THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3504 of 2015

ORDER:

The petitioner is accused of C.C.No.395 of 2015 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad, wherein the learned Magistrate has taken cognizance for the offences punishable under Sections 420 and 506 of Indian Penal Code (IPC); which is out come of a private complaint filed by the second respondent-*de facto* complainant for the offences supra allegedly occurred on 11.06.14, 12.01.2015, 20.01.2015 and other dates, after recording the sworn statement of the complainant with other witnesses, if any (the order of taking cognizance as well as statements at the pre-cognizance stage recorded, if any, not before the Court filed by either side). Needless to say the second respondent – complainant even served with notice in U.S.R. No.3435 of 2015, failed to attend and the first respondent is State represented by the public prosecutor.

The sum and substance of the averments in the private complaint is that the complainant is a public limited company providing IT solutions to various companies wherein the accused joined as Chief Operating Officer on 11.06.2014. Believing his exaggerated version to his skills, the company entrusted various duties and powers covered by the employment agreement supra dated 11.06.2014, that the accused placed un-wanted orders on behalf of the complainant without consent of the Board and could not perform duties as promised, resulting Company incurred unwanted liabilities from his orders so placed including the purchase order software of Rs.56 lakhs on behalf of the Director of the Company and on coming to know the same the complainant cancelled purchase order and questioned the accused in placing order without the consent of the Board, that accused worked for 50 days and stopped working later by violation of the agreement supra, that complainant came to know the accused used to place lot of orders unwanted for illegal works so also of previous companies and in the *modus operandi* used to get bills for wrongful gain resulting wrongful loss to the complainant company and it is done deceptively said order for Rs.56 lakhs; that complainant company came to know that earlier associates of accused landed into debt traps by acts of accused and the accused vandalised the companies wherever he associated with, but failed in his attempts to adopt the methodology resisted by the complainant herein; that accused made accredited and illusory payments to have illegal claims though not entitled to get as per the employment agreement; that for his notice claiming Rs.14,50,000/- towards remuneration, arrears from August, 2014 for 50 days, he worked only from 15.06.2014 to 31.08.2014 and stopped coming thereafter to the office and even as per the agreement, he has to work two months prior to notice. Having failed to do so and even for the 50 days he worked, he was paid and he started his trail to extort money by that notice by threatening to file arbitration case and has been sending false mails demanding the position of president/CEO for illusory salaries contrary to the agreement by threatening to land in false litigation. The further averments in the complaint are that the complainant reposed good faith but due to the acts of the accused supra, complainant company suffered route loss from the orders placed without prior approval, which is with an intention to dip and dupe the complainant and not only that he issued false notices with frivolous claims in resorting to file false arbitration proceedings. Having left abruptly by causing loss to the complainant-company, from the agreement terms, thereby liable for cheating for the offences under Section 420 and 506 of IPC.

The enclosures with the complainant are agreement for employment, legal notice issued by the advocate, arbitrator notice got issued by accused to complainant, email correspondence of the accused, PAN card and passport copy of the accused.

There is nothing to say any report given to police for taking action before filing the complaint much less sending by post under Section 154 of Cr.P.C. The said averments if at all reiterated by complainant that was taken cognizance by Magistrate is impugned herein; that the contentions impugned in the grounds of quash petition, that the Managing Director of the complainant approached the accused quash petition in May 2014 to take over operations of the company in view of the reputation and 27 years experience of the petitioner in the field as by then petitioner was running a company with name M/s.Trident IT Services Private Limited as its Managing Director and it is for the persuasion, the petitioner accepted the offer vide employment agreement dated 11.06.2014 entered by both sides and joined on that day as Chief Operating Officer and noticed several illegalities in the functioning of the complainant company and brought to the notice of the Managing Director who assured to rectify that as per the employment agreement, the petitioner is entitled to monthly remuneration of Rs.3 lakhs and he was paid towards part remuneration for June -2014, Rs.1,01,613/- and still Rs.1,24,500/- due for part remuneration of July 2014 after TDS deduction of Rs.25,500/-. For August, 2014 entire remuneration due for the employment services of the petitioner, the petitioner being prevented from doing his own business in the name of M/s.Trident IT Servies Private Limited and he made a request to the petitioner Company's Board of Directors for mediation on 09.11.2014 as per memorandum terms which is with no response. Thereby he caused issue notice through advocate dated 05.12.2014 to the company complainant Managing Director to pay Rs.14,50,000/- towards his remuneration, arrears from August, 2014 onwards, including TDS Services of remuneration and to pay three mobile number bills and to deactivate all the numbers thereafter and to return two Dell Services Model T410 with 16 GB Ram and 2 GB Hard Drives, HP Lazer Printer with USB and power cable, reconnected WIFI router, three executive chairs and to remove from the website link www.simul.co.in and pay Rs.16,854/- which is the subscription for monstor.com and Rs.15,000/- amount for travel expenses and hospitality charges and communicate to ICICI Bank, Kakinada branch, withdrawing the status of authorized signatory status of the petitioner in four bank accounts and also to pay Rs.10,000/- costs of notice and to respond in 15 days else to appoint one Sri Ch.Satish Kumar, advocate as sole arbitrator in accordance with clause 15 (1) of the employment agreement and for no response, arbitration proceedings initiated and notices sent and as a counter blast to it, the present case is filed thereby it is liable to be quashed.

It is also the averment in support of the relief that the alleged mis-demenour while working is an engineered story though he worked to the best of his ability in accordance with employment, for the scene of asking his legitimate amounts due.

Heard. Perused the material on record.

Infact, as referred supra, there is no cognizance order much less, the sworn statement of the complainant and others, if any, examined and recorded at pre cognizance stage by the learned Magistrate much less any document referred therein that are placed by the petitioner accused, before this Court in this application seeking to quash the proceedings. No doubt, it is the contention that there is no any element of cheating under Section 420 of IPC with any dishonest intention to deceive from the inception of entering into the employment in order to have wrongful gain and to cause wrongful loss for the story weaved after legal notice for the remuneration due and there is no criminal intimidation thereby nor there was any injury to person or reputation or property of the complainant company or any of its Directors to vindicate to do any act legally entitled or to do an act or any legal act entitled to do for and so called intimidation to approve Section 506 of IPC is the sum and substance of the contentions on hearing the arguments from learned counsel for the petitioner accused. The employment agreement dated 11.06.2014 filed shows it is containing several terms. The agreement entered between parties is not in dispute. In 15(1), there is a clause for resolution of any dispute by mutual discussion or through mediation within 90 days of such dispute and if not through mutual discussion or mediation possible to refer to sole arbitrator mutually accredible within Secunderabad area jurisdiction. In fact, the petitioner accused claims including in his legal notice as well as quash petition of his running M/s.Trident IT Services Private Limited as Managing Director before his appointing as C.E.O. on 11.06.2014. On perusal of the employment agreement Clause 3 (v), there is a prohibition for doing any trade or business or other occupation for remuneration or otherwise in any manner during the period of employment. A perusal of the contention No.3.1 to 3.3 of the employment agreement speaks that as Chief Operating Officer to set goals for organization, improve service offerings of the company, define target revenue and timelines, strategic tie ups, road map for achieving the objects of company and the way forward, turning around operations of the company from present stage, take initiatives which will assist company in foraying into new areas of business with quicker revenues and reasonable margins to get onto a growth path and shall exercise additionally such powers to perform such duties and comply with such directions in relation to the company's business as the Board or any person authorised by the Board, may from time to time confer or assign or give them. If such is the case, for placing the so called order for Rs.56 lakhs for purchase of software solutions terms in specific authorization and its lying as per the complainant and even after knowing to cause wrongful loss, complainant accused acted and there by liable for legal consequences. Here whether it is a mere breach of contract of employment or the breach was as he is party to the employment contract, knowingly to cause wrongful loss committed and if so what offence could be made out is a matter to be decided, had there been material before this Court including the sworn statements of the pre cognizance stage as well as cognizance order which are lacking before this Court.

Having regard to the above, the material falls short for this Court to quash the calendar case proceedings.

Hence the criminal petition is disposed of by giving liberty to file any application under Sections 244 or 245 Cr.P.C. before the learned Magistrate concerned by proceeding in the pre-charge enquiry and seek for discharge if no grounds to frame charge thereform either by cross examination of the prosecution witness at that stage or by seeking to defer as the case may be. Subject to that, needless to say further if any application is filed by the accused to represent through special vakalat holder in the event of framing charges, without prejudice to the other remedy, he can file application under Section 205 of Cr.P.C. and the learned Magistrate to consider after hearing with necessary conditions of personal appearance, as and when required.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:14.10.2015

vhb