HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.5819 & 6949 of 2015

COMMON ORDER :

These two criminal petitions are filed by the petitioners/A-1 to A-3 under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.122 of 2015 of Central Crime Station, Hyderabad which was registered, at the instance of the 2nd respondent, for the offences punishable under Sections 403, 406, 409, 420, 468, 471 read with 120-B I.P.C.

2) The averments made in the F.I.R by the 2nd respondent are that the 1st accused was appointed as employee in his Company M/s.Materials Software System India (P) Limited during December, 2003, that he being the in charge of the operation of the Company affairs is obligated to see the overall affairs viz., manage staff, oversee them and see that they work as per the norms of the company and accomplish the day to day tasks set out by the company, pay the salaries of other employees from the account of the company and report the developments to the 2nd respondent in U.S. through mails/phone etc., to that effect, to facilitate easy management of the company, the 2nd respondent has given authorization to the 1st accused to operate banking operations of accounts of the Company and see that the income and expenditure are correctly accounted and maintained, that the 2nd respondent sent Rs.19,36,22,271/- to Karnataka Bank and Vijaya Bank, Hyderabad. It is further averred that on selling of the software products, an amount of Rs.2,50,56,375/- was transferred to Karnataka Bank, Dilsukhnagar branch, Hyderabad. It is alleged in the report that the 1st accused is having total control of the company and its affairs, showed some fictitious persons as company employees and withdrew huge sums towards their salaries and the same was shown as expenditure towards their monthly salaries and withdrawn an amount of Rs.5,23,21,736/- from company accounts and Rs.19,20,752/- from the personal account of the 2nd respondent, that the 1st accused showed his wife/A-2 and his brother-in-law/A-3 and other relatives and friends in the list of

employees although they really did not work and withdraw huge sums towards their salary from the year 2008 to 2015. It is the further allegation that the 1st accused has transferred some funds in the name of his friend one Sri Chandramouli Alavala, business entities, family members and relatives and friends also though they are not related to the company to an extent of Rs.7,58,13,130/-, that the 1st accused included the name of Mr.M.S.Sastry, brother-in-law of the defacto-complainant, resident of U.S.A, as one of the employee and drew an amount around Rs.1,00,000/- as salary paid to him per month, that the 1st accused submitted exaggerated internet bills and illegally misappropriated company's money by claiming Rs.63,06,341/- towards internet bill and paid to M/s.Pioneer labs, that the 1st accused paid income tax for the years from 2009-10 to 2013-14 for an amount of Rs.37,93,414/- though the company did not earn any income to that effect, that from the year 2004-05 to 2014-15 the 1st accused diverted the funds of the company to a tune of Rs.71,58,391/- in the name of Kranthi Educational society and also sent Rs.21,28,000/- to Cambridge High School and also an amount of Rs.2,27,000/- to Bhavi Bharath though the company has no connection with above institutions, that during the period from 2004 to 2015 1st accused has withdrawn an amount of Rs.4,06,90,096/- from company accounts and an amount of Rs.69,20,790/- from personal accounts though he was not authorized to withdraw money for his self needs, that the 1st accused by fabricating signatures on the minutes of meetings submitted fake returns to the Registrar of Companies, that he mortgaged the personal properties of the defacto-complainant and obtained loans from Vijaya Bank, Karnataka Bank etc., to a tune of Rs.8,43,53,000/- by misutilising the power of attorney given to him by signing personal cheques and encashing cheques and misappropriated sums from the company accounts and personal accounts, that when the 2nd respondent purchased office spaces bearing No.701 to 708 in Babukhan Estates in the year 2006 vide documents No.1233 of 2006, the 1st accused forced the defacto-complainant to sell part of the property in 707 and 708 to M/s.Agrasen Hall Trust for an amount of Rs.29,00,000/- each and part of 705 and 706 for an amount of Rs.69,00,000/- to Agarwal Packers and Movers but he neither handed over the money to the defacto-complainant nor accounted for the same, he also sold Mitsubishi Lancer Car without the knowledge of the defacto-complainant, that the 1st accused also rented the house of the defacto-complainant situated at Banjara Hills to some third party and collected the rents about Rs.25,00,000/- but failed to account for the same since past 7 years. It is further alleged that the 1st accused appointed one Mr.Nagaraj, Chartered Accountant (A-5) to audit the records of the company to conceal his misgiving and fraud in connivance with the Chartered Accountant, 1st accused audited the false statements, failed to submit proper books of accounts. It is further alleged that the 1st accused joined the company with an ulterior motive with a dishonest intention of cheating, misappropriate the company money being the incharge of the company and conspired with the other accused persons and in pursuance of his conspiracy in connivance with other persons working in the company i.e., Nagaraju, Auditor-cum-Chartered Accountant falsified the company records unsupported by the documents and diverted funds to their accounts and requested to take necessary action against the accused.

3) The report supra dated 18.05.2015 submitted by the defacto-complainant by addressing the Deputy Commissioner of police Detective Department, Hyderabad who endorsed the S.I. Chain duty to register a crime and entrust to K.Vali, A.C.P. The said endorsement was dated 19.05.2015 pursuant to which Mohd.Ghosh, S.I. of police, C.C.S Control Room registered the crime dated 20.05.2015 for the offences mentioned supra and forwarded the same for investigation to the A.C.P V.K.Vali. It is also contended that as per the police standing orders of the constitution of C.C.S; it is not entrusted with registration of crimes but for investigating of the cases entrusted within their expertise. In fact the C.C.S, Hyderabad is entitled being entrusted with registration of Crime even, but for other Central Crime Stations. Even so far as other Central Crime Stations there is recent empowerment including to register crime for investigation.

4) Against said crime registered and taken up investigation, impugning the same, the petitioners viz., A-3, K.Venu Gopal in Crl.P.No.6949 of 2015, A-1 and A-2 K.Shantnan Kumar and Jhansi Rani in Crl.P.No.5819 of 2015 filed quash petitions contending that the allegations are false and fabricated for the purpose to involve them into a criminal case, that the 2nd accused who is the

wife of the 1st accused is no way concerned with any of the affairs of the company and there is also no whisper on her role in the police report, that the 1st accused is not the manager of the company and he was only as part time assistance managing the affairs of the 2nd respondent's office, that too he was acting only on a general power of attorney given by the respondent No.2/defacto-complainant, which has executed in the year 2008 that there was no dishonest intention on the part of the 2nd accused, that the alleged diversion of funds by the 1st accused is only on the instructions of the complainant to Cambridge School to adjust funds which were delayed by the defacto-complainant for payment of salaries. It is also contended that the other allegations leveled against the petitioners of the 1st accused has employed fictitious office staff in the above company is false as all the amounts were deposited to the employees' accounts directly and this was being monitored by complainant and his own sister who is the financial head of the company continuously from 2008, that the other allegations of misappropriation of funds of the above company by the accused are false, that there is no documentary evidence to substantiate the claim by the complainant, that the defacto-complainant executed a G.P.A in the year 2008 and only from then he was looking after the affairs of the company. It is also contended that with regard to alleged selling of the properties of the 2nd respondent, it has not been done by the petitioner/A-1 nor was he indirectly connected, that the 1st petitioner/A-1 did not sell the property acting on the G.P.A, that all the bank transactions regarding mortgage and loans were done by the 2nd respondent himself personally that the 1st petitioner/A-1 had nothing to do with the transactions.

5) The 3rd accused submitted in his quash petition that he was appointed by the 2nd respondent in the year 2004 vide appointment letter dated 24.02.2004 and except working in the company, there was no role alleged by the complainant in the F.I.R, that he was resigned from the company in the year 2010 and hence he has no connection with the affairs of the Company and prayed to quash the F.I.R proceedings.

6) The 2nd respondent, apart from submitting material documents viz., copy of bail petitions filed by the petitioners, copy of sale deed dated

21.11.2012, copy of sale deed dated 17.03.2011, extracts of statement of accounts of the accused etc, contends in opposing the quash petitions that the accused in the above crime have involved in large scale embezzlement of money and committed offences of cheating, forgery and falsification of accounts etc., causing huge loss to him, that all the grounds made in the respective petitions are to be decided during the course of trial as it is a matter of fact and prayed to dismiss both the criminal petitions. It is also contended that this Court cannot go into disputed questions of facts, to quash the F.I.R when there are allegations which requires investigation including by interrogation by accused persons, who are all privy to the crime reported.

7) From said material on record, heard both sides at length and perused the material.

8) From the crime registered for the offences punishable under Section 420 I.P.C, as to there is any cheating by the accused persons 1 to 3 of the defacto-complainant including any forgery of documents for the purpose of cheating or using as genuine any forged documents to attract Section 420/468 and 471 I.P.C and as to any dishonest criminal misappropriation under Section 403 I.P.C or any breach of trust defined in Section 405 I.P.C which is punishable either under Section 406 or Section 409 I.P.C as the case may be pursuant to so called general power of attorney in the claim as agent of the complainant by A-1 in privy with others A-2 and A-3 to attract Section 120-B I.P.C, the crucial document is the general power of attorney in fact, admittedly executed by the defacto-complainant in favour of the 1st accused way back in the year 2008.

9) A perusal of General Power of Attorney, dated 25.08.2008 it discloses that the 2nd respondent appointed the 1st accused as his attorney to do certain acts on his behalf viz., to open bank accounts in his name and in the name of his firms and company’s names, to avail bank loans by executing necessary loan documents, to clear the bank loans, to transfer the loan accounts from one bank to another, to take delivery of the securities and deposit the securities wherever they are required, to furnish all the papers and details those are required by the bank, to accept all communications from the bank and for providing the necessary information to the bank from time to time and

acknowledge and confirm the balances in the loan account and for executing the necessary acknowledgement of debt as and when required, to draw, accept, endorse, retire the bills of exchange, promissory notes, cheques and other negotiable instruments, to collect the money due to him, to his firm and his company and pass on necessary receipts/documents, to manage the assets and collect rents etc., to initiate legal proceedings, to refer the matters to the arbitrator wherever required, to settle the matters outside the Courts by compromise etc.,

10) The complainant by virtue of the general power of attorney supra agreed to ratify and confirm whatever acts and deeds and things lawfully and bonafide done by his attorney that shall be construed as acts and deeds and things done by him to all intents and purposes as if he is personally present and thereby agreed to ratify and confirm. There is an hand written clause underneath the typed matter with contents supra that the attorney is not empowered to sell or transfer any of his property. The fact that the power of attorney in force from 25.03.2008 between defacto-complainant and the 1st accused but for any recent cancellation, not in dispute. As per the Indian Contract Act, Chapter XIX which includes between power of attorney holder and the principal to act as agent, as per Section 182, it is by agent to act on behalf of the principal to represent the principal in dealing with third parties in order to bring the later (principal) into legal relations with a third person which is an import of the English Law, for which consideration between principal and agent not a mandatory requirement including under Section 185 of the Indian Contract Act, not in dispute. The area of the agency for the acts to be done is governed by the written contract by the general power of attorney to bind with the undertaking to ratify of acts, so long as the general power of attorney the continuous without cancellation to continue the agency, what Section 188 of Indian Contract Act provides is an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act and having any authority to carry on a business, to do every lawful thing necessary for the purpose or usually done the course of conducting such business. It is needless to say under Section 189 of the Indian Contract Act, an agent has an authority in case of emergency for the purpose of protecting the principal from loss as would be done as a person of ordinary prudence to act in his own case, to do all such acts. It is

irrespective of not provided an agent can do to protect the interest of the principal. Such is the law with reference to the power of attorney governed by the provisions of the Power of Attorney Act, 7 of 1882 duly executed not in dispute. It is to see whether the criminal prosecution is sustainable so far as the alleged offence under cheating concerned. It is not the case that the power of attorney is executed involuntarily muchless outcome of any fraud or deception to cause wrongful loss and to cause wrongful gain which are the pre-requisites to sustain the prosecution for the offence under Section 420 I.P.C from the satisfaction of the element of cheating defined in Section 415 I.P.C besides to show further delivery of property or valuable security or the like to attract Section 420 I.P.C. It is not mere cheating that is suffice to define in Section 415 I.P.C to attract Section 420 I.P.C as besides cheating, there must be dishonest inducing delivery of property or to make alter or destroy whole or part of valuable security- - - - - -. Such allegations are conspicuously absent from the contents of the report of the defacto-complainant described in the initial paragraphs of this judgment supra to say there is no offence of cheating. The said conclusion is fortified the decision of Five Judges bench of the Apex Court in ***Tulsi Ram V. State*** is regarding ingredients of Section 420 I.P.C in saying it is to be established not only of defacto-complainant is shown cheated but also he was dishonestly induced for the purpose of cheating to deliver any property or valuable security by the assailants to cause wrongful loss and wrongful gain by unlawful means, that to be established of any of the facets of dishonesty of loss or gain. As concluded already in the factual matrix itself from perusal of the complaint referred and registered as crime and the statement of the complainant recorded as L.W-1 during investigation apart from others coupled with remand report of accused, the material no way shows attracting of Section 420 I.P.C. or Section 477-A I.P.C. and the other decision of Three Judges bench of the Apex Court in ***State of M.P. V. Mir Basith Alikhan*** holds that for the offence of cheating it is not even suffice of the scheme evolved is speculative or unworkable without showing any defraud or cheating with intention of suppression or misrepresentation in deceiving to cheat with wrongful gain or wrongful loss and further in ***Hari Prasad Chamaria V. Bishun Kumar Surekha*** of appellant to start business in full faith give large amount to respondents and respondents starting the business in their own name and refusing to render account is not even suffice to attract the offence under Section 420 I.P.C. in the absence of specific showing in the complaint of prima facie accusation of dishonest or fradulent intention from the inception.

11) The defacto-complainant in his report referred supra makes a mention of A-1 Shantan Kumar was even appointed by him as employee, administrative and finance in-charge in his entity M/s.Material Software Systems India Private Limited during the year 2003. He claims as an in-charge of operation of the Company affairs, Shantan Kumar is obliged to see over all affairs of the company in his absence as defacto-complainant is having other business in U.S.A and as such busy in looking after their business there. It is not even his case of the appointment, is he in-charge as per the general power of attorney but of the appointment in December, 2003. Importantly the general power of attorney executed in March, 2008 as referred supra, but for gaining confidence of his performance even appointed more than 4 ½ years before the execution of power of attorney, appointed as in-charge of administration and finance of his entity, his voluntary executing the general power of attorney referred supra with terms therein could not have arisen. Could it be believed of his executed the G.P.A in the year 2008 if he was not acting in trust as employee since 2003, to say nothing of any deception from the inception to attract any offence of cheating. It is not even his allegation that he was made to execute the general power of attorney by playing any deception, at the cost of repetition, thus suffice to say there is no any element of cheating, it is required to made out from the beginning muchless by dishonestly and also dishonestly inducing the delivery of property there from, for nothing in attracting of the offence under Section 420 I.P.C. The scope of law in this regard is well considered by this Court in a quash petition covered by ***Anukuri Kanakaraju V. State of Telangana (Crl.P.No.14262 of 2014, dated 16.09.2015).***

12) No doubt, learned counsel for the petitioners contend that as laid down by the Apex Court in ***P.Durgappa V. State*** sections 409 or 406 have no application for mere retention of money. It is premature for this Court to come to any conclusion muchless to quash the F.I.R on that ground as in the factual matrix, the case decided was in a Criminal Revision maintained against criminal appeal confirming the trial court's conviction judgment for the offences punishable under Section 409 I.P.C.

13) The other decision relied is ***Brahmananda Mohanty V. The State*** of what is the proof required for the offence under Section 409 and 405 I.P.C in saying intention on the part of the accused and is giving of false accounts of what he has done with the money is a strong circumstance for not accounted for. In fact, it is also after full dressed trial of the conclusions arrived on facts in deciding the matter. Equally coming to the decision in ***S.Harnam Singh V. The State (Delhi Admn)*** to attract the offence punishable under Section 477-A I.P.C, the word willfully and intent to defraud used to mean intentionally or deliberately and mere fact of certain entries made by accused wrongly even does not attract offence under Section 477-A, I.P.C. Nothing more is required to discuss from this accusation for the conclusion already arrived from facts plain of no offence under Section 477-A, I.P.C is attracted in the case on hand.

14) The other decision for the offence under Section 406 I.P.C of ***Kalaktar Singh V. The State of Bihar*** no way requires further discussion but for to say reiteration of the principle laid down in the decision supra of there must be entrustment of property or dominion over property and it is thereafter same is shown as misappropriated or converted to own use in violation of the direction, to attract the offence of breach of trust defined under Section 405 I.P.C. The decision in ***Ashim K.Roy V. Bipinbhai Vadilal Mehta*** relied is in calendar case on appreciation from the material on record upheld the order of the High Court quashing the crime under Section 409 I.P.C on the allegation of respondents diverted the funds of the Company by making advance to suppliers, whereas respondents not in control or management of the Company. In fact, the facts therein are different to the case on hand as can be seen from the factual matrix discussed supra.

15) The decision in ***S.N.Palanitkar V. State of Bihar*** not laid down any new principle regarding the offence under Section 420 and 406 I.P.C than what is referred supra. It was in fact added therein of arbitration clause in the agreement cannot prevent criminal prosecution if acts alleged made out a case but for to say on facts there is nothing to show any entrustment to any of accused any principal or dominion over it of complainant and nothing to say from the inception any existence of intention to deceive but for any failure of

promise. Same is also laid down in the other expression relied in ***K.C.Builders V. Assistant Commissioner of Income Tax*** at para No.29 of which required to be proved of accused had fraudulent or dishonest intention at the time of making promise or misrepresentation and failure to keep a promise subsequently even nothing to presume culpable intention right from beginning in the absence of same making out. In ***Inder Mohan Goswami V. State of Uttaranchal*** where the Court held that criminal prosecution not to be used as an instrument of harassment or for seeking vendetta and if such facts brought in, refusal to quash is improper.

16) Coming to the other decision in ***Sadhupati Nageswara Rao V. State of A.P.*** in relation to offence under Section 409 I.P.C accused dealer of fair price shop and food for work coupons rice entrusted to him to distribute against coupons. However, he sold without ration cards and could not submit coupons for the stock found deficient during inspection is nothing but deception on facts. In fact it is already observed that the offence under Section 409 I.P.C requires investigation from facts on hand also, leave it as to how far the principle applied in the expression to the present facts to decide after police investigation final report to raise at that relevant point of time.

17) From the above propositions, coming to further factual matrix, the report no way discloses any annexure like the so called appointment letter of December 2003 and what are the terms and conditions therein. Even the defacto-complainant in the counter filed in opposing the petition did not file the letter of appointment which is the basis for the claim. It is important to know there is any non-disclose of the general power of attorney, dated 25.03.2008 in the entire report of the defacto-complainant and the same in the quash petition even mentioned in the counter filed by the defacto-complainant in opposing the quash petition was not disputed about the general power of attorney and its voluntary execution and the terms and conditions. In fact at para Nos.17 to 19 of the counter of the defacto-complainant it is mentioned about the general power of attorney in referring A-1 in para No.19 as general power of attorney holder. Once the so called appointment in December, 2003 not filed and the G.P.A of March, 2008 not in dispute, it is not known when the A-1 claims in the quash petition acting under the G.P.A, how can be disputed by the defacto-complainant in saying the allegation of A-1 only in assisting in the managing of

affairs of defacto-complainant based on the said general power of attorney as denied. Thus, there is no element of cheating and inducement for delivery of property muchless dishonestly to attract the offence under Section 420 I.P.C. Now, coming to the offences for misappropriation and breach of trust concerned, by virtue of the general power of attorney, there is entrustment undisputedly and if there is any deviation to the general power of attorney with dishonest intention there is a breach of trust defined under Section 405 I.P.C to attract so far as the G.P.A agent concerned within the meaning of Section 409 I.P.C. The complaint averments, the alleged showing of A-2 no other than wife of A-1 and A-3 by name K.Venu Gopal claimed as brother-in-law of A-1 concerned, it is important to note that the job letter was given by the defacto-complainant to A-3 dated 24.02.2004 and not given by A-1 and defacto-complainant addressed letter dated 08.04.2005 to the Consulate General of Canada saying A-3 Venu Gopal is the branch manager of the entity Material Software Systems Inc., Hyderabad since February, 2014 and said K.Venu Gopal is planning a business trip to Toranto and Canada would arrive by 15th April, 2005 and depart on 14.10.2005, and in between to attend training and licensing course with Shift Trade Inc, so to grant the business Visa for his trip. The law is very clear of the Court in a quash petition can permit the quash petitioner/accused filed any material that also to consider besides the prosecution material in deciding the same vide ***Rukmini Narvekar V. Vijaya Satardekar*** besides the subsequent expression in ***Rajiv Thapar V. State*** and ***Prashanth Bharathi V. State*** leave about the earlier expression ***P.S.Rajya V. State of Bihar***. Regarding A-1 diverting of funds in favour of all other accused as employees in saying that they are really working, once it is shown it is the amounts A-1 embezzled in the name of others, difficult to probe others without showing they are privy from roping though they are not parties here but for A-2 and A-3. So also regarding the A-4 chartered account by name Naga Raju of the Audit. The main allegation regarding diversion of funds even from the report is against A-1 showing the alleged breach of trust and misappropriation as agent by virtue of the general power of attorney, if any or other entrustment once prone to offence under Section 409 I.P.C that requires only the investigation, the other offences as referred supra even against A-1 won't survive.

18) So far as the averment at report, last para concerned, A-1 is claimed as incharge of the company and responsible to manage staff and oversee them and to accomplish day to day tasks and pay salaries from the account of the company and report developments to him through mails or phones and to that the complainant given an authorization to A-1 even to operate the accounts and account for the income and expenditure and once such is the case, the so called payments of salaries cannot be find fault.

19) No doubt, this Court cannot go, in a quash petition, into the complicated questions of fact which require some investigation, that is also the sum and substance of the expression placed reliance by the defacto-complainant in ***Tamilnadu Mercantile Bank V. State .*** No doubt as held by the three Judge bench of the Apex Court in ***Inder Mohan Gosamy V. State of Uttaranchal*** the inherent jurisdiction of the High Court under Section 482 Cr.P.C is vide enough though required to be exercised sparingly it has to be exercised *ex debit justia* to do real and substantial justice for the administrative of which alone the Courts exist and in exercising that power, Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with ulterior motive to pressurize accused but for to say the power should not be exercised to stifle legitimate prosecution and where there are facts incomplete, Courts cannot give prima facie decision and there is no hard or fast rule in exercise of the jurisdiction under Section 482 Cr.P.C but for depending facts of each case within the broad guidelines.

20) So far as the allegation of criminal breach of trust for the offence under Section 409 I.P.C and so far as A-1 concerned thereby by acting under the general power of attorney whether there is any dishonest misappropriation or conversion to own use any property or use or dispossess of any property in violation of the general power of attorney terms and conditions or others employed and drawn any amounts in their name of others later if any is the matter to be investigated under Section 409 I.P.C which includes the offence under Sections 406 and 403 I.P.C. Thus, the crime registered besides under Section 420 I.P.C, having registered under Section 409 I.P.C again under Section 403 and 406 I.P.C but for the Section 409 I.P.C supra unsustainable for the offences. Even coming to the alleged withdrawal of huge amounts and payment of salaries even other than to A-2 and A-3 as covered supra even it

requires some investigation as part of the privy for the offence under Section 409 I.P.C against A-1. The allegation is only against A-1 to sustain and even from the say of transferring the amounts to the account of A-2 in the absence of A-2 is privy. So far as Cambridge High School concerned, where A-2 is director and A-3 is member, from what A-1 claims only at the instructions of the complainant, the alleged adjustment of funds were done by A-1. It is also the allegation of the A-1 in the quash petition that it is the sister of the defacto-complainant, the financial head of the complainant's entity atleast from the year 2008 not to mention of earlier period. In fact the defacto-complainant shown executed a sale deed in favour of A-2, wife of A-1 on 17.03.2011 for plot bearing No.43 in S.No.131, 134-Part of 267 Square yards of Yapral village, Alwal Municipality of Rs.79,75,755/- having received the consideration which he cannot dispute having executed. It is not a specific in the complaint that it is a forged document and there was any impersonation of him and in the absence of showing the same sought for cancellation, it is difficult to rope A-2 the vendee from the defacto-complainant on face value of the document as accused muchless in privy with A-1 her husband even that copy of sale deed filed by the defacto-complainant in saying he got knowledge of it. He did not even made any whisper regarding the sale transactions if not genuine that too in the year 2011, for nothing of any subsequent act on her part to make her privy to rope her to the crime.

21) What the defacto-complainant mentioned in page No.6 of the report of he purchased two plots in Babukhan Estate in the year 2006 and that in the year 2004, A-1 forced him to sell part of the property to M/s.Agrasen Hall Trust and part of 705 and 706 to Agarwal Packers and Movers and that he did not hand over the money till date and did not even account for the same, whether in the year 2004 or 2006 as the case may be leave about the inconsistency, is it believable and he executed G.P.A of the year 2008 if not money accounted for from 2004 or atleast from 2006 to say absurdity of the allegations to believe as same is also part of misappropriation or breach of trust for that there is nothing to say any entrustment. Is it believable of had he forced him to sell 2004/2006, in March, 2008, he could execute the G.P.A. Is it believable of he was not submitting the accounts or day to day status even weekly or fortnightly or

monthly and he so blindly from 2003 or 2006 or 2008, even after the G.P.A executed kept quite till his recent giving of the report to the police on 18.05.2015 for those transactions. The main allegation of Shantan Kumar (A-1) took loans by forging his signatures and diverted funds and prepared false accounts so also wrong filing of income tax returns concerned, it is part of any breach of trust to require investigation that is an allegation only mainly against A-1.

22) Having regard to the above, the Crime registered against A-2 and A-3 no way sustainable for any of the offences and the crime registered other than for the offences punishable under Section 409 I.P.C which includes the offence punishable under Sections 406 and 403 from the definition of Section 405 read with 409 I.P.C, for other offences no way sustainable, against A-1 in the crime registered by C.C.S police. It is needless to say under Section 156(2) Cr.P.C no proceeding of a police officer investigating a cognizable offence shall be called in question at any stage on the ground that the case was one which such officer was not empowered under this section to investigate. The contention of police have no jurisdiction to investigate by referring to Chapter XIII Cr.P.C is untenable. In this regard, it is needful to say that registering of crime and its investigation by police is different from jurisdiction of the Court in taking cognizance under Chapter XIII of Cr.P.C based on police final report.

23) In the result, the Criminal Petitions are partly allowed by quashing the entire proceedings so far as against A-2 and A-3 among the three petitioners/A-1 to A-3 respectively for all the offences in Crime No.122/2005 of Central Crime Station, dated 20.05.2015 and by quashing so far as A-1 concerned for the other offences but for Section 409 I.P.C. The C.C.S Police can continue the investigation of the Crime so far as A-1 concerned for the offence under Section 409 I.P.C and file final report.

24) As a sequel, miscellaneous petitions pending if any in the above criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

30.10.2015

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