HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8514 of 2015

ORDER :

This Criminal Petition is filed by the Petitioner/ accused No.2 under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.129 of 2015 of P.S Chandanagar, Cyberabad, registered for the offences punishable under Sections 406, 420, 463, 120-B IPC, which is outcome of private complaint filed on 06.04.2010 by 2nd respondent—de facto complainant against the petitioner as Accused No.2 and one M.Satyanarayana.

2) A perusal of the complaint averments show that the accused Nos.1 and 2 fradulently fabricated and created the agreement of sale dated 09.04.2009 and undated receipt by forging the signatures of 2nd respondent—de facto complainant to cheat her and to mentally harass her. She cited the witness by name M.Jagadeeswara Rao besides herself and referred 13 documents including copy of the agreement of sale dated 09.04.2009 and the receipt for Rs.2,40,00,000/- (claiming as forged) legal notice dated 09.12.2013, postal receipts and unserved postal cover, copy of plaint and summons in O.S. No.809 of 2014, copy of complaint, copy of resignation letter dated 03.03.2011 (claiming as forged), copy of Truth Lab Report dated 13.12.2012, copy of police complaint dated 16.02.2015 and copy of GPA dated 12.11.2012.

3) The 1st accused referred by her is no other than her husband. The averments in the private complaint show that the petitioner/accused No.2 filed O.S. No.809 of 2014 on the file of I Additional District & Sessions Judge, Ranga Reddy District alleging that the de facto complainant herein and her husband (A1) executed an agreement of sale in favour of Accused No.2 dated 09.04.2009 and the defendants as if received an amount of Rs.2,40,00,000/-; that the de facto complainant having received the suit summons to her shock and dismay for never executed such an agreement and not passed any such receipt in his favour, obtained copies of the documents and on verification came to know the collusion

and fabrication between accused Nos.1 and 2, the so-called agreement of sale and receipt by forging her signatures. She further avers that Accused No.1 (her husband) already cheated her and forged her signatures and transferred the property mentioned in the agreement of sale in favour of M.Jagadeeswara Rao and another, for which made a complaint on 28.01.2013 to Registrar of Companies in respect of her forged signature on her resignation letter by enclosing a copy of expert opinion of the Truth Lab report opining the signature was forged and Accused No.1 and LW.2—M.Jagadeeswara Rao have settled the matter with her and paid her share of Rs.20,96,000/- in respect of the schedule property covered by agreement of sale dated 09.04.2009 and the complainant agreed for the said settlement keeping in mind the future of her children. She further avers that under the guise of alleged forged and created agreement of sale and receipt accused persons are trying to harass her physically and mentally to cause wrongful loss and it is in that process, the petitioner/ accused No.2 filed the suit O.S. No.809 of 2014 and therefrom she presented a report to Chandanagar Police Station, who failed to receive, from which, she is constrained to file the private complaint before the XIX Metropolitan Magistrate, Cyberabad, Ranga Reddy District for necessary action and thereby sought for referring the matter to Chandanagar Police Station against the accused Nos.1 and 2 for registering the Crime under Sections 406, 420, 463 and 120 B IPC and for investigation.

4) The above complaint dated 06.04.2015 referred to police for investigation by the learned Magistrate and therefrom the crime No.129 of 2015 was registered by the police, Chandanagar. It is to quash the crime No.129 of 2015 proceedings, the petitioner (A2) filed the petition.

5) The averments in the quash petition (of A-2) in nutshell are that, M/s.Avalon Hotels and Resorts Pvt. Ltd's earlier known as Empress Hotels and Resorts Pvt. Ltd., represented by its Managing Director M.Satyanarayana (accused No.1) and the de facto complainant, who is no other than wife of accused No.1 and director of the company and they executed the agreement of sale dated 09.04.2009 in favour of the quash petitioner (A-2) to sell the property bearing 2-1 comprising 1st, 2nd, 3rd and 4th floors admeasuring 20880 Sq.ft, in all together with undivided share of land admeasuring 600 Sq.yds out of total extent of 646.80 Sq.yds of Chandanagar Village, Serilingampally Mandal, Ranga Reddy District for a total sale consideration

of Rs.2,46,00,000/- by undertaking to clear the loan obtained from the State Financial Corporation (for short 'SFC') covered by mortgage and obtain all documents of title including link documents after repayment from SFC and the de facto complainant also agreed to clear the loan of Rs.80,00,000/- to SFC availed by them and therefrom obtained the agreement and he paid out of said consideration Rs.2,40,00,000/- under receipt which the de facto complainant has acknowledged that the attestors to the agreement are K.Krishna Rao and G.Babu Rao of whom G.Babu Rao is another director of said company, whereas K.Krishna Rao is a practicing advocate at Sangareddy Courts for more than 25 years standing, who was the mediator to the negotiations and finalization of the sale transaction and payment of amount.

6) The specific performance suit filed as O.S. No.809 of 2014 was in the year 2004 only. Prior to that, notice dated 09.12.2013 issued by A-2 to M/s.Avalon Hotels and Resorts Pvt. Ltd and also the de facto complainant expressing his intention to pay the balance of consideration of 6 lakhs. The notice was admittedly not served. There is nothing to show from April, 2009 why the A-2 agreement holder kept quite till December, 2013 without even issuing notice and till 2014 to file suit. Further, it shows as if out of total consideration of Rs.2,46,00,000/-, but for Rs.6,00,000/- if Rs.2,40,00,000/- paid, why he kept quiet for all the years is a big question. Is it believable of he paid such a huge amount only by cash and if he possess and why not paid by D.D or pay order or cheque or the like with proof. Pending disposal of the suit obtained in I.A. No.1104 of 2014, temporary injunction restraining the vendee company and the de facto complainant from alienating or encumbering or otherwise parting with the property covered by the agreement of sale and said de facto complainant filed counter and written statement. No doubt, the quash petitioner alleges that it is after filing of the suit, the de facto complainant herein falsely filed the private complaint with false allegations by engineering the facts for the private complaint purpose. It is averred that that even with part of sale consideration the Avalon Hotels and Resorts Pvt. Ltd and the de facto complainant discharged the loan to SFC, again availed a fresh loan of Rs.45,00,000/- on 31.08.2012 and the same is not cleared which made to file the suit for specific performance; that the Accused No.1 is no other than husband of the de facto complainant and it is the modus operandi of de facto complainant including from her private complaint

averments of earlier filed similar complaint against one of the vendee of part of other property and her husband and later arrived at a settlement by getting Rs.20,96,000/- towards her share and there also she alleged forgery and fabrication of sale agreement. It is averred that but for disputing the signature on the registered agreement of sale, she could not dispute the photograph and her thumb impressions in the agreement and the alleged forgery and fabrication is nothing but falsely weaved story and thereby the FIR proceedings are liable to be quashed.

7) It is also one of the contentions that the learned Magistrate in referring the private complaint simply endorsed as heard in referring to SHO, PS Chandanagar for investigation and a reading of the order shows that there is no any judicial application of mind in referring the complaint for police investigation under Section 156 (3) Cr.P.C of any requirement of referring the complaint for police investigation as it is a dispute purely of civil nature and the de facto complainant sold all her shares in respect of Avalon Hotels and Resorts Pvt. Ltd., and received full consideration after execution of the agreement of sale in favour of accused No.2, that having received the major part of sale consideration of the property belongs to the Company, there is nothing to say any offence of cheating or breach of trust under Sections 420 and 406 IPC for any entrustment or forgery for attracting the offence under Section 463 IPC and thereby the proceedings are liable to be quashed.

8) Whereas it is the counter contention of the de facto complainant through her counsel that the document is a forged and fabricated one and it is outcome of collusion between her husband (Accused No.1) and the quash petitioner—Accused No.2 in creating the agreement and the receipt as if most of the sale transactions paid and also in filing the suit for Specific Performance and the learned Magistrate having heard referred the private complaint case for police investigation and it reflects application of judicial mind, though no reasons given and there is nothing to quash the FIR proceedings and the Truth Lab Report also when discloses that there is a forgery of signatures on the receipt which is basis for agreement, the investigation shall go on and thereby sought for dismissal of the quash petition.

9) It is also the contention of the de facto complainant that the father of the de facto complainant filed criminal complaint against Accused No.1 (de facto complainant's husband) for attempt on his life by Accused No.1 and one Ratna

Kumari for the offence under Section 307 IPC and final report filed by investigation in Crime No.438 of 2012 for the attack by them on him on 27.07.2012 within iron rod caused head injury with intent to kill but for rescued timely by persons rushed there. The other submission is that the quash petitioner—accused No.2 did not come to Court with clean hands and he is giving wrong address.

10) It is also the submission that O.P. No.800 of 2011 filed by the de facto complainant against her husband—Accused No.1 and one Ratna Kumari, W/o.Radha Krishna under Section 13 of Hindu Marriage Act alleging that her marriage was performed with Accused No.1 on 30.10.1987 and in their wedlock they blessed with son Shivaraj and daughter Kesaswini, later, accused No.1 herein developed illicit intimacy with Ratna Kumari and talking hours together over phone with her and beat the de facto complainant on 12.05.2005 and he left the company of her and started living away.

11) The divorce petition enclosures are only marriage photos and not even any exchange of notices and crime No.93 of 2012 of P.S Chandanagar, Cyberabad registered on 17.02.2012 under Section 498-A IPC and Section 3 & 4 of DP Act, outcome of report of de facto complainant against her husband and his family members (7 in number) alleging that from 1990 to 2005 after marriage, the couple used to stay in the ground floor of her parents house who were residing in 1st floor and he is addicted to all vices and from 1990 to 2005 he was harassing physically and mentally including with demand for partition of her father's properties and as she refused, in May, 2005 he beat her and left from her parents house. The averments show that there are disputes between the couple from 2005 onwards. The record shows from Section 498-A IPC case registered the FIR (Crime No.438 of 2012) is of the year 2012 and the divorce petition (O.P. No.800 of 2011) filed was in 2011 and there is nothing to show any exchange of notices even between the couple prior to that. There is a civil suit with O.S. No.254 of 2011 filed by her and her two children against accused No.1 on the file of I Additional District Judge, Ranga Reddy District for partition and other reliefs and obtained temporary injunction against alienation of the properties and the order copy of CMA No.600 of 2011 against the order passed in I.A. No.1048 of 2011 dated 30.04.2011 filed, where there is an undertaking by him not to alienate pending disposal of the injunction application and without prejudice

to right to file injunction vacation application and the order was passed on 14.07.2011 disposing the appeal recording the undertaking in C.M.A No.600 of 2011 by the Division Bench of the High Court.

12) Before going into further facts, the so-called Truth Lab Report dated 13.12.2012 is one of the enclosures to the quash petition, counter filed by de facto complainant shows the documents relied are Photostat copy of letter dated 01.10.2010 containing Q1 signatures and dated 03.03.2011 containing Q2 signatures sale deeds, photographs dated 19.02.2009, 24.04.2009, 27.02.2012 and Photostat copy of gift deed dated 01.12.2010 containing specimen signatures of S1 to S21 did not write Q1 and Q2. Thus, from the above and in view of the disputed and complicated questions of fact involved from the rival contentions viz., as per complaint there is a collusion between her husband (A1) and the so called vendee (A2) in forging and fabricating the so-called agreement of sale of April, 2009 and a receipt of almost all amount paid and kept it in secrecy although or created with antedate and to cheat made use by filing suit, she has no knowledge of it but for after suit summoning to enquire and came to know to challenge and to file the criminal case. Whereas the A-2 claims as bonafide purchaser for consideration and the complaint and her husband colluded together and she chooses to dispute the signatures, strangely not specifically disputed the thumb impression and photo on the agent; these aspects require investigation and not a case to quash the FIR.

13) These are, therefore, prima facie circumstances and facts that require investigation by police for filing final report also as to, the signature of de facto complainant on the agreement of sale and receipt and also the so-called thumb impression on the agreement is that of her or forged as contended by her. Mere filing of suit by A2 for specific performance cannot by itself a ground to shun the investigation of the crime.

14) Having regard to the above, for no prima facie grounds to quash the proceedings relating to Crime No.129 of 2015 of Chandanagar Police Station, Cyberabad as sought by the petitioner/ accused No.2, the Criminal Petition is dismissed. The observations herein no way prejudice any defence of petitioner/ accused No.2 including to impugn in future the police final report and any cognizance taken by the Magistrate therefrom.

15) Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date: 30.10.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.8514 of 2015

Date: .10.2015

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