

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRL.P.No.1583 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, the petitioner/A1 seeks to quash all further proceedings in Cr.No.143 of 2014 on the file of Banjara Hills Police Station, Hyderabad.

2. The factual matrix of the case, which led to file the instant petition can be stated thus:

M/s Techsmart India Private Limited, represented by its Project Manager, lodged a complaint, based on which, Police of Banjara Hills Police Station registered a case in Cr.No.143 of 2014 under Section 406 and 420 IPC against the present petitioner, who is the General Manager and three others, who are the Directors of L1-Identify Solutions Operating Company Private Limited. The complainant's case is that his company engaged in the business of IT Services to the Government authorities and during, 2010, the accused company represented by Mr. Kalidindi R.N.R approached the complainant and offered to supply their brand of Biometric devices viz., Agile TP and Mobile eyes, for issuing Aadhar Cards and after negotiations, the parties entered into an agreement. The complainant on seeing the draft agreement found that in the agreement the name of another company i.e., M/s Identix Incorporate was mentioned. When enquired, the accused informed that it was the sister concern of the accused company at U.S.A. Further, when the complainant asked the accused to sign the agreement, the accused stated that it was a formality and that they can deal with business without any agreement. The further case of the complainant was that it issued four blank cheques as security and requested the accused company to supply Biometric devices, as per the oral agreement. The complainant alleged that it also paid a sum of Rs.4,44,11,162/-

through Wire transfer from HDFC Bank, Hyderabad, for 457 Biometric devices. Evenafter receiving the said amount, the accused company did not return the above mentioned four cheques given as security. The further grievance of the complainant is that the devices delivered by the accused were sub standard and defective ones and inspite of the requests of the complainant, they have not replaced the defective ones and thus, the accused company committed the acts of cheating and breach of trust punishable under Sections 406 and 420 IPC.

3. The case of accused company is that around August, 2010, the complainant company approached the accused for purchase of Bi-Model Enrolment PKG consisting of one Mobile Eyes- Dual Iris capture Device and one Agile TP USB Appliance Device. Those devices were to be supplied from the U.S.A by M/s Indentix Incorporate, which is a sister concern of the accused company. On the basis of purchase orders issued by the complainant and High Seas Agreements, devices were supplied and complainant paid total amount of Rs.4,44,11,652/- under two transactions and there was no dispute about it. While so, under the 3rd transaction, the complainant company purchased 1000 number of Bi-Model Enrolment PKG Devices and it was liable to pay an amount of Rs.8,12,16,000 to accused company. However, the complainant made only a part payment of Rs.2,03,04,000 and balance amount of Rs.6,09,12,000 was due and on repeated demands, the complainant company issued three post dated cheques to accused company towards payment of the said amount and when the said cheques were dishonoured, the accused company filed C.C.No.26541 of 2012 and C.C.No.27461 of 2012 against the complainant under Section 138 of Negotiable Instrument Act of which, C.C.No.27461 of 2012 was recently transferred to XVII Additional Chief Metropolitan

Magistrate Court, Nampally and pending consideration. The complainant filed the present complaint with false allegations only as a counterblast to the NI Act cases filed by the accused company. The plea of the complainant that the devices were sub standard was never raised by it before. In view of the false complaint, the police harassed the petitioner/A.1 and brought him to Hyderabad and forced him to compromise the issue. In those circumstances, the accused No.1 filed a Quash Petition No. 6255 of 2014 before the Hon'ble High Court for quashment of FIR No.143 of 2014. During hearing, the Public Prosecutor submitted that the police referred the complaint as civil dispute and due to his representation, the said Quash Petition was closed by the Hon'ble High Court on 18-06-2014.

(a) The further case of the accused is that subsequently without his knowledge and notice, the complainant filed Writ Petition No. 26395 of 2014 purportedly challenging the action of Police in referring his complaint as Civil dispute. As per the Order dated 26.09.2014 in Writ Petition 26395 of 2014, the Hon'ble High Court observed that under Section 173(8) Cr.P.C., the Magistrate if satisfied that the investigation has not been carried out properly, shall grant necessary permission for conducting further investigation and hence if the petitioner adopts any such measures, the learned III Chief Metropolitan Magistrate, Hyderabad, will spare proper and adequate consideration in that regard. The grievance of petitioner/Accused No.1 is that there was no notice to the accused in the said Writ Petition.

(b) The further submission of petitioner is that pursuant to the Order in the Writ Petition, the complainant filed protest petition in CrI.M.P.No.3645 of 2014 before III Chief Metropolitan Magistrate, Hyderabad, requesting the learned Magistrate to refer the matter to S.H.O, Banjara Hills Police Station for conducting further

investigation in the matter. By Order dated 02-12-2014, the learned Magistrate allowed the petition and directed the SHO, Banjara Hills Police Station, to conduct further investigation and file the report. Thus, police commenced further investigation.

Hence, the instant Criminal Petition by Petitioner/A.1 to quash the FIR in Cr.No. 143 of 2014.

4 . Heard Sri C.V. Mohan Reddy, learned Senior Counsel, appearing on behalf of Sri N. Narasimha Rao, learned counsel for petitioner, Sri P. Nageswara Rao, Learned counsel for respondents and the learned Public Prosecutor.

5(a). Severely fulminating the FIR, the learned Senior Counsel, firstly argued that the complaint is nothing but a counterblast to the Criminal cases filed by the accused company against the complainant under Section 138 of NI Act. He submitted the complaint allegations that the devices supplied by the accused company are sub standard ones is false, as such a plea was not raised in the earlier round of litigation and hence, the complaint is nothing but abuse of process of law and hence the same is liable to be quashed.

(b) Alternatively he argued that even assuming that some of the Biometric devices supplied by the accused company are sub standard stuff, the remedy available to the complainant is only before a civil forum as the matter is purely a civil dispute and no criminal offences much less the offences under Sections 406 and 420 IPC have any application at all.

(c) Secondly, the learned Senior Counsel submitted that even if the complaint allegations are believed, they may at best amount to breach of contract by the accused company as it failed to supply quality devices. In such an event, the complainant cannot twist the

facts to launch the Criminal Prosecution, which will amount to sheer abuse of process of Court. In this regard, he relied upon the following decisions:

- 1) Indian Oil Corporation v. NEPC India Limited and others^[1].
- 2) Hridaya Ranjan Prasad Verma and others v. State of Bihar and another^[2]
- 3) Thermax Limited and others v. K.M. Johny and others^[3].

He, thus, prayed to quash the proceedings in Cr.No. 143 of 2014.

6) Per contra, opposing the quash petition, the learned counsel for respondent/complainant Sri P. Nageswar Rao argued that various acts of the accused clearly demonstrate their committing criminal offences apart from actionable civil wrongs and hence, the criminal prosecution is very much sustainable. Expatiating his argument, the learned counsel argued that the accused company, inspite of the requests of the complainant has not entered into written agreement and further, it has retained the cheques issued by the complainant as security and did not return them and the devices supplied by the accused are sub standard devices and thereby the complainant suffered huge loss on one hand and its reputation suffered a lot as the complainant could not complete the Aadhar Enrolment work within time. Thus, due to the breach of trust and cheating committed by the accused company, the complainant suffered huge loss and therefore both civil and criminal remedies are very much available to the complainant. He argued that when the same set of facts raise both Civil and Criminal action, the petitioner is entitled to choose his line of action. He relied upon a decision reported in ***Vijayander Kumar and others v. State of Rajasthan and another***^[4] and thus, prayed to dismiss the petition.

7) The learned Assistant Public Prosecutor, while arguing in similar lines, has submitted that when the learned Magistrate ordered further investigation following the direction of the Hon'ble High Court, it will not be apt to quash the proceedings. He submitted that the accused will not suffer any loss due to further investigation because there may be a possibility of police coming to the same conclusion that the matter is a civil dispute, having no criminal flavour and refer the case.

8) In the light of the above rival arguments, the point for determination is:

“ Whether there are merits in this Petition to allow?

9) **POINT:** In this case, there is no demur with the legal principles cited by either side. If the facts of the complaint reveal only breach of a civil contract and give rise to a civil dispute, the continuation of investigation cannot be permitted as it would amount to abuse of process of the Court. On the other hand, if the facts in the complaint reveal both civil and criminal offences, then there is nothing wrong in continuing the criminal proceedings. In the instant case, admittedly, the police at the first instance after investigation, came to the opinion that the matter is civil in nature and accordingly filed a final report before learned III Chief Metropolitan Magistrate, Hyderabad. However, basing on the orders of this High Court in W.P.No.26395 of 2014, the learned Magistrate in CrI.M.P. No.3645 of 2015 passed an order directing the police to conduct further investigation in the matter. In this context, the learned Magistrate relied upon a decision reported in ***Hemant Dhasmane v. Central Bureau of Investigation and another***^[5].

10) So the above factual background would reveal that unlike other cases, the present case is not the one where High Court's inherent power under Section 482 Cr.P.C. is sought for to quash the FIR when the investigation is in infant stage. On the other hand, it is a case where once the investigation was completed and the police came to a conclusion that the matter was civil in nature and requested the learned Magistrate to close the proceedings and at that juncture, on the direction of the High Court, the learned Magistrate having exercised his power under Section 173(8) Cr.P.C directed police to conduct further investigation. So, the pertinent question at this juncture is whether it is appropriate for the High Court to stifle the investigation under its inherent power, which investigation was re-started virtually by the direction of the High Court itself.

11) There is another legal aspect involved here i.e., intervening with the power of Magistrate under Section 173(8) Cr.P.C. to order further investigation having been not satisfied with the final report filed by the police. In para No.4 of his Order, the learned Magistrate opined that the documents made available on record by the petitioner(complainant) gives a clear cut impression that the transaction between the parties is marred by the high degree of cheating on the part of the accused and one telling example of this is the expert's opinion that the accused had supplied sub standard equipment to the petitioner after receiving the total amount. The learned Magistrate further observed that there was abundant *prima facie* evidence of cheating and the matter cannot be taken to its logical end without proper investigation by the police. On these observations, he ordered for further investigation. Regarding the powers of a Magistrate under Section 173(8) Cr.P.C., the Hon'ble Apex Court in **Hemant Dhasmane's** case (5 supra), observed thus:

“Although the said sub-section does not, in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judges direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck”.

So, in view of the above observation of the Hon’ble Apex Court, it is not apposite for this High Court to intervene at this juncture to quash the proceedings and thereby stifle the investigation, which, in my considered view will be against the interest of justice.

12) In the result, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending if any shall stand closed.

U. DURGA PRASAD RAO, J

Date: 14.07.2015

eha

[\[1\]](#) (2006) 6 SCC 736

[\[2\]](#) (2000) 4 SCC 168

[\[3\]](#) (2011) 13 SCC 412.

[\[4\]](#) 1 (2014) CCR 495 (SC)

[\[5\]](#) 2001 (7) SC 536