

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7484 of 2015

ORDER :

The quash petitioners are M/s.Aquanomics Systems Private Limited rep. by its MD Mr.Sanjay Supra, filed the Criminal Petition to quash the proceedings in C.C. No.264 of 2015 on the file of X Additional Chief Metropolitan Chief Metropolitan Magistrate, Secunderabad, which is outcome of private complaint of 2nd respondent —M/s.KVR Railway Infra Projects Pvt. Limited on 16.02.2015 for the offences punishable under Sections 420 and 403 IPC and the learned Magistrate, after recording the sworn statement of the Senior Manager (Admin) by name Mohd. Afzal, has taken cognizance for the offences supra against the petitioners/ accused supra and issued summons to them.

2) It is pursuant to it, they filed the quash petition seeking to quash the C.C. No.264 of 2015 on the ground that there are no offences made out and it is only a civil transaction and there is no any element of cheating or breach of trust or misappropriation to attract the said penal offences to take cognizance either from the complaint or from the sworn statement of the de facto complainant and what the sworn statements speak is that the A-1 entity represented by accused No.2 dealing in products for pool requirements used in Water Treatment, Recycle, Storage, Water Handling and Enjoyment of Water, the accused No.2 is the Managing Director, the accused No.3 is the Business Manager, accused No.4 is local agent/ dealer of the A-1 company and the complainant had supplied, pursuant to the order of A1, swimming pool for its Guest house at Jubilee Hills to the accused No.2 through their local Hyderabad agent Mr.Sudhakar of Express Pools & Spa. The complainant submitted the total value of the work order of Rs.6.50 lakhs and paid the total value and accused Nos.1 to 4, having issued threatening mails to the complainant, induced the complainant and extracted the money, hence to take action to punish them by taking cognizance of the offence. As seen from the complaint and said sworn statement, there was payment of the amount for work order. As per the grounds in the quash petition, the complainant has given the work order and paid the amounts through cheque and swimming pool was supplied by A-4 through A1

and the allegation is that it is a low standard and for causing repairs A2 to A4 induced the complainant for Rs.50,000/- for supplying sheets and supplied duplicate sheets and swimming pool is still leaking and complainant asked the accused Nos.1 to 4 to repair the swimming pool through various mails and after receiving the mails, accused Nos.2 to 4 have started threatening and on 12.02.2015, accused No.4 at the behest of accused No.1 approached the complainant and taken away Rs.1,00,000/- cash for repairing the swimming pool and did not turn up.

3) Even from the same, there is no evidence of cheating that can be made out as the material supplied verified and taken if at all it is an inferior quality it could have been rejected at the time of supply and undisputedly for repairs Rs.1 lakh was stated to have been paid to accused No.4 and so far as supply of sheets concerned, it is purchased by complainant for Rs.50,000/- and if defective he could not allow to be brought and for so-called threats that attracts if at all Section 506 IPC, for which the complainant not even filed much less stated before the learned Magistrate in the sworn statement. In the sworn statement of complainant referred supra, it is a general averment that complainant was induced and accused were threatening and extracted money and any date or time not even mentioned in the sworn statement and in the complaint. No doubt, there is also a stray sentence mentioned about the accused No.4 approached complainant and taken away Rs.1,00,000/- for the repairs to say it was at the behest of accused No.1. Even there is nothing to believe much less that tantamounts to cheating and breach of trust for supply of the material that is admittedly supplied earlier.

4) Even though notice served, the complainant failed to attend there could be nothing to rebutt the averments in the quash petition referred supra from the side of the complainant, if at all any truth to dispute the averments for having been served.

5) Having regard to the above, from the civil transaction which cannot be allowed to be prosecuted in law criminally further much less for the offences under Sections 420 and 403 IPC and the learned Magistrate in passing the order taking cognizance also furnished no reasons much less by any judicial application of mind vide ***Binod Kumar vs State of Bihar***.

6) Accordingly, the Criminal Petition is allowed and all the proceedings relating to C.C. No.264 of 2015 on the file of X Additional Chief Metropolitan Chief Metropolitan Magistrate, Secunderabad, is hereby quashed. The bail bonds of the petitioners/ accused Nos.1 and 2 if any, shall stand cancelled.

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

Dr. B. SIVA SANKARA RAO, J

Date:25.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: .11.2015

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