

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petitions No.13122 and 13506 of 2011

Between :-

Criminal Petition No.13122 of 2011

P.Ramesh Babu

.. Petitioner/A.1

and

The State of A.P.,
Rep.by Public Prosecutor,
High Court at Hyderabad
And another

.. Respondents

Criminal Petition No.13506 of 2011

Smt.T.Kanchana and another

.. Petitioners/A.2 & A.3

and

The State of A.P.,
Rep.by Public Prosecutor,
High Court at Hyderabad
And another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 12th August, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of Judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wish to see
the fair copy of the Judgment? Yes/No

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition Nos.13122 and 13506 of 2011

COMMON ORDER:-

A.1 filed Criminal Petition No.13122 of 2011 and A.2 and A.3 have filed Criminal Petition No.13506 of 2011 to quash all further proceedings in C.C.No.752 of 2011 on the file of the IX-Additional Chief Metropolitan Magistrate, Hyderabad, taken on file against the petitioners for the offences punishable under Sections 420, 384, 406, 468 and 471 read with 34 IPC.

2. Originally, Sai Renewable Power Private Limited (hereinafter referred to as 'SRPPL') represented by its Director – Appayya filed a private complaint before the IX-Additional Chief Metropolitan Magistrate, Hyderabad, which was referred to the Police, Chikkadpally, under Section 156 (3) Cr.P.C., for investigation and report. Thereafter, the police Chikkadpally registered the complaint as a case in Cr.No.226 of 2009 on 26-05-2009 and the F.I.R. was issued. When the matter was pending investigation, in view of certain developments, which shall be referred to hereinafter, one Udaya Bhaskar Rao addressed a letter to the S.H.O., Chikkadpally P.S., for withdrawal of the complaint in view of the administrative decision taken in its Board Meeting, dated 17-05-2009. The copy of the said resolution which authorised the said Udaya Bhaskar Rao to withdraw the complaint was also filed. In view of the above, the police filed the final report on 15-02-2011. Notice was sent to the complainant. However, on 02-02-2011, Mr.Appayya, who in his capacity as Director of SRPPL originally filed a complaint, filed a letter before the investigating agency stating that the complaint, which he filed previously in his capacity of a Director of SRPPL is a mistake and he ought to have filed that complaint in his individual capacity, therefore he requested the police to continue with the investigation in the crime even though Udaya Bhaskar Rao made a request to withdraw the complaint. Thereafter, the

2nd respondent/complainant filed a Protest Petition before the learned Additional Metropolitan Magistrate in SR No.2633 of 2011. The learned Magistrate recorded the statements of the complainant Appayya, one M.V.Ramana Rao and Karanam Srinivasa Rao and by order dated 08-11-2011, after taking into consideration the complaint and the sworn statements, and on being satisfied, the learned Magistrate took the cognizance of the complaint and registered as C.C.No.752 of 2011 for the offences punishable under Sections 420, 406, 468 and 471 IPC. Summons were issued to the petitioners/accused.

3. The brief averments of the private complaint/protest petition are as under:-

“The 2nd respondent/*de facto* complainant and his brother – M.Chandrasekhar Rao promoted SRPPL with its registered Office at Ashoknagar, Hyderabad. Both the brothers were the Directors. The Company has 4.5 MW Industrial, Waste to Energy, Non-conventional Energy, Power Plant in Kamavarapukota, West Godavari District, Andhra Pradesh. The Unit was set up with the assistance of the term loan from IREDA and Union Bank of India. The Unit was commissioned on 31-03-2004 and started generating and supplying power to APTRANSCO under a Power Purchase Agreement. The Unit was also registered with UNFCCC for CDM and was issued 53,107 CER's for the operation period starting from 31-03-2004 to 22-09-2007. Due to ill-health of his brother and certain other factors, the shareholders of SRPPL decided to sell their respective shares in SRPPL along with the Unit comprising of the land, building, plant and machinery. A3 who is personally known to the *de facto* complainant was working as Deputy Manager in NEDCAP at that time and attached to the section connected with Waste to Energy Projects Development in the State of Andhra Pradesh. The complainant met A.3 quite a number of times in this connection for getting approval from NEDCAP which is mandatory for setting up waste to energy power projects. At every step, A.1 had guided the complainant and helped him in establishing SRPPL, as all bio-mass and Waste to Energy Power Plants initially need approval of NEDCAP for setting up such power plants. The SRPPL initially got the approval of NEDCAP for setting up a 2.5 MW power project. With the help of A.3, the complainant was able to obtain approval for enhancing the

capacity of SRPPL from 2.5 MW to 3 MW. Accordingly, the project was given financial sanction by IREDA. However, even at this capacity as the project was not viable, with the help of A.3, the capacity of SRPPL was further enhanced from 3 MW to 4.5 MW. The additional term loan for implementing 4.5 MW project of SRPPL was availed from Union Bank of India.

In the year 2008, the complainant informed A.3 that himself and his brother decided to sell the unit as well as their shares in SRPPL. A.3 informed him that he would facilitate smooth sale of the unit as well as shares in SRPPL and in return, A.3 requested the complainant to pay consideration of Rs.1,10 crores. The complainant agreed for the said proposal only after completion of the entire transaction i.e., realization of the entire sale proceeds. Subsequently, A.3 introduced one Mr.A.Udaya Bhasker Rao, Managing Director of M/s.Agri Gold Projects Limited (hereinafter referred to as 'AGPL') to the complainant stating that they were interested in acquiring the unit and 100% Equity in SRPPL. After a thorough and full inspection of the plant by AGPL and verifying and satisfying itself in all respects, AGPL came forward to acquire 100% Equity in SRPPL. Accordingly, a Memorandum of Understanding dated 12-06-2008 was drafted and finalized in between the complainant representing all the shareholders of SRPPL and AGPL in the presence of A.3.

As per the MoU, dated 12-06-2008, the complainant representing all the shareholders agreed to sell the shareholding in SRPPL in favour of AGPL. In return, AGPL agreed to pay an upfront amount of Rs.5 crores. Apart from the aforesaid sum of Rs.5 crores, AGPL was bound to pay to the complainant certain further consideration in term of MOU. Out of the upfront amount of Rs.5 crores, AGPL initially paid a sum of Rs.250 crores on the date of signing of MOU i.e., on 12-06-2008 and failed to pay the balance amount of Rs.2.5 crores as agreed. AGPL assured to pay a balance amount of Rs.2.5 crores within a short period and A.3 orally assured the complainant towards the same. At request of the AGPL and on the advice of A.3, the complainant had stopped production in the plant in order to facilitate AGPL for entering into one time settlement with IREDA. However, for the reasons unknown to the complainant, AGPL did not fulfil its obligations under MoU.

Subsequent to the execution of the MoU, contrary to the understanding, A.3 demanded the complainant to immediately pay the consideration amount of Rs.1,10 crores by way of a Demand Draft to be drawn in favour of his wife i.e., A.2 since A.3 stated that he cannot accept the same in his name being a

Government employee. Otherwise, A.3 threatened the complainant that the entire transaction between the complainant and AGPL would be badly affected. However, A.3 expressly assured the complainant that the aforesaid Demand Draft shall be encashed only after all the terms of the MoU are fully complied with by parties. Reluctantly, the complainant handed over a Demand Draft dated 10-11-2008 for a sum of Rs.1.10 crores. Although, there is no privity of contract between the complainant and A.2, the complainant issued the Demand Draft in favour of A.2 at the request of A.3.

On 29-11-2008, an amendment to the MoU dated 12-06-2008 drafted and finalized by A.3 which was executed between the shareholders of SRPPL represented by the complainant and AGPL in the presence of A.3. As per clause 2.1(ii) and 2.1 (iii) of the amended MoU, AGPL agreed to immediately pay the balance 50% of upfront payment and 50% of sale consideration of CERs. AGPL paid to the complainant the balance amount towards 50% of the upfront payment of Rs.2,50,00,000/- only on 29-11-2008. The complainant completed his part of obligation under the MoU and handed over the plant to AGPL. However, AGPL inspite of taking possession of the plant did not comply or fulfil its part of the terms and conditions of the MoU.

A.3 encashed the Demand Draft for Rs.1.10 crores even before the parties to the MoU have discharged their obligations. Having encashed the said Demand Draft, A.3 has failed to provide his services in facilitating the conclusion of the transaction between the complainant and AGPL. A.2 and A.3 have defrauded and cheated the complainant and usurped Rs.1.10 crores. AGPL has failed to comply with the terms and conditions of MoUs and amendment to the MoU till today. Under the *bona fide* belief that AGPL will perform its part of the contract, the complainant and other shareholders transferred the balance 47.8% of their shareholding in SRPPL in favour of AGPL on 12-05-2009. Even after the execution of the MoU, amendment to MoU and MoS, AGPL has committed breach of contract and thereby caused monetary loss to the complainant. A.2 and A.3 are guilty of breach of trust and faith.

A.1 is an Advocate who is said to be working under a Senior Advocate by name SRK Hanumantha Rao. A.1 is said to have been handling the cases of SRPPL in different forums. A.1 has fabricated and forged a Board resolution purported to have been passed by SRPPL on 10-10-2008 at Rajahmundry under which it was resolved that a sum of Rs.1.27 crores will be paid to A.1 towards his fees. On the basis of such a forged and fabricated

resolution, A.1 filed a suit in the Court of Family Court-cum-Additional District and Sessions Judge, Rajahmundry for recovery of the amount and subsequently the said suit was withdrawn.

A.3 is working as Deputy General Manager in NEDCAP Ltd., which is a Government of A.P.Undertaking and also Nodal Agency to India Renewable Energy Development Agency (IREDA), a Government of India Undertaking under the Ministry of New and Renewable Energy, Government of India and A.2 is the wife of A.3. A.1 to A.3 with a common intention extorted Rs.1.10 crores by way of Demand Draft. Out of Rs.1.10 crores, A.2 and A.3 paid Rs.40,00,000/- to A.1.

It is also averred that the complainant instead of filing complaint in his individual capacity, by mistake lodged a police complaint representing SRPPL as its Director vide F.I.R. No.226 of 2009. Therefore, the complainant addressed a letter dated 02-02-2011 to the S.H.O., Chikkadpally, Hyderabad, to treat the complaint as made in his individual capacity and requested to investigate into the matter in accordance with law. In spite of the said letter, the S.H.O., failed to investigate into the matter. After registering the case, the Police, Chikkadpally have not recorded the statement of the complainant and other witnesses. The police have not conducted any investigation after registering the case. Taking advantage of the said mistake, the accused got a letter addressed by SRPPL rep.by one A.Udaya Bhasakara Rao as its Managing Director to the S.H.O., Chikkadpally, to close the case as withdrawn by the complainant.

A.1 to A.3 with a common intention to cheat the complainant by fraudulent way, forged, fabricated the documents and extorted the amounts with a criminal conspiracy and committed the offences punishable under Sections 384, 406, 420 and 471 read with 34 IPC.”

4. The petitioners/accused denied the accusations and filed the present petitions to quash the same on the ground that absolutely no offences are made out which can be tried by a criminal Court and the present proceedings are nothing but abuse of the process of law for extracting money from the petitioners. Even according to the complainant, the offences alleged to have been committed by A.1 on the one hand and A.2 and A.3 on the other are quite distinct and separate. The two alleged offences cannot be clubbed and tried together. Insofar as the alleged

offences against A.1 are concerned, admittedly, the cause of action arose only at Rajahmundry but not in Hyderabad. Therefore, the Court in Hyderabad will have no jurisdiction to entertain and try the case insofar as A.1 is concerned.

5. With regard to A.2, it is contended that A.2 has got nothing to do with the transaction and there is no privity of contract in between A.2 and the complainant or SRPPL. A.2 is the wife of A.3. The only allegation is that the Demand Draft for Rs.1,10 crores was issued by the complainant in the name of A.2 she being the wife of A.3 on a representation that A.3 being a public servant cannot accept the same.

6. Insofar as A.3 is concerned, it is contended that he was paid the amount by the complainant in pursuance to the agreement between the parties and the fact that a Demand Draft given to A.3 by the complainant itself goes to show that by the date of issuance of the Demand Draft, absolutely there was nothing to suspect the *bona fides* and there is no question of there being any inducement or any acts of cheating on the part of A.3. It is submitted that for the services rendered by A.3 and after duly entering into the Memorandum of Understanding with M/s.Agri Gold Projects Limited (hereinafter referred to as 'AGPL') and after the complainant has admittedly received Rs.2.50 crores, as against Rs.5 crores to be paid, only then the Demand Draft for Rs.1,10 crores was issued to A.3. It is submitted that if AGPL has failed to fulfil the terms of MoU, A.3 cannot be said to be responsible therefor in any way and significantly, no complaint is lodged by the complainant against the defaulting party to the MoU viz., AGPL and the complaint is lodged only against A.3 who only acted as a mediator in between SRPPL and AGPL. It is further submitted that a bare reading of the complaint clearly shows that the dispute is mainly in between SRPPL and AGPL in view of non-fulfilment of the alleged terms of the contract and MoU entered on 12-06-2008 and the amended MoU dated 12-05-2009. Even according to the complainant, due to the alleged breach of the MoU by AGPL, the complainant sustained huge monetary loss. It is apparent from the complaint itself that the dispute is predominantly arising from commercial

and financial transactions for which recourse cannot be had to the criminal prosecution.

7. On the other hand, the contention of the 2nd respondent/complainant is that it is the inducement made by A.3 who was holding a responsible position with whom the complainant Company was having dealings in the past who made the complainant SRPPL to enter into MoU with AGPL and even before the contract was completed, A.3 has induced the complainant to pay him Rs.1.10 crores towards his fee for mediating in between AGPL and SRPPL. It is further contended that the oral understanding in between A.3 and the complainant was that the Demand Draft should not be encashed till AGPL fulfil its terms of contract as envisaged in the MoU and fraudulently, A.3 who obtained the Demand Draft in favour of his wife – A.2 has encashed the same and thereby committed the offence. Learned Counsel submits that since it is the acts of A.1 and A.3 which led to the complainant sustaining huge monetary loss, they are liable for the criminal prosecution.

8. In view of the above, what is required to be seen is as to whether a perusal of the complaint petition/protest petition and the evidence placed on record justify continuation of the criminal prosecution and whether a *prima facie* case is made out for putting the petitioners/accused on trial or whether considering the nature of the allegations as contained in the complaint continuing the criminal prosecution will amount to abuse of process of Court subjecting the petitioners/accused to face the trial without there being any substance.

9. In this connection, reference can be made to the decision of the Supreme Court reported in **STATE OF HARYANA AND OTHERS v. BHAJAN LAL AND OTHERS**^[1], wherein the Supreme Court laid down the following aspects which need to be considered at the stage of considering as to whether it is a fit case to proceed with the trial or to quash the proceedings:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In **B.CHANDRIKA v. SANTHOSH AND ANOTHER**^[2] the Supreme Court held as under:-

"In the instant case, the statement of the complainant clearly indicates that money was entrusted to the first accused husband of second accused. Complainant has also stated that at the time of paying the amount, the wife was not seen. Police on investigation, noticed that during the period when money was entrusted to the first accused, the second accused was not in the residential house of first respondent. A copy of decree of divorce produced before the Court, shows that the second accused had obtained a decree of divorce against the first accused on the ground of cruelty under Section 13 (1)(a) of the Hindu Marriage Act, 1955. Considering the fact that the second accused had no role, even according to the complainant, there is no reason to prosecute the second accused. Thus, report as well as the

statement of the complainant would indicate that no offence has been made out so far as the second accused is concerned and therefore, the summons issued against the second accused would stand quashed.”

11. In **SATHISH MEHRA v. STATE OF N.C.T. OF DELHI AND ANOTHER**^[3], the Supreme Court held at para 15 as under:-

“The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the F.I.R., or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra-ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed.”

12. In **RISHIPAL SINGH v. STATE OF U.P. AND ANOTHER**^[4], the Supreme Court held as under:-

“When a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceedings results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482, Cr.P.C. While exercising the power under the provisions, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact.”

13. In **CHANDRAN RATNASWAMI v. K.C.PALANISAMY**^[5], the Supreme Court at para 54 held as under:-

“We are of the definite opinion that the complainant has

manipulated and misused the process of Court so as to deprive the appellants from their basic right to move free anywhere inside or outside the country. Moreover, it would be unfair if the appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction. Hence, allowing the criminal proceedings arising out of F.I.R. No.7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed. Since the High Court failed to look into this aspect of the matter while passing the impugned order, in our opinion, the same could not be sustained in law.”

14. Upon carefully perusing the material on record, what is noticed is that the dispute if any in between the *de facto* complainant and the petitioners/accused is for the alleged failure on the part of the petitioners/accused to fulfil their commitment made to the complainant on the basis of which the complainant have agreed to sell SRPPL to AGPL for consideration of about Rs.18 crores. A.3 was a public servant with whom SRPPL had several official dealings and hence he is known to the complainant. The complainant wanted to sell the SRPPL and since A.3 was working as DGM, NEDCAP Ltd., and attached to the section connected with Waste to Energy Projects Development, the complainant informed A.3 in the year 2008 that they have decided to sell their unit and A.3 is said to have assured them that he would facilitate smooth sale of the unit as well as shares in SRPPL. For doing this, A.3 is alleged to have demanded Rs.1.10 crores which was agreed to be paid by the complainant after realising the entire sale proceeds. It is alleged that A.3 introduced Mr.Udaya Bhaskara Rao, Managing Director of AGPL, who agreed to purchase the unit of the complainant. A.3 helped in settling the deal. Accordingly, a Memorandum of Understanding is entered into in between the AGPL and SRPPL on 12-06-2008. As per the MoU, SRPPL agreed to sell its unit and share holdings in favour of AGPL for an upfront amount of Rs.5 crores and the balance was to be paid subsequently. It is also mentioned in the complaint that in pursuance to the said MoU, AGPL initially paid a sum of Rs.2.50 crores to SRPPL on the date of signing the

MoU dated 12-06-2008. Thereafter, AGPL is alleged to have committed default in payment of the balance agreed amount. At the instance of A.3, the complainant stopped production in the plant in order to facilitate AGPL for entering into settlement with IREDA. The specific allegation is that it is the AGPL which did not fulfil its obligation under MoU.

15. From the above contents of the complaint, what could be gathered is that A.3 acted as a mediator and introduced the prospective buyer to the seller and both the parties entered into MoU and the purchaser also paid half of the agreed amount and the remaining half was not paid inspite of there being a written MoU between them. The default is committed by AGPL but not A.3.

16. Insofar as A.3 is concerned, what is alleged is that he demanded the complainant to pay Rs.1.10 crores to him as agreed and on his insisting, the complainant issued a Demand Draft for Rs.1.10 crores in favour of his wife A.2 and the specific understanding was that the said Demand Draft will be encashed after AGPL pays the entire consideration. Contrary to that oral understanding, A.3 is alleged to have got the Demand Draft encashed and thereby committed the offence. It is contended that by no stretch of imagination, can this act of A.3 be said to amount to commission of the offence alleged. It is not that the complainant issued any cheque. The fact that the complainant issued a Demand Draft which is as good as net cash clearly shows that the intention was to pay the amount of Rs.1.10 crores to A.3 on the date when the Demand Draft was issued and any amount of oral understanding contrary to that cannot be believed. It is a well-known fact that a Demand Draft will be issued with a limited period of validity and it will be encashed on par. Once a Demand Draft is obtained, it cannot be held without being encashed for an uncertain or indefinite period. Therefore, the fact that the complainant issued a Demand Draft negatives his contention that there was any oral understanding to the effect that A.3 should not encash the Demand Draft till the entire deal is finalized.

17. Be that as it may, when the MoU is dated 12-06-2008, the amount of Rs.1.10 crores was paid to A.3 on 10-11-2008 and even by 12-06-2008,

admittedly, AGPL paid Rs.2.50 crores to the complainant. With regard to the balance of Rs.2.50 crores, it is mentioned in para 10 of the complaint that AGPL paid the balance amount of Rs.2.5 crores to the complainant on 29-11-2008. Therefore, within 20 days after the commission charges were paid to A.3, AGPL fulfilled its obligation of paying Rs.5 crores to the complainant as agreed in the MoU dated 12-06-2008.

18. The subsequent allegation is that rest of the terms of the contract for payment of the remaining consideration were not fulfilled by AGPL and after negotiations, another MoU was entered into on 12-05-2009 in between SRPPL and AGPL. This understanding is entered six months after the Demand Draft was paid to A.3 between AGPL and SRPPL and it was christened as Memorandum of Settlement and it was dated 12-05-2009. In this settlement, it was incorporated that AGPL will fulfil the remaining terms of the contract of the original MoU. It is alleged that even thereafter AGPL did not fulfil its commitment.

19. If the contents of the complaint are analyzed carefully, nothing is shown as to how can A.3 be said to have committed the offences alleged against him. Even at the cost of repetition, it may be stated that A.3 took up the responsibility of only facilitating the smooth transfer of the unit and the shares of SRPPL in favour of AGPL and for that purpose, it was agreed by both the parties that A.3 will be paid Rs.1.10 crores. Only after MoU was entered into and 50% of the amount was paid by AGPL to SRPPL, the complainant paid the agreed amount of Rs.1.10 crores to A.3. If the purchaser AGPL commits default thereafter in fulfilling its terms of MoU or even the Memorandum of Settlement, that was arrived at more than six months after the commission was paid to A.3, A.3 cannot be said to be in any way responsible for the alleged breach of terms of the contract or the violations of the terms of the settlement by AGPL, leave alone accepting that he has committed the criminal offences of cheating, extortion and criminal breach of trust.

20. Insofar as the allegation against A.1 is concerned, the fact is that he is an Advocate who is said to be working under a Senior Advocate by name SRK Hanumantha Rao. A.1 is said to have been handling the

cases of SRPPL in different forums. The allegation is that A.1 has fabricated and forged a Board resolution purported to have been passed by SRPPL on 10-10-2008 at Rajahmundry under which it was resolved that a sum of Rs.1.27 crores will be paid to A.1 towards his fees. This resolution is said to have been forged and fabricated by A.1. On the basis of such a forged and fabricated resolution, A.1 filed a suit in the Court of Family Court-cum-Additional District and Sessions Judge, Rajahmundry for recovery of the amount and subsequently the said suit was withdrawn. Admittedly, the cause of action for this offence, insofar as A.1 is concerned, is only at Rajahmundry where it is alleged that A.1 has brought into existence a forged board resolution and used the said resolution for the purpose of instituting a suit for recovery of a sum of Rs.1.27 crores towards his professional fee.

21. As noticed from the above discussion, the offence alleged against A.1 has got absolutely no nexus whatsoever with the offences alleged to have been committed by A.2 and A.3. Both of them are quite distinct and different. The two cannot be tried together. As per Section 223 Cr.P.C., the persons who can be tried jointly and together are the persons accused of the same offence committed in the course of the same transaction; persons accused of an offence and persons accused of abetment of, or attempt to commit such offences; or the persons accused of different offences committed in the course of same transaction. The offence that is alleged against A.1 is that he has forged and fabricated a Board resolution, dated 10-10-2008, purported to have been passed at Rajahmundry and used the said resolution for filing a suit for recovery of Rs.1.27 crores towards his professional fee. The allegation against A.2 and A.3 is that they have committed cheating, extortion and criminal breach of trust. Therefore, the two set of persons cannot be tried in one complaint.

22. In addition to the above, the cause of action for the offence alleged to have been committed by A.1 at Rajahmundry but not at Hyderabad and therefore neither the police of P.S.Chikkadpally nor the Court of IX-Additional Chief Metropolitan Magistrate, Hyderabad, have got territorial

jurisdiction to try the offences alleged against A.1.

23. It is also brought on record that for the alleged acts of professional misconduct by A.1, the Advocate, he has been punished by the Bar Council of Andhra Pradesh in Complaint Case No.12 of 2010 before the Disciplinary Committee No.1 of the Bar Council of the State of Andhra Pradesh, Hyderabad, dated 30-04-2011 and A.1 was found guilty of the professional misconduct and his practice was directed to be suspended for a period of two years.

24. It may also be stated here that absolutely there is no material or allegation insofar as A.2 is concerned. The only thing is that she is the wife of A.3 and she has absolutely no privity of contract in between her and the complainant. The allegation is that the amount that was agreed to be paid to A.3 when it was being proposed to be paid, at the instance of A.3, the Demand Draft for the said amount was obtained in the name of A.2 for the reason that A.3 is a public servant and he cannot accept any commission. Even thereafter, the allegation is that it is A.3 who has encashed the Demand Draft contrary to the oral understanding in between the complainant and A.3 and that the Demand Draft will not be encashed till the entire deal is finalised. Therefore, A.2 cannot be said to be in any way privy to the contract or any offence alleged to have been committed by A.3.

25. To sum up the foregoing discussion, what can be said is that the present complaint/protest petition filed by the complainant is not the proper remedy available to the *de facto* complainant. Even if the entire contents of the complaint are taken to be true, no criminal offences can be said to have been committed by A.2 and A.3 so as to continue the criminal prosecution. Even according to the complainant, the substance of his grievance is that A.3 who agreed to smoothly facilitate the transfer of the ownership of SRPPL with AGPL, did not fulfil his commitment and AGPL has committed breach of the terms of the two agreements, dated 12-06-2008 and 12-05-2009 and even though AGPL did not fulfil its promises, A.3 has took away his commission of Rs.1.10 crores, which was payable only after the entire deal was finalized. In view of the foregoing

discussion, it is held that continuing the further proceedings in C.C.No.752 of 2011 on the file of the IX-Additional Chief Metropolitan Magistrate, Hyderabad, will amount to abuse of process of law and therefore the same cannot be continued.

26. In the result, both the Criminal Petitions are allowed and the proceedings initiated against the petitioners/accused No.1 to 3 in C.C.No.752 of 2011 on the file of the IX-Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

Miscellaneous petitions, if any, pending in these Criminal Petitions shall stand closed.

M.S.K.Jaiswal, J

12th August, 2015
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[\[1\]](#) AIR 1992 S.C., 604

[\[2\]](#) 2014 Cr.L.J. 1090

[\[3\]](#) AIR 2013 S.C., 506

[\[4\]](#) AIR 2014 S.C., 2567

[\[5\]](#) AIR 2013 S.C., 1952