

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.14286 of 2014

Between:

A.P. Kurian
and another.

.... Petitioners

And

The State of A.P
Rep. by Public Prosecutor,
And another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **28.07.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL PETITION No.14286 of 2014

ORDER:

_____ In this petition filed under Section 482 Cr.P.C.,
petitioners/A1 and A2 seek to quash the proceedings in FIR
No.93 of 2013 of Unguturu PS, Vijayawada, Krishna District.

2) Brief facts of the case are thus:

a) Petitioners/A1 and A2 are Chairman and Managing director of Geojit BNP Paribas Financial Services Limited (Geojit) having registered office at Kochi, Kerala State. Geojit is a registered stock broker with Securities and Exchange Board of India (SEBI). The complainant is one of their clients who registered with Vijayawada branch of Geojit under the unique trade code—HVK063. The complainant was a retired Inspector of Police. According to complainant, he has been dealing in share market through the accused company who are the stock brokers since 2011. He alleges that the accused took his signatures on empty booklets and filled up the same later without his knowledge. In the process, they did not trade the stocks as indicated and instructed by him. They did not shot twenty Nifty's as indicated by him and further they have made trading in his name as indicated by their head office and on its tips, causing a loss of more than 20 lakhs. So, he gave complaint to SEBI and National Stock Exchange of India Limited (NSE) and in the enquiry conducted by SEBI and NSE, the accused produced forged records pertaining to intimations sent to me from time to time in respect of his share lots and further, they created Express IT Couriers PODs with his forged signatures and therefore, the complainant could not get justice in NSE arbitration. The accused even created e-mail IDs without his knowledge and cheated him. All these criminal acts were done by the head office of Geojit Paribas. On these allegations the complainant lodged a compliant with Unguturu PS which was registered as FIR No.93 of 2013 and investigated into.

Hence the instant quash petition.

3 a) The petitioners sought for quashment of the proceedings mainly on the submission that it is a civil dispute and the FIR allegations do not disclose the commission of any criminal offence. So, continuation of investigation would amount to abuse of process of law. It is further contended that the petitioner already invoked arbitration proceedings and the arbitrator passed an award dated 28.06.2012 whereby and whereunder the claim of the complainant was dismissed. As such, the complaint is not maintainable.

b) It is further contended that A1 is the Chairman and A2 is the Managing Director of Geojit and they have nothing to do with complaint allegations as the complainant was doing stock trading through Vijayawada branch of Geojit and therefore, no vicarious liability can be imputed against the accused even if assuming that complaint allegations are true. On the aspect that there is no vicarious liability in criminal offence they relied upon several decisions. On these submissions, petitioners/accused sought for quashment of the FIR.

4 a) Opposing the petition, learned Assistant Public Prosecutor (APP) argued that the complaint allegations reveal how the accused have cheated the complainant to a tune of Rs.20 lakhs by creating forged documents and they have not traded as per his instructions and therefore, the complaint is maintainable. He further submitted that complainant made a direct allegations

against the accused stating that the offence was committed by the head office of Geojit and therefore, it is false to contend that petitioners/A1 and A2 being the top-brass of Geojit company cannot have vicarious liability. The allegations are directly made against them and the truth or falsity of the complaint allegations is known only on a threadbare investigation. Learned APP submitted that investigation is in progress and four witnesses were examined. He thus prayed to dismiss the petition.

5) The point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** A perusal of the complaint shows the complainant made scathing allegations against the accused stating that believing accused he has been doing trading business through them since 2011, but they cheated him by trading the shares without his consent and against his will and in that process they caused a wrongful loss of Rs.20 lakhs to him and they created forged documents with his signatures with the help of Express IT Couriers. In the complaint he has specifically mentioned all these criminal acts were done at the head office i.e. accused. Thus, the complaint allegations contain a *prima facie* material for the offence under Sections 420, 468 and 471 IPC. The investigation is reported to be pending.

7) In these circumstances, in my considered view, it is not a fit case to quash the proceedings. The truth or falsity of the complaint allegations can be known only after a thorough

investigation by the police.

8) In the result, this Criminal Petition is dismissed with a direction to the Unguturu PS to complete the investigation in FIR No.93 of 2013 expeditiously and file the report as per law.

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

U. DURGA PRASAD RAO, J

Date: 28.07.2015

Murthy