

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5955 of 2014

ORDER :

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This Criminal Petition is filed by the Petitioners/ accused Nos.1 and 2 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.336 of 2014 on the file of III Metropolitan Magistrate, Cyberabad, at L.B Nagar, where the learned Magistrate has taken cognizance for the offences punishable under Sections 420 & 506 IPC, which is outcome of report of 1st respondent—de facto complainant in Crime No.655 of 2013 of Uppal Police Station, Cyberabad

2) The factual matrix of the case from the complaint averments show that the complainant is working as Principal, Government Degree College, Khairatabad, Hyderabad. He purchased 200 Sq.yds plot bearing No.13 (mistakenly typed as plot No.44) in Balaji Enclave layout, North Kalyanapuri in Uppal Locality and wanted to construct G+1 independent house and approached the 2nd respondent—S'n'S Associates Architects & Engineers Vidyanagar, Hydeabad represented by its Proprietor G.Karuna Sagar and explained his proposal and requested for plan and construction estimates. The accused No.2 brought accused No.1—G.Satish Kumar when he visited the site and in the course of discussion accused No.2 introduced accused No.1 as builder cum partner of accused No.2 and accused No.2 prepared plan and estimates.

3) There was an agreement dated 16.08.2010 reduced in writing and the said agreement was obtained in the name of accused No.1. When the complainant asked accused No.2, why the agreement is obtained in the name of accused No.1 instead of accused No.2, for which he stated to avoid tax, name of the accused No.2 was omitted but accused No.2 signed as witness to the agreement and even the amounts received promptly from complainant as per the agreement terms, they failed to maintain quality and time schedule as per schedule and having collected Rs.28,52,000/- with a promise to complete and hand over the constructed premises

in the 3rd week of October, 2011, however did not, and when complainant on suspicion about the foul play by the accused Nos.1 and 2, he got the premises estimated by R.B Enterprises, Asifnagar the work done by accused Nos.1 and 2 its value came to only Rs.20,77,011=76 ps and thus the accused cheated the complainant to the tune of Rs.7,74,989/- and also made him to spend Rs.15,600/- towards incomplete works and caused wrongful loss of Rs.7,90,589/-.

4) It is also averred that the complainant approached the District Consumer Forum, Ranga Reddy District with C.D. No.23 of 2013 for refund of excess amount including awarding of further compensation where accused No.1 stated that he received Rs.28,45,000/- only and made the construction of 4167 Sq.ft whereas as per the plan the actual construction area is 3331 Sq.ft but A.1 has brought area of construction to 3823.75 Sq.ft on his own using material sufficient only for 3331 Sq.ft as per the plan, that results in sound of entire slab area and with deviation from approved plan by accused. Later the complainant learnt that accused No.1 is working as conductor in Ranigunj Depot, APSRTC with ID No.201973, whereas accused No.2 duped him by introducing accused No.1 as if he is a builder by suppressing the factum of he is working as a conductor in RTC and the construction is made with inferior quality material and when questioned about it, he was threatened by them and they misrepresented and cheated the complainant and caused wrongful loss to him and thereby both are liable to be punished for the offences punishable under Sections 420 and 506 IPC.

4) The averments in the quash petition are that the learned Magistrate taken cognizance for the offences punishable under Sections 420, 506 IPC, is unsustainable and the allegations are false and there are no ingredients of cheating made out and there is nothing to show any criminal intimidation or cheating and the consumer forum adjudicated the issue with categorical findings in regard to the untrue allegations made against the petitioner herein and the present proceedings are nothing but making the civil dispute adding criminal flavour and the proceedings are nothing but abuse of process, engineered having went unsuccessful before the consumer forum and the learned Magistrate without even considering the same taken cognizance apart from referring the private complaint for police investigation without application of mind and hence to quash the same.

5) Heard both sides and perused the material on record.

6) The written agreement of contract not filed by the petitioners or by the complainant before this Court in the quash petition. No doubt, the order passed in C.D. No.23 of 2013 by District consumer Forum is filed which reads in dismissal of the complaint filed by the de facto complainant against the accused Nos.1 and 2 herein in saying at para Nos.8 and 9 that complainant could not show how Satish Kumar so-called builder is partner of S'n'S Associates and Architects & Engineers, Vidyanagar, Hyderabad, which is a proprietary concern of G.Karuna Sagar and Ex.A1—construction agreement filed shows only complainant entered with Satish Kumar and not with S'n'S Associates and Architects and Engineers, Vidyanagar, Hyderabad and the said S'n'S associates Architects & Engineers, Vidyanagar rep. by its G.Karuna Sagar is only an attester to the agreement and though it is probable to say to attest the agreement, he introduced the complainant to said Satish Kumar. As per the construction agreement dated 16.08.2010, the said builder Satish Kumar agreed to complete the construction within six months and mode of payment and material to be used mentioned therein and Ex.A2 is the receipt showing Rs.28,52,000/- paid by complainant to said Satish Kumar and that is also not in dispute by Satish Kumar and the other receipts Exs.A4 to 13 show expenditure and estimation of works and so far as the estimation cost made by complainant VR Enterprises of Asifnagar saying that the estimated construction work by Satish Kumar had only Rs.20,77,011-76. There is nothing to show of any agreement of payment should be made as per the estimation by another only to give any credence to that estimation to the claim of difference in amount. More particularly, every builder accept the work for some monetary benefit as provided and it is not even a case of complainant that builder left any works covered by Ex.A1 agreement, thereby there is nothing to show any deficiency in service on part of builder who is working as conductor in RTC as per Ex.A14 and that is not a ground even to award any compensation for due of the complainant before entrusting the work to make of enquiry and once entrusted and allowed to complete the construction to accept for it.

7) In fact as held by the Apex Court in the very recent expression in Rajiv Ranjan vs R.Vijaya Kumar on the facts where the party, who went unsuccessful in the civil litigation thereafter maintaining criminal prosecution by converting the civil case into criminal proceedings, cannot be allowed to continue, as it tantamounts to

misuse and abuse of process of law, in quashing the proceedings without going into the merits as to challenging of the offences under Sections 120 B, 468, 420 and 500 IPC on the compliant case. Having regard to the above and from the other expression in ***Rashmi Jain vs State of Uttar Pradesh and another*** directions were given in the complaint to convert the civil dispute into a criminal offence for the proceedings that are liable to be quashed.

8) Here, coming to the so-called offence there is nothing much less any correspondence to show the accused No.2 introduced as S'n'S associates, the complainant, to give the contract work, to accused No.1. Even in the District Consumer Forum covered by CD No.23 of 2013 averments when that is lacking, which is first in point of time, the same is even subsequently introduced in the private complaint case that is registered as FIR from the investigation filed final report that is nothing but adding the criminal flavour to a civil dispute having went unsuccessful in the civil dispute that tantamounts to abuse of process as a ground to quash the FIR proceedings.

9) Accordingly, the Criminal Petition is allowed without prejudice to the right any civil further remedy to the complainant before competent civil Court.

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

Dr. B. SIVA SANKARA RAO, J

Date:30.10.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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