

Prasad RAO Criminal Petition Nos.16212 and 16580 of 2014 COMMON ORDER: In Criminal Petition No.16212 of 2014, the petitioners/Accused Nos. 1 to 4 and 6 and in Criminal Petition No. 16580 of 2014, the petitioner/A5 seek to quash the Proceedings in Crime No. 197 of 2014 on the file of S.H.O., Central Crime Station, Hyderabad under Section 482 Cr.P.C. 2) The second respondent/complainant filed private complaint before XII Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioners, which was referred to S.H.O., C.C.S, Hyderabad, under Section 156(3) Cr.P.C. and registered as a case in Cr.No. 197 of 2014 and investigated into. 3 a). The facts of the complaint are succinctly thus: The complaint's company is running the business of manufacture and import of Edible Oil i.e., Palm God, Sun Gold and Health Care etc., and it has been importing Edible Oil to Jawaharlal Nehru Port Trust, New Bombay. While so, the complainant's company purchased 999.992 MTs of Palm Oil, Edible grade vide bill No.SIN-BTM/JNP-607, dated 04-12-2013 under High Seas Sale Agreement, dated 13-12-2013 from M/s PEC Limited, New Delhi (A Government of India Enterprise). Out of it, the complainant sold 250 MTs of Palm Oil to the petitioner/A1 through A.5, who is a broker represented by A.6 and one Harish Takkar, vide High Seas Sale Agreement under Bill of Lading No.SIN-BTM/JNP-611 and 612. In terms of the said agreement, the title of the goods was to be transferred to the buyer by endorsing the negotiable set of documents in favour of buyer and duly handing it over to them. The aforesaid High Seas Sale Agreement was followed by High Seas Invoice dated 13.12.2013 raised by the complainant's company on A.1. b) The further case of the complainant is that it entered into agreement with A.1 for a quantity of 250 MTs only. However, A.1 company forged and fabricated documents and filed the Bill of Entry for a quantity of 500 MTs with the Customs Authority at JNPT Port, Mumbai. A.1 Company did the said act without the knowledge or permission from the complainant company. As soon as the complaint came to know it, they approached A.1's company, but the accused threatened the complainant with dire consequences. Added to it, A.1 to A.6 neither taken steps to pay the customs duty nor they collected the negotiable set of documents pertaining to the consignment by making payment of the price to complainant's company. As a result, the Customs Department at JNPT Port, Mumbai, issued notice to the complainant's company to clear the Cargo, failing which they would be free to auction the goods. Thereby, the complainant was put to trouble. A.1 and A.5 appear to be working in conclusion with each other and due to their acts, the complainant neither got the payment of the price nor his goods back as the Bill of Entry had already been filed in their name. On several occasions, the complainant requested A.1 to A.6 orally as well as in writing to take immediate steps to clear the said consignment from the storage tank by paying customs duty and the price thereof, but they have not taken any steps so far in this regard. As a result, the complainant was forced to pay huge rent for the storage of the said consignment. Further, the complainant could not pay amount to M/s PEC Limited from whom the complainant purchased the Cargo, as the payment to the complainant was held up from A.1. This resulted in loss of image and reputation of the complainant before the Government Company. The further case of the complainant is that it issued a legal notice calling off the sale to the accused. On receiving the notice, A.1 to A.6 contacted the complainant telephonically and conveyed that due to some financial problem, they could not complete their part of contract and requested not to call off the sale and assured that they would make payment to complainant as well as Customs Department shortly along with Storage Charges and other damages to the complainant. In good faith the complainant believed their version, but they did not keep their promise. c) The further case of the complainant is that on another occasion, the complainant sold a consignment of 250 MTs of Palm Oil to the petitioner No.1/A1 through A.5, out of which, A1 paid the amount for 148 MTs only and shifted the entire stock of 250 MTs and the complainant is still to receive an amount of Rs.61,00,000/- approximately for 102 MTs. On the repeated requests, A.1 to A.6 finally conveyed telephonically that they were not going to perform their part of contract and also refused to pay the customs duty as well as price of consignment i.e., Rs.61,00,000/-. When questioned, they threatened the complainant with dire consequences. Thus, due to the wrongful acts of the accused, the complainant suffered monetary loss of about Rs.5 crores besides loss of reputation. The investigation is reported to be pending. Hence, he instant petition. 4) The case of the petitioners/Accused Nos. 1 to 4 and 6 is thus: The petitioner/A1 is the proprietary firm, petitioner No.2 is the Commission Agent for petitioner No.1, petitioner No.3 is the brother of Petitioner No.2 having separate business and not connected with the transactions mentioned in the complaint and the petitioner No.5 is the Partnership Firm and the petitioner Nos. 4 and 6 are the partners of the Petitioner No.5. a) According to the petitioners, the complainant's company in fact sold 500 MTs of RBD Palmolein Edible Oil to petitioner No.1 by two transactions of each 250 MTs, which was taken place at Mumbai. Since the complainant asked petitioners to sign one High Seas Sale Agreement of 250 RBD Palmolein Edible Oil and represented to the petitioners that the other agreement at mutually agreed rate would be prepared by the complainant as and when stamp paper was available. Believing such request of the complainant, the petitioners signed on High Seas Sale Agreement dated 13-12-2013 for 250 MTs and orally agreed for the rest of 250 MTs. The petitioners and complainant have been doing various business transactions since long time and they have good business relations and so the petitioners agreed to sign on High Seas Sale Agreement on 13-12-2013 on the promise of the complainant that other agreement at mutually agreed rate would be signed as and when the stamp paper was available with the complainant. 5) While so on 10-01-2014 the complainant filed Bill of Entry Nos.4321247 and 4321294 for 250 MTs RBD Palmolein Edible Oil and 249.992 RBD Palmolein Edible Oil in bulk respectively on behalf of petitioner/A1 through M/s Narendra Forwarders Private Limited being the Clearing House Agents of the complainant. Further, the complainant in his Letter dated 28-02-2014 addressed to the Assistant Commissioner of Customs, Group-I, JNPT, Mumbai, admitted to sold 500 MTs of Palmolein Edible Oil to A.1 and the said Letter was also referred to by the complainant in Writ Petition No. 6543 of 2014. The complainant once again confirmed that he sold 500 MTs of RBD Palmolein Edible Oil to petitioner/A1 by an email on 07-03-2014 addressed by him to his Custom House Agent i.e., Narendra Forwarders Private Limited. Not only that, the complainant in his Letter dated 08-03-2014 addressed to the petitioner again confirmed that he sold 500 MTs of RBD Palmolein Edible Oil through the Bill of Lading Nos.SIN-BTM-JNP-611, 612, 613 and 614 respectively and all dated 04-12-2014. Further, the Custom Authorities in their Letter dated 11-04-2014 addressed to the Petitioner No.1 confirmed that the complainant sold 500 MTs of RBD Palmolein Edible Oil to the petitioner No.1 and the same was lying unclaimed at storage terminal. Apart from above admissions, in his Letter dated 15-05-2014 addressed to the Petitioner No.1/A1, the complainant sent a copy of Ledger Account showing that the complainant has entered into High Seas Sale Agreement of 250 MTs and still has to give Invoice for 249.99 MTs for which rate was supposed to be fixed. b) The further case of the petitioners is that previously petitioner No.1 entered into High Seas Sale Agreement with complainant on 23-11-2013 for 125 MTs of RBD Palmolein Edible Oil and after receiving the part amount, the complainant instead of handing over the oil, sold the same to 3rd parties and knowing the same, the Petitioner No.2 lodged FIR with Nhava Sheva Police Station, JNPT, Navi Mumbai. It is only on the assurance of the complainant to deliver the edible oil relating to Sale Agreement dated 23-11-2013, the petitioners entered into subsequent High Seas Sale Agreement dated 13-12-2013 for 250 MTs of RBD Palmolein Edible Oil and also agreed to sign another contract for remaining 250 MTs of edible oil at a later stage as intimated by the complainant. c) The further case of the petitioners is that the complainant filed a Civil Writ Petition No. 6543 of 2014 before the Hon'ble Bombay High Court seeking an Order directing the Customs Authority to handover 500 MTs of RBD Palmolein Edible Oil, which is in the name of Petitioner No.1, to the complainant. However, the Hon'ble Bombay High Court disposed of the said Writ Petition without giving any relief. d) Finally, it is contended that the contracts took place within the jurisdiction of Hon'ble Bombay High Court and hence, the Criminal Complaint which was forwarded to the Police is not maintainable for lack of jurisdiction. It is also contended that the matter between the parties is purely civil in nature and hence continuation of Criminal Proceedings will amount to abuse of process of law. The petitioners/A.1 to 4 and 6, thus, prayed to quash the proceedings. 6) The case of the petitioner/A5 is thus: The petitioner/A5 is only a broker for the transactions between the complainant and the accused No.1 to 4 and except that he has nothing to do with the alleged collusion and cheating. The complainant made omnibus allegations against all the accused to rope in the petitioner/A5 and A.6. The complaint allegations against the petitioner/A.5 and 6 are baseless and untenable. Hence, continuation of Criminal Proceedings against A.5 and A.6 would amount to sheer abuse of process of law. 7) Heard both sides. 8) The point for determination is : " whether there are merits in this Petition to allow ? 9) POINT : Precisely the case of the complainant is that under High Seas Sale Agreement dated 13-12-2013, he sold only 250 MTs of RBD Palmolein Edible Oil to Petitioner No.1/A1 through A.5, who is the broker. However, A.1's company forged and fabricated documents and filed the Bill of Entry for a quantity of 500 MTs with the Customs Department authorised at JNPT Port, Mumbai and thus all the accused conspired in this regard and created forged documents

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