

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.7954 of 2015

ORDER :

This Criminal Petition is filed by Petitioners/Accused Nos.1 and 2 under Section 482 Cr.P.C seeking to quash the entire proceedings in Crime No.94 of 2015 of Kadapa Taluk police Station, YSR Kadapa District registered for the offences punishable under Sections 402, 406, 506 I.P.C.

2) The averments in the private complaint, which was referred under Section 156(3) Cr.P.C, are that the complainant was appointed as a franchise of M/s.DTDC Courier & Cargo Limited for Kadapa town about 20 years ago and he was doing courier business to the entire satisfaction of his head office at Bengaluru vide an agreement executed in the past that he went to Bengaluru on 13.11.2003 in the afternoon to discuss about his business matters after taking lunch outside and in the after noon while he was consuming tea, he fell sick due to consumption of tea mixed with poisonous insecticide by oversight and he was shifted to hospital and there he was treated and was discharged on 01.12.2003 and when he was contemplating to give a police complaint at Bangaluru against DTDC Company for attempt of murder against him through administering poison, (insecticide) mixed in tea, the then Dy.G.M. B.N.Eshwarappa persuaded him not to give any police complaint in order to safeguard the name, fame and reputation of DTDC courier and Cargo limited and executed a deed of reconciliation on 01.09.2004 at Kadapa on certain terms and conditions by promising to pay a compensation of Rs.25.00 lakhs to him and in default to pay a penal amount of

Rs.50.00 lakhs in lieu thereof with life time franchise continuation, that subsequently when the Complainant demanded the said amount, they flatly refused to comply with the terms and conditions of said deed of reconciliation executed earlier and that they cancelled his franchisee business licence for Kadapa town without any notice to him and thus played cheating and mischief towards the complainant, that they also sent five hired goondas to Kadapa town from Bengaluru on 04.05.2015 night around 9.00 p.m who wielded threats to his life that if he persisted in his demand of payment of said compensation if that is so they would murder him mercilessly and eliminate him which was witnessed by Pathan Mastanvalli, Shaik Hussain Saheb who were passing on the road near the residence of the complainant to go to their respective houses that aggrieved and frightened by the malafide and nefarious activities of both the petitioners the complainant filed a private complaint. Aggrieved by the same, the petitioners filed the present petition for quashing with several contentions that complaint is abuse of process and the allegations are absurd to believe besides false and meant to blackmail, the deed was allegedly executed on 01.09.2004 was human error and over sight regarding the food poison and the complaint filed is more than 11 years thereafter and the complainant also suppressed the fact that he cause issued legal notice dated 25.04.2015 enclosing so called deed of reconciliation for which the quash petitioners issued reply saying the so called deed is forged and fabricated and the claim therein is false, the learned Magistrate mechanically referred the private complaint to police investigation by non-application of mind and without any affidavit required in support of the complaint as per recent Apex Court expression referring to earlier expressions also, that the allegations on its face value no way even constitute

any offence, none of the petitioners are parties to alleged deed of reconciliation but for roped them with ulterior motive by suppression of material facts including the reply given to the notice and thereby the proceedings are liable to be quashed.

3) The 2nd respondent/defacto-complainant served with notice failed to attend and hence taken as heard and heard the learned counsel for petitioners as well as the 1st respondent-State represented by the Public Prosecutor and perused the material on record.

4) No doubt, a perusal of the reference of the private complaint case under Section 156(3) Cr.P.C by the learned Magistrate is not by assigning any reasons muchless as appears by any judicial application of mind but simply for mere sake of asking. It is also averred in fact in the complaint that the accused compromised and executed a reconciliation deed on 01.09.2004 for payment of compensation of Rs.25.00 lakhs and when such is the case, the remedies to enforce the same. For the notice issued by complainant, the accused issued reply disputing execution of so called deed of 2004 that is set up by the complainant. Even as per the complaint the so called assurance was given by one Eshwarappa and not even the petitioners. The complainant not even filed against the entity D.T.D.C Courier & Cargo Limited individually against present Chairman-cum-Managing Director and Executive Director, even without basis from complaint shows they were not the executants of the deed of reconciliation of 2004 muchless therefrom to make them penally liable. It is nothing but a civil dispute at best subject to showing of no bar of limitation for recovery of any amount thereunder the deed of reconciliation, which is in dispute subject to proof

execution and enforceability that too against the entity and not against the quash petitioners individually. The learned Magistrate did not go through the complaint by any judicial application of mind even before referring police for investigation and further assigned no reasons for referring to police for investigation in simply saying the case is referred to police under Section 156(3) Cr.P.C for investigation and report. It shows said reference is by non-application of mind and nothing but mechanical which is contrary to law as laid down by the Apex Court in ***Maksud Saiyed V. State of Gujarat***^[1], that was followed in para 11 of ***Anil Kumar V. M.K.Aiyappa***^[2] and the same affirmed by the three Judges' bench in ***Ramdev Food Products V. State of Gujarat***^[3] and reiterated in ***Priyanka Srivastava V. State of U.P.***^[4] of application of judicial mind is required even to refer under Section 156(3) Cr.P.C a private complaint for police investigation by consideration of the facts of the case on hand and the order though not a detailed one expresses the views of Magistrate, not suffice of mere statement of his gone through the complaint, documents and heard complainant, unless same by judicial application of mind reflects in the order, same is liable for setting aside. Further even the Apex Court in ***Priyanka Srivastava*** supra by judgment dated 19.03.2015 laid down guidelines to be followed which include enclosing of proof of regarding any giving of police report for entertaining a private complaint besides filing of affidavit of full disclosure of fact without any suppression of material facts. The learned Magistrate did not even verify said compliance before entertaining the complaint muchless to refer to police for investigation and suffice to say, same is liable to be set aside.

5) Accordingly and in the result, the Criminal Petition is allowed and all the proceedings in Crime No.94 of 2015 of Kadapa Taluk Police Station, YSR Kadapa District are quashed. The bail bonds of the petitioners/accused, if any, shall stand cancelled. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

30.10.2015

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[\[1\]](#) (2008)5 SCC 668

[\[2\]](#) (2013)10 SCC 705

[\[3\]](#) (2015)6 SCC 439

[\[4\]](#) (2015)6 SCC 287