HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.3194 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the petitioners-A.1 and A.2 out of 5 accused in C.C.No.251 of 2014) to set aside the order dated 01.03.2014 in C.F.No.2405 of 2006 in Cr.No.268 of 2005 of I Town Police Station, Vijayawada, (on the file of the Chief Metropolitan Magistrate, Vijayawada (C.C.No.251 of 2014), for the offences under Sections 195,406,420,423,504 and 506 of I.P.C outcome of a private complaint filed by the 2nd respondent/complainant before the Chief Metropolitan Magistrate, Vijayawada, which was referred to the police Vijayawada, I Town Police Station, who registered the crime supra.

2. Heard the learned counsel for the petitioners so also the 1st respondent-state and the 2nd respondent/defacto complainant and perused the material on record.

3. The allegations of the complaint of the 2nd respondent are that of giving and fabricating false evidence, breach of trust, the fraudulent and dishonest misappropriation and attack etc., within the limits of the I town police station Vijayawada, that A.1 D.Laxman Rao, husband of A.2 S.Jayasri(petitioners herein) was working as Sales Executive of Vijaya Oils, A.P.Co-operative Oil Seeds Growers Federation Limited (for short, 'the APCOSGFL') Hyderabad and in charge of Vijaya Oils and sales depot, Donka Patamata, Vijayawada, that during 1998 the complainant was working as Sales Representative in Public Distribution System(for short, 'PDS'), that the A.1 has taken hand loan amount from the complainant during 1998 to 2000 and in that regard when the complainant has taken up sale, distribution and marketing and on the advice of the A.1, invested 5 lakhs and the A.2 fabricated bankers memo, a blank cheque of Vijaya Bank, Malakpet, Hyderabad and Syndicate Bank, Bankinghampet, Vijayawada, return memos and

filed a false case against the complainant, for the offence under Section 138 of the N.I.Act, against the complainant and fabricated and forged the complainant's affidavit in Crl.P.No.4937 of 2004 in Crl.M.P.No.5190 of 2002 before the High Court at Hyderabad, to get an order in C.C.No.636 of 2002 pending before II Metropolitan Magistrate Court, Vijayawada quashed. The A.1 sold on complainant's counter P.D.S. sales of Vijayawada branch edible oil bags through complainant as per invoice of A.1 bearing Nos.OPS00651, 615, 677 in August 1998 on the profit of Rs.2/- per pouch of one litre under Public Distribution System, and escaped from payment of amount of Rs.40,000/- and godown rent for four months Rs.10,000/- and thus A.1 is liable to pay Rs.50,000/- supra on the ration shop sales and rythu bazaar sales and private sales to complainant and accused 3,4 and 5 are buying stocks in complainant's shop including for ration depot Nos.225,231 and 54 and they illegally associated with the A.1 and got unauthorizedly as dealers of circles I and II of rythu bazaars and ration shops to sell the stock of Vijaya brand one litre oil pouches including in rythu bazaars of Swarajya Mydan, and Padamata Rythu bazaar, Kedareswarpet Rythu Bazar and ration shops, private Market Sales in their bills, and they were offered through A.1 to complainant Rs.1/- each on one litre pouch as commission for their stocks sold within Vijayawada region, however, the A.1 did not pay single paise to the complainant and for the demands by the complainant, the accused persons were postponing without payment and complainant also filed O.S.No.5 of 2003 on the file of the II Additional District Court against the A.1 and his company for its recovery and A.3 to A.5 were wrongly selling the stocks in the area allotted to the complainant of Vijayawada region by causing loss and they all are harassing him to withdraw the suit O.S.No.5 of 2003 and they also attacked the complainant and they are causing loss by their unlawful attempts and getting profits illegally by not even paying one rupee commission on each pouch to the complainant as promised and complainant also filed in the suit a petition vide I.A.No.559 of 2003 to stop the sales by A.3 to A.5 having received notice therein, they started attacking and compelling to withdraw the suit proceedings and even the complainant given report to the Commissioner of police, Vijayawada who did not take any action and they are threatening the complainant by creating fear and they played fraud on him by deception and cheating to have wrongful gain with dishonest intention with privy to harass and thereby they are liable for action. The learned Magistrate forwarded the complaint for investigation to I town police who registered the Crime vide Cr.No.268 of 2005 and filed final report as non-cognizable in nature and the protest petition at one stage dismissed mistakenly and complainant preferred revision vide Crl.R.P.No.5 of 2008 against that order that was allowed on 23.06.2009 and A.1 and A.2 preferred quash petition No.6392 of 2009 in High Court that was ended in dismissal on 15.12.2011 with a direction to proceed with the case thereby the case is taken up on file.

4. With the above factual background, the order reads, with the sworn statement of the complainant, the complainant filed Photostat copy of the three invoices referred in the complaint for the offence of cheating and breach of trust against the accused persons and the documents filed also show A.3 to A.5 brought stocks of Vijayawada edible oil packets of one litre at the counter opened by the complainant at rythu bazar, patamata and the other documents show A.1 collected on 23.03.1998 Rs.30,000/- from the complainant and the cheque bouncing case filed by the A.2 whom he does not know and no cheque issued, he impugned the cheque bouncing case, and the High Court quashed the same and the suit O.S.No.5 of 2003 filed by the complainant was decreed by the VII Additional District Judge, Vijayawada for Rs.13,01,000/- on 05.06.2006 and appeal before High

Court as A.S.No.516 of 2006 is pending in this regard. It is the observation of the learned Chief Metropolitan Magistrate therefrom that A.1 violated the agreement terms and conditions, having collected the entire amount from the complainant promising to arrange the truck load of edible oil sachets, and as Managing Director of A.3 deceived the complainant with dishonest intention and caused loss to him and he obtained blank cheques from the complainant and cause filed through his wife A.2 cheque bounce case that is also deception by the A.1 and A.2 against the complainant and there are allegations to show the A.3 to A.5 also colluded with A1 in taking dealership, contrary to the dealership of the complainant given by the A.1 for part of the area and place, in causing wrongful loss to the defacto-complainant and thereby there is a prima facie accusation against them for the offence under Section 420 so far as against the A.1 and A.2 and Section 420 read with 34 of IPC, so far as against the A.3 to A.5 and also under Section 506 of I.P.C. against A.1,A.3 to A.5 that was taken cognizance and ordered to issue summons.

5. It is the order dated 01.03.2014 now impugned in the quash petition, dated 06.04.2015. The contentions in the quash petition are that the cognizance taken by the learned Magistrate is untenable and A.1 has no capacity to appoint distributors much less to remove anybody and the suit O.S.No.5 of 2003 decreed is subject matter of A.S.No.516 of 2006 pending in High Court and by passing of judgment in Civil Court, criminal prosecution won't survive and the petitioners/A.1 and A.2 are innocent and the complaint filed is untenable. The defacto-complainant is doing business at Vijayawada and 2nd petitioner is wife of the 1st petitioner. The 1st petitioner worked as Sales Executive in APCOSFL, Hyderabad where the defacto-complainant got dealership of edible oil from the employer of 1st petitioner and became defaulter for payment of stocks received on one month credit basis, even the stocks sold in retail by diverting sale

amount to the other business, APCOSGFL Association made several demands by notices for the dues and after sufficient time for the failure to fulfill the terms and conditions of the federation in the provisional appointment letter and from his poor performance and irresponsible attitude, the Manager, Marketing appointed new distributor to cover the area of Vijayawada city to improve the sales from their efforts and on fulfilling the terms and conditions including the submission of bank guarantee of 10 lakhs, besides security deposit and own arrangements for transporting stocks with a salesman which became eyesore to the defacto-complainant It is also averred that the complainant who took hand loan of one lakh on 09.09.99 from the 2nd petitioner-wife of 1st petitioner and executed a bond on stamp papers in own writing acknowledging receipt of the amount and issued post-dated cheques in own handwriting and failed to repay for which the 2nd petitioner for the cheque presented dishonoured, issued statutory notice and filed private complaint case vide C.C.No.245 of 2000 on the file of VII Addl.Chief Metropolitan Magistrate, Hyderabad that was ended in conviction on 18.08.2006 and as counterblast to it, he filed present private complaint that was referred to police for investigation and I town police, Vijayawada having registered the crime, after investigation, filed final report as civil nature and it is on protest petition taken on file as C.C.No.636 of 2002 for the offences under Sections 403 and 406 of IPC; the petitioners filed quash petition Crl.P.No.5190 of 2002 in the High Court and while the same was pending, the defacto-complainant filed transfer petition Tr.Crl.P.No.1441 of 2002 of the C.C.No.245 of 2000(cheque bouncing case) from VII Addl.Chief Metropolitan Magistrate, Hyderabad to Vijayawada to try along with C.C.No.636 of 2000 and Transfer petition was ended in dismissal and quash petition was allowed by quashing C.C.No.636 of 2002 and even after deciding quash petition Crl.P.No.5190 of 2002 against the C.C.No.636 of 2002, the defacto-complainant filed another private complaint by adding two more names i.e.APCOSGFL represented by its Managing Director against A.1 and APCOSGFL represented by Manager with some allegations and changing verbatim that was registered by police as Cr.No.972 of 2002 by Vijayawada II town police Station and they filed final report as non-cognizable against which the protest petition filed was dismissed even further aggrieved by that, the defacto-complainant filed revision vide C.R.P.No.27 of 2005 and the same was also dismissed and having lost in the attempts, he filed the present complaint with slef-same allegations by adding two more persons as accused even no way connected to A.1 and A.2, the petitioners herein and there is a bar under Article 20(2) of the Constitution of India and Section 300 of Cr.P.C. It is also contended that the present private complaint also referred to police for investigation who registered Cr.No.268 of 2005 after investigation, filed referred report by mentioning earlier case and protest petition was also ended in dismissal and against such C.R.P.No.5 of 2008 filed was since allowed on 23.06.2009; the learned Chief Metropolitan Magistrate, directed the accused to appear by issuing summons on 24.05.2006 for answering accusation in which even the defacto complainant in revision went unsuccessful against the dismissal of the protest petition earlier, in filing quash petition Crl.P.No.6392 of 2009 and the same was partly allowed on 15.12.2011 and having regard to the above the learned Magistrate ought not to have taken cognizance on the protest petition of the defacto-complainant and the cognizance taken is without application of judicial mind to the material and there are no ingredients of Section 420 read with 34 and 506 of I.P.C to attract and the matter is purely civil in nature and it is for the self-same averments of C.C.No.636 of 2002 on the file of the same Court in Crl.P.No.5190 of 2002 and suppressing all the earlier facts, present protest petition is filed by the defacto-complainant by abuse of process and to damage the reputation of the petitioners in society, that petitioners filed Crl.P.No.10612 of 2014 where notice before admission was ordered and after counter of the defact-complainant while the matter was coming, it was dismissed for default for timely non-representation of one occasion while granting permission to file fresh petition which resulted in filing the present petition and thereby the proceedings are liable to be quashed.

6. Heard the learned counsel for the petitioners as well as the 1st respondent-state represented by the learned public Prosecutor and taken as heard 2nd respondent for not appeared even received notice sent by the registered post as per the order of the Court and the R-net track receipt shows the article booked on 06.08.2015 and delivered on 08.08.2015 and even the matter posted to 10.07.2015 and to 21.08.2015.

7. From the factual matrix supra, the protest petition on which the learned Magistrate taken cognizance on 01.03.2014 pursuant to the orders in Crl.R.P.No.5 of 2008 dated 23.06.2009 in setting aside the order of the Chief Metropolitan Magistrate, dated 23.08.2007 in C.F.R.No.2405 of 2007 which is subsequent to the police referred report of non-cognizable,(Cr.No.268 of 2006) of I town police Station Vijayawada, for the offences punishable under Sections 195,406,420,423,504 and 506 IPC of the private complaint of the defacto-complainant referred to police for police investigation. Originally, the protest petition was dismissed with a single sentence order of it has no merits, however directed to address a letter to concerned Station House Officer, through Commissioner of police for filing chargesheet. As the direction is not correct, the revision was allowed with a direction to follow the procedure of a private complaint and dispose of the said protest petition private complaint for ultimately to dismiss if no grounds under Section 203 of Cr.P.C else to proceed by issuing summons. It is therefrom, the CFR No.2405 of 2007 restored to file and the sworn statement recorded and the impugned

cognizance order passed by the Chief Metropolitan Magistrate was on 01.03.2014.

8. The allegations that the complainant used to sell Vijaya edible oils of A.1 in Vijayawada area and surroundings, A.2 is Sales Executive of A.1 who falsely made the complainant to believe for sale, distribution and marketing to gain profits and to recommend his name for that purpose and ultimately got appointed him as distributor and A.2 also promised to invest capital equally from which complainant resigned his job and took up distributionship through A.2 and at the request of A.1 to A.3, complainant opened stall on 23.03.1998 at Exhibition, Swaraj Maidan, Vijayawada inaugurated and by directions of A.2 and A.3, the complainant sent Rs.32,000/- for the opening ceremony for advertisement etc., besides further spent Rs.25,000/- and later the complainant was appointed as distributor by A.1-entity for entire Vijayawada region vide agreement dated 28.04.1998 and it speaks entitles to receive 5% commission on every sales bill.

9. Therefrom to that extent there is nothing to point out against any of the accused as he entered the agreement and was appointed as dealer or distributor on commission basis for Vijayawada region having believed the words of accused and invested and complainant was constrained to supply the oils to retail shops on credit basis who fell due and A.1 got more profits in sales at Vijayawada through the complainant and public distribution of sales started in 1998 selling the Vijaya brand products through the complainant on profit of Rs.2/- per pouch of one litre in Public Distribution system, however, A1-entity not paid even a single paise much less godown rent in spite of promise on behalf of the A.1 and 2nd accused. In the said complaint, A.2 is D.Laxman Rao-the quash petitioner herein, there is nothing to say there is a promise of 2nd accused for anything including from the dealership agreement referred supra. However, averments show,

under the circumstances, while the complainant was prepared to sell his house site to improve the sales of P.D.S. of A.1-entity, the A.2 told that he would arrange loan to 3rd persons at the interest of 12% per annum and took his title deeds and obtained agreement in the name of his wife (A.4 therein/present 2nd petitioner) and also obtained number of post-dated cheques and blank cheques and blank papers of which one cheque in the name of her (A.2) for one lakh rupees, obtained signature of the complainant and encashed and later even he collected the amounts on behalf of her and made endorsement on the back of the cheques and received and returned the post-dated cheques. It is the averment that the A.1 and A.3 entitles as well as A.2 Lakshman Rao of the said complaint of 2003, violated the terms and conditions of the Distributionship. It is thereby originally Cr.No.84 of 2000 which is outcome of a private complaint referred to police who filed final report and on protest petition, the learned Magistrate taken cognizance of C.C.636 of 2002 were ended in quashing. It is not in dispute in this regard that he filed a civil suit which is decreed and it is subject matter of appeal in High Court. It is also not in dispute of A.4 in that private complaint who is the 2nd quash petitioner herein by name Jayasri-wife of Laxman Rao filed the cheque bouncing case against the complaint and the case was ended in conviction. The said complaint further reads the A.2 and A.4 therein who are the A.1 and A.2 herein being the quash petitioners allegedly conspired and to cause loss to him, filed the cheque bouncing case and thereby liable for the offences. The said allegation is per se untenable. It is when the private complaint forwarded to police under Section 156(3) of Cr.P.C. they registered Cr.No.972 of 2002 on 28.10.2002 by mentioning as referred by Court for investigation and after investigation, the police filed final report dated 22.02.2003 referring as non-cognizable and served notice on the defacto-complainant and filed self-same earlier private complainant again with protest petition, as can be seen, taken on file as C.C.No.636 of 2002 on the file of the II Metropolitan Magistrate, Vijayawada while it was pending, the said Laxman Rao and Jayasri filed quash petition Crl.P.No.5190 of 2002 against the defacto-complainant herein who is no other than the accused in the cheque bouncing case C.C.No.245 of 2000 and the Hon'ble High Court by order dated 16.11.2004 allowed the quash petition by quashing the proceedings of C.C.No.636 of 2002, there, it was observed that the defacto-complainant, having received summons in the cheque bouncing case C.C.No.245 of 2000, came forward with the private complaint and it is alleged that there are civil matters and C.C.No.5 of 2003 already filed against the APCOSGFL and one of the quash petitioners D.Laxman Rao (A.1), and it was observed at para-5 onwards that the creditor not giving credit to the amounts paid to the debtor, is not and cannot be an offence either under Section 403 or 406 IPC and there is no entrustment of money to the creditor by any payments of the debt and regarding title deed of property of defacto-complainant said to have been given to the petitioners as security, there is nothing to show any misappropriation or converted to own use even assuming those allegations as true, no offence made out and continuation of criminal proceedings are nothing but abuse of process of law as laid down in State of Hariyana Vs.Bhajanlal and thereby quashed the proceedings in C.C.No.636 of 2002.

10.It is besides the above as subsequent litigation almost on the same facts, the private complaint filed dated 09.05.2005 that was again forwarded to police who registered Cr.No.268 of 2005 and filed referred report and on protest application order passed by the learned Magistrate referred supra that was impugned in revision and sent back to the file of the learned Chief Metropolitan Magistrate, who has taken cognizance for the offences under Section 410, 420 read with 34 of I.P.C. and 506 of IPC against the 5 accused. In fact, the facts are self-same and even the proved facts of the complainant refereed

C.C.No.636 of 2002 that was ended in quash and also from the civil matter pending the dispute needless to say by reiterating the expression in the earlier quash petition order referring to Bhajanlal supra nothing but a civil dispute added with criminal flavor by abuse of the process of law and is thereby liable to be quashed and also vide decision Raja Ranjan Vs.R.Vijay Kumar holding filing of criminal complaint and converting civil case into criminal proceedings even after losing battle in civil litigation means abuse of process and in Rushni Jain Vs.State of U.P. a dispute of civil nature converted into a criminal offence by alleging utterances or occurrences etc., with malicious intent is abuse of process and proceedings are liable to be quashed. It is by reiterating the expressions not only Bhajanlal supra but also **G.Sagarsuri Vs.State of UP**[1] and **Indian Oil Corporation Vs. NEPC India Limited**[2].

11. Accordingly, the Criminal petition is allowed by quashing the proceedings in C.C.No.251 of 2014 on the file of the Chief Metropolitan Magistrate, Vijayawada, against the petitioners. The bail bonds of the petitioners/A.1and A.2 shall stand cancelled. Consequently, miscellaneous petitions, if any pending, in this Criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 29.10.2015.
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[1] (2000) 2 SCC 636
[2] (2006) 6 SCC 736