

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5521 OF 2015

ORDER:

This Criminal Petition is filed by the petitioners/A1 and A2 under Section 482 Cr.P.C seeking to quash F.I.R. No.29 of 2015 of III Town Police Station, Proddatur.

The petitioners, who are husband and wife are accused in the above said crime, outcome of the report of the 2nd respondent, registered for the offence punishable under Sections 408, 420, 468, 471, 506 r/w 34 I.P.C. In fact, a private complaint was filed on 09.01.2015 before the learned I Additional Judicial Magistrate of First Class, Proddatur, by the *de facto* complainant for the above said offences against the petitioners/accused in Yelahanka Police Station, Bangalore, showing his address at Proddatur alleging the date, time of offence on 31.12.2014 and alleged to be taken place at the house of the complainant by citing three witnesses including his wife as LW.2 and others of Proddatur town. The learned Magistrate referred the same under Section 156(3) Cr.P.C. and the F.I.R. registered there from was on 01.03.2015.

Now, as pointed out by the learned counsel for the petitioners, there is no application of mind judicially in forwarding the complaint under Section 156(3) Cr.P.C. by the learned Magistrate for police investigation by registering crime, but for as a purpose for sake of asking by the complainant in registering the crime supra are that the complainant and one Vasantha incorporated McML Systems Private Limited company (hereinafter referred to as 'McML') in the year 1999 as first founders and directors, with office at Yelahanka, Bangalore and A1 joined as Director of the said entity and that later he was appointed as Managing Director in the year 2001 on salary of Rs.8 lakhs p.a. It is further averred that A1 started E2E company in the name of A2 later. It is averred that *de facto* complainant invested huge amount by pledging all his properties in Axis bank and Allahabad Bank for running the company, whereas, A1 pledged his property worth Rs.3 lakhs for investment in the company McML. It is further averred that A1 diverted funds from McML to E2E group to a tune of Rs.4,38,02,809/- without approval of McML and by diversion of funds. A1 and A2 cheated McML and its shareholders including *de facto* complainant and

thereby committed the offence of cheating under Section 420 I.P.C. It is averred that E2E company is in progress with more than 30 crores in profit and the accused created false documents and misappropriated funds to a tune of Rs.5 crores of McML. It is averred that A1 later resigned from the position of Managing Director of McML in the year 2010, while drawing salary of Rs.24,00,000/- p.a. to evade the amount to McML and to help E2E company of A2. Subsequently, McML is skeleton closed due to misappropriation of funds by the accused.

Besides the above, the further averments are that the complainant requested A1 and A2 many a time for Rs.5 crores and they were postponing without payment on one pretext or other, that earlier one of the Directors of McML filed a complaint against A1 in Yelahanka New Town Police Station, Bangalore against A1 (crime No.137 of 2010) and the crime registered by the said police and A1 was remanded to judicial custody and the matter was compromised there from. It is however averred further that complainant went to Bangalore and requested the accused to pay the amount. A1 and A2 later came to Proddatur and held a panchayat and promised to pay Rs.5 crores to the complainant in December, 2014 and that again on 31.12.2014, A1 and A2 with others came to house of complainant quarreled with him and pressurized to accept only Rs.2 crores, for which when complainant refused, A1 and A2 and their men threatened the complainant with dire consequences and the same was witnessed by LWs.2 to 4, that the accused are having political back ground and influential and even he approached III Town Police Station, Proddatur, they are not evincing interest in registering the crime. Hence, the private complaint.

A perusal of the complaint no way shows even submission of any copy of report said to have been given on 31.12.2014 to Proddatur Police Station if at all there is proof much less sending by registered post any report to the Superintendent of Police in this regard. There are no enclosures filed with the complaint.

It is the said crime registered by police from the complaint averments supra in the factual back ground and the order of the learned Magistrate in referring to police for investigation without assigning the reasons by non-application of mind that is impugned herein not only on merits but also on the

technicalities supra.

After numbering and before admission notice ordered to the 2nd respondent even served failed to attend. Hence, taken as heard.

Heard the learned counsel for the petitioners and the learned Public Prosecutor for the State.

The contention of the petitioners in support of grounds of quash petition as well as the grounds urged otherwise also referred supra are that the 1st petitioner is Chairman-cum-Managing Director of E2E group, which consists of five companies with 400 employees out of his experience being holder of M.Tech and earlier served in the Railways in the cadre of Joint Director at the time of his taking V.R.S. and the 2nd petitioner is his wife who is unconnected with the business affairs of the company. The 1st petitioner became part of McML having been joined as Director. Later there were business differences with McML and criminal complaint lodged against him in crime No.137 of 2010 by Yelahanka New Town Police Station was closed from the closure report, outcome of settlement outside the Court of the entire dispute and there is nothing survives to maintain the present complaint again for having been compromised including for all dues. The further contention is that when 1st petitioner came out of McML and developed his own venture E2E group, the progress of E2E made an eyesore to the complainant who started blackmailing the petitioners as if the 1st petitioner has to pay Rs.5 crores for nothing and for his threats and intimidation the

1st petitioner filed a report against the complainant at Yelahanka New Town Police Station on 19.12.2014 that was registered as crime No.279 of 2014 which is pending investigation against him and the present complaint is nothing but a counter blast by weaved a false story with vengeance and to extract money if possible by blackmailing without basis and is trying to cause arrest the petitioners by influencing the police of Proddatur, the native place of the complainant and thereby the proceedings are liable to be quashed.

A perusal of the material supra including from the complaint averments at page No.4 are clear that it is a civil dispute or money dispute including from page No.4 para-2 averments of there was a settlement for Rs.5 crores and

accused were postponing to pay Rs.5 crores. If such is the case nothing to say any criminal element apart from very para-1 speaks earlier on behalf of McML, a report was given and crime No.137 of 2010 registered against the 1st petitioner herein by Yelahanka police and the matter was compromised and the enclosures clearly speak the matter was settled as per the Board resolution of McML to withdraw the complaint proceedings as settled and there was an authorization by the resolution to withdraw the complaint and accordingly it was withdrawn that was recorded by the Court on 01.08.2011 pursuant to adjournment from 27.07.2011 by representation of counsel for the complainant(McML) with the Board resolution of the matter compounded along with memo and documents in that regard. The order of the Court further reveals that on 10.08.2011 the matter has been compromised and the D-report is accepted and the investigating officer is permitted to return the seized properties to the accused. It is clear not only there from but also from the Board resolution of McML dated 08.07.2011 at plot No.54/S, Ecil Post, Hyderabad at 11 a.m. of consensus reached in the meeting held on 02.07.2011 between the parties for entered into a deed of settlement and presented before the Board of Directors of the draft deed and there from the Board agreed the terms and conditions and the consent of Board accorded for entering into the deed of settlement with G.Srinivasa Rao(1st petitioner) and his assignees and the company in respect of withdrawal of civil and criminal cases filed against the company by respective parties and resolved that the conditions as reflected in the draft deed are approved and authorized one of the Directors of McML by name Sri S.S.Sastry for signing the above referred deed and other documents for the purpose and on behalf of the Board and the company, to do all consequential and necessary acts pursuant to the performing of obligations in terms of deed of settlement. If same is true, there is nothing survives for the complainant to say as if Rs.5 crores due or as if Rs.2 crores agreed to be paid, leave about such monitory claim cannot survive to believe in the absence of anything in writing. As pointed out by the learned counsel for the petitioners, there is nothing to the roping of A2 in the crime, who is no way connected with McML or the so called alleged cheating of McML even taken for argument she is anyway concerned with E2E group for nothing to show her active role for alleged cheating or any deception. Leave it as it is, the so called complaint referred supra of the complainant alleges the occurrence on 31.12.2014 at the

house of the complainant. A perusal of the complaint shows that it was an alleged threat on that day at that house. The accused are shown as residents of Yelahanka, Bangalore and the complainant is shown as resident of Hyderabad. However, in the complaint address shown as Proddatur of Kadapa District and it clearly shows as laid down by the Apex Court in one of the guide lines in **State of Haryana v. Ch.Bhajan Lal**, all these allegations are engineered with some spite and vengeance or to create a cause to maintain the complaint in Proddatur for no cause of action taken place and to influence the police there in registering the crime and if at all to arrest the accused to bring them to terms if any.

Having regard to the above, it is a fit case to quash the proceedings of F.I.R.

Accordingly, this criminal petition is allowed by quashing the proceedings in crime No.29 of 2015 of III Town Police Station, Proddatur.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:11-09-2015

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