of Arbitration case No.8/2017)

M/S Quartz Infra and Engineering Pvt. Ltd.
(A company incorporated under companies Act, 1956, office At Groiund Floor, D.No.8-2-269/S/61, Sagar Society, Road No.2, Banjara Hills, Hyderabad, Telengana-500 034, Represented by Mr.Vegesna Subba Raju, aged about 51 years, Son of Satyanarayana Raju.

...**petitioner/complainant**

- Versus. -

1. M/s.Jindal India Thermal Power Ltd,(JITPL), a limited Company incorporated under companies Act, 1956, represented by lead Director Mr.Punit Gupta, Head Office at Plot No.12, Local Shopping Complex, Sector B-1, Vasanth Kunj, New Delhi- 110070, Factory Office at PO- Derang, PS-Kaniha, SD-Talcher, Dist-Angul, Odisha,-759117.

...Original Respondent/
accused / O.P

2. Alok Paliwal, Signatory on the Section 34 Application, aged about 42 years, Signatory on the Section 34 Application. M/S.Jindal India Thermal Power Ltd; (JITPL), At 12, Green Avenue, Sector-D3, Vasanth Kunj, New Delhi- 110070.

3. Ghanshyam Dass Singal, son of Jaikumar Singal, aged about 45 years, General Manager (Accounts)
   M/S.Jindal India Thermal Power Ltd; (JITPL), Office at Plot No.12, Local shopping Complex, Sector B-1, Vasanth Kunj, New Delhi -110070

4. Punit Gupta, Director
   M/S.Jindal India Thermal Power Ltd; (JITPL), Office at Plot No.12, Green Avenue, Sector-D3,
   Vasanth Kunj, New Delhi -110070

5. Shyam Jindal
   Promoter and Chairman of Board
   M/S.Jindal India Thermal Power Ltd;
   Office at Plot No.12, Local shopping Complex, Sector B-1, Vasanth Kunj, New Delhi -110070

6. Prakash Matai, son of Ram Matai, aged about 48 years, General Manager (Commercial/Purchasing/ Legal Coordinator of Derang Power Plant, Odisha.)
   M/S.Jindal India Thermal Power Ltd; (JITPL), Office at Plot No.12, Local shopping Complex, Sector B-1, Vasanth Kunj, New Delhi -110070

...**Accused persons/ Opposite parties.**

For the petitioner	...	Sri P.Nayak & Asso.,Adv.
For the Opp.Parties	...	Sri P.Panda & Asso.,Adv.

Date of Argument:-18.07.2019.
Date of Judgment:-26.07.2019.

JUDGMENT.

This criminal complaint is initiated by the DHR U/s.340 of Cr.P.C. alleging therein that the JDR who has filed the application u/s.34 of the Arbitration and Conciliation Act, 1996 challenging the award dtd.21.2.2017 passed by the learned Arbitrator awarding Rs.9,71,06,938/- in favour of the DHR, relied upon the forged and fabricated document in defending the claim of the DHR.

2) It was vehemently argued by the learned counsel for the DHR that the JDR used documents vide Annexure -A (document No.1), Annexure -B (document No.2) and Annexure- C (document No.3) before the Arbitral Tribunal in support of his claim. The contents of the document Nos.2 and 3 are contradictory to the contents of the document No.1 on which the JDR placed reliance. The DHR also accepted the document No.1 before the Arbitral Tribunal and disputed the other two documents on which the JDR placed reliance. The Arbitral Tribunal on perusal of the record and hearing the parties found the document Nos.2 and 3 as forged & fabricated and did not take into consideration those documents. The JDR in the present application also relied upon the document No.2 and 3 which are fabricated and forged document and thereby committed the offence U/s.191,192, 193 and 196. The JDR having purposefully and knowingly utilized the forged documents in the court, proceeding should be initiated against him u/s.340, Cr.P.C. and he should be punished according to law giving an opportunity of hearing to him. He submitted to make a preliminary inquiry in the matter and proceed against the JDR in this complaint.

3) Per contra the learned counsel for the JDR forcefully argued that the JDR did not utilize any forge documents before this court. The complaint initiated by the DHR is misconceived one with an intention to harass the JDR. As per the complaint story the offence was committed before the Arbitral Tribunal, but no application was filed before it to initiate a complaint against him(complainant). The initiation of proceeding u/s.340, Cr.P.C

before this court is a wholly misconceived one and is not legally maintainable. The DHR should have initiated this proceeding against the JDR in the court where the forged documents were utilized and forgery was committed. The JDR has not utilized any document which according to the DHR is forged one and is not liable u/s.340, Cr.P.C. as he did not commit any offence thereby. He submitted to dismiss the complaint.

4) Perused the record. The present complaint was initiated by the JDR on the specific allegation that the document Nos.2 and 3 on which the JDR relied are forged documents for which proceeding U/s.340 Cr.P.C. should be initiated against him. It was specifically alleged that the JDR also used the same document before the Arbitral Tribunal which were not accepted by the sole Arbitrator and were held to be forged documents. The JDR knowing well about forgery of documents repeated his mistake before this court and relied upon those documents. Now it is to be seen whether on the basis of this allegation criminal contempt can be initiated against the JDR U/s.340 of Cr.P.C. for the alleged commission of offence U/s.191,192,193 and 196.

4(A) Before, however, embarking on a discussion on the subject issue, a look at the provisions would be best suited at this juncture. The relevant provisions being sections 340 and 195, sub-section (1)(b) and sub-section (3) of the Code of Criminal Procedure. The provisions read thus:

"340 : Procedure in cases mentioned in section 195-

(1) When, upon an application made to is in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which

appears to have been committed in or in relation to a proceeding in that court or as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(Corresponding Law: Sec.476 (1) of Act V of 1898)

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.

(Corresponding Law : Sec.476-A of Act V of 1898)

(3) A complaint made under this section shall be signed-

(a) Where the court making the complaint is a High Court, by such officer of the court as the court may appoint:

(b) in any other case, by the Presiding Officer of the Court.

(Corresponding Law : Sec.476(1) Proviso of Act V of 1898)

(4) In this section, "Court" has the same meaning as in Section 195".

"Sec.195 : Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-

(1)No Court shall take cognizance -

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code 945 of 1860), namely, section 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (I) or sub-clause (ii)).

except on the complaint in writing of that court, or of some other court to which that court is subordinate.

(2)…………"

(3) " In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this Sections."

4(B). A conjoint reading of both the provisions makes it clear that the court is not bound to make a complaint regarding commission of an offence referred to Sec.195(b)(i), as the case is conditioned by the words, Court is of opinion that it is expedient in the interest of of justice. Such a course should be adopted only if the interest of justice requires not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into an offence in sec.195(b)(i) of Cr.P.C. This expediency will normally be judged by the court by weighing not the magnitude of inquiry suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider any expedient in the interest of justice to make a complaint. Even when the court form such an opinion it is not mandatory that the court should make a complaint. The sub-section has conferred a power on the court to do so. It does not mean the court should, as a matter of course, make a complaint. Once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding it's opinion. The preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

Reliance is placed on the decision in case of ***Pritish -vrs- State of Maharashtra and others reported in AIR 2002, SC 236, Raj Kishore Biswal -vrs- State of Orissa, 2008 (II), OLR 150***.

4(C). Keeping in mind the aforesaid position of law it is to be seen whether inquiry into the allegation regarding forgery of document should made u/s.340 CrP.C or not. On perusal of the award dtd.21.2.2017 I find that nowhere the learned Arbitrator has held that the documents No.2 and 3 on which JDR placed reliance were forge documents. Of course he did not accept those documents but the same cannot be the basis to hold an enquiry in the matter. At the cost of repetition, it is stated here that the commission of alleged forgery was made before the learned Arbitrator not before this court. So, there is no occasion for this court to hold an inquiry to find out whether on the materials available it is expedient in the interest of justice to enquire into the offence which appears to have been committed. The specific allegation of DHR is that the JDR utilized the forged documents before the Arbitrator. It is not his case that the forgery was committed in respect of the alleged document after filing of the same before the Arbitrator. So, section 195(1)(b)(i) Cr.P.C. is not a bar from the DHR to file an application before the appropriate court of law. Reliance is placed on the decision reported in (2005) 31 OCR (S.C.) 3 in the case of **Iqbal Singh Marwah and another -vrs- Meenakshi Marwah and another**.

5. On discussion of the facts and law as above, I am of the opinion that it is not expedient in the interest of justice to hold preliminary enquiry for the alleged commission of offence enumerated u/s.195(1)(b)(i) of Cr.P.C. Accordingly the petition U/s.340, Cr.P.C. filed by the DHR stands rejected and the criminal complaint is dismissed.

Pronounced the judgment in the open court, this, the 26th day of July, 2019 under my hand and seal of the court.

District Judge, Angul.

Judgment is prepared from my dictation
in computer process and corrected by me.

District Judge, Angul.