HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.5113 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 to quash the proceedings in F.I.R.No.342 of 2015 on the file of the Sanjeeva Reddy Nagar Police Station, Hyderabad District, registered for the offence under Sections 420,409,467,468,471 read with 120(B) of IPC and 156(3) of Cr.P.C. on the report of the 2nd respondent-complainant before the learned III additional Chief Metropolitan Magistrate who taken cognizance and referred to police supra for investigation and final report.

2. Heard both sides and perused the material on record.

3.The complaint averments show that A.2 Smt.Dasari T.Lavanya, wife of A.1 Dasari Ranga Rao, started a company by name M/s.DRR Aims Properties Private Limited at plot Nos. 57-A, 58-A and Plot No.401 of Sri Sai Vishal Mansion, Vengal Rao Nagar, Ameerpet, Hyderabad, for doing real estate business for construction and development and A.1, being a childhood friend of complainant, requested and convinced the complainant and the other witnesses L.Ws. 2 to 5 by names the L. Shravan Kumar, Vennavalli Prashanth, V.Prashanth, P.Jawaharlal cited in the private complaint along with the officials of Registrar of Companies and G.Sreenivas & Company, Chartered Accountant; that A.1 promised to allot shares and make the complainant and L.Ws.2 to 5 supra as Directors of the Company and basing on the said representation of A1, complainant invested Rs.25,00,000/- in April, 2011, and so inducted by A.1 as Director of the Company on 15.04.2011, State Government Developed Projects in Hyderabad, Vijayawada and Visakhapatnam including of project by names Ananda Nalayam-1,2 and 3 at Raykal village, Farook Nagar Mandal, Mahaboobnagar district wherein the complainant invested lot of amount and secured loans for the project with great efforts and in the completed ventures supra, plots were sold by A.1, that the complainant was authorized to sell the plots in Ananda Nilayam-1, that A.1 has been postponing settlement of accounts despite requests of complainant and ultimately on 16.05.2013 there was a written agreement to settle the accounts wherein A.1 has undertaken to pay Rs.26,17,975/- by way of cheques to each of the Directors supra and also to pay Rs.65,01,954/- to each Director however said amounts not paid, that it was further agreed by A.1 that complainant is entitled for 50% share from receipts of Ananda Nilayam Projects and the agreement was signed by A.1 and L.Ws. 2 to 5 supra and the promise was not kept by A.1 and he was using his position in the Company and executed many sale deeds after 16.05.2013 and usurped the proceeds knowing well that the same belonged to the Company, that A.1 and A.2 forged the signatures of complainant and all payment vouchers of Rs.5,00,000/- each on 25.04.2013, 02.05.2013,10.05.2013, 03.06.2013 and 01.09.2013 as if payments received by complainant and the accused also forged and fabricated many other vouchers or receipts as if genuine and also did not allot shares to the complainant. It is further averred that A.1 in connivance with A.2 abused their possession in the Company and misappropriated funds of the Company and he cause issued a public notice dated 10.02.2015 to the surprise of complainant from which he issued reply dated 14.02.2015 and it came to light of A.1 forged signatures of the complainant and submitted notice to resign and resignation letter as Director of the entity to the Registrar of the Companies, Hyderabad respectively on 10.05.2014, 02.06.2014 and certified copies of it obtained by the complainant revealed the same from which the complainant lodged protest with Registrar of Companies about the same. It is further averred that A.1 and A.2-Directors of the entity were interested with funds and records of it and misappropriated in conspiracy and with intention of cheating the complainant, hence, other Directors by submission of forged letters as if genuine of the complainant by forging the signatures of complainant on vouchers and receipts knowingly and thereby liable for the penal consequences. The learned counsel while referring the private complainant under Section 156(3) of Cr.P.C. to the police station for investigation passed the order on office note, dated 27.04.2015 reads as follows:-

"This complaint under Section 200 Cr.P.C. filed by the complainant against D.Rama Rao-A.1 and another (Lavanya) for the offences under Sections 420,409,467,468 and 471 read with 120-B IPC. The place of offence shown in the limits of the Police Station, S.R.Nagar and it falls under the jurisdiction of the Court. The complainant has filed Photostat copies of the documents. The complainant prays this Court to refer the complaint to the Station House Officer, S.R.Nagar, under Section 156(3) of Cr.P.C. for investigation and report."

4. It is therefrom the endorsement of the Magistrate is made referring for investigation without assigning any worth reasons. The police registered the same as the crime supra for the offences supra as per the directions of the Magistrate.

5. The complainant, in fact, filed the suit O.S.No.120 of 2015 against the M/s.DRR Aims Properties Private Limited represented by its Managing Director D.Ranga Rao-

A.1, three more persons Shravan Kumar Lukalapu(L.W.2) Vennavalli Prashanth(L.W.3) and P.Jawaharlal(L.W.5) as defendants for recovery of Rs.91,19,931/- and for rendition of accounts, the suit filed was in March,2013 some time before the private complaint dated 27.04.2015 filed. The private complaint no way refers the filing of the suit in fact. The complaint averments show that the plaintiff is one of the Directors of registered company of defendant No.1 along with defendants 2 to 5, office at plot No.B.1, first floor, Padma Mohan Arcade, near Saradhi studio, Hyderabad, the 1st defendant conducting business in real estate in and around Hyderabad and in the then United States of Andhra Pradesh and the 1st defendant developed certain real estate projects in Hyderabad, Vijayawada and Visakhapatnam and said projects were completed and plots were sold and developed another project by name Ananda Nilayam at Rayakal wherein the complainant spent lot of rupees and developed the entire project along with other Directors and in the course of business, plaintiff and defendants 2 to 5 entered into agreement to settle accounts in respect of other projects except Ananda Nilayam of Rayakal which is reduced to writing on 16.05.2013 to settle accounts amicably and the 2nd defendant kept the original agreement while furnishing the Photostat copies to all the Directors and as per which the 2nd defendant representing 1st defendant agreed to pay Rs.26,17,975/- by cheques to each Director including plaintiff and also to pay Rs.65,01,950/- to each Director including plaintiff after disposing of left over immovable property standing in the name of the 1st defendant, despite demands the 2nd defendant on behalf of the 1st defendant saying that the said amount was also invested in the Ananda Nilayam Project, Rayakal and the plaintiff can get more profits therein and made believe the plaintiff and 1st defendant also authorized the plaintiff to execute sale deeds in Ananda Nilayam project and plaintiff pursuant to which executed sale deeds even after the agreement upto 16.05.2013 and the agreement also speaks the plaintiff spent huge amounts and developed the project, as such the plaintiff is entitled for 50% share from receipts over Ananda Nilayam Project and same was accepted by the defendant Nos. 2 to 5 and plaintiff continued his participation in the business transactions of Ananda Nilayam, defendants 1 to 3 and plaintiff has authorized to execute sale deeds but intending purchasers after agreement dated 16.05.2013 continued upto April, 2014. It is however in May, 2014 plaintiff came to know of 2nd defendant executing sale deeds on behalf of 1st defendant when questioned by the plaintiff, he started avoiding and for constant demands by the plaintiff to pay the amounts due as per the agreement dated 16.05.2013 and to furnish the accounts of Ananda Nilayam Projects of Rayakal, the 2nd defendant is postponing the same and on 10.02.2015, the 2nd defendant got issued a public notice, in Eenadu Telugu Daily Newspaper stating the plaintiff has nothing to do with 1st defendant and cautioning public not to enter with sale agreements with the plaintiff which is nothing but illegal, even plaintiff continued in the business transactions in D.1-entity after agreement dated 16.05.2013 thereby the plaintiff issued reply demanding to pay the amounts as per the agreement and furnish accounts of Ananda Nilayam Project and the rejoinder issued by the D.1 is with false allegations stating already paid the amount in liquid cash though not paid and that the plaintiff is entitled to D.1 and D.2 Rs.91,19,931/- and further alleges the plaintiff purchased lands from pattadars of Rayakal village and developed about 2,67,000 square yards, to D.1 and D.1 sold plots at Rs.2,600/- per sq.yard and got profit around Rs.600/- per sq.yard which comes to more than 16 crores therein, plaintiff entitled to 8 crores as 50% which the defendants are avoiding and thereby the suit from the cause of action claimed accrued however in saying suit claim is for Rs.91,19,931/- with interest. Also sought temporary injunction restraining the defendants 1 and 2 from alienating the Ananda Nilayam Project plots 1 to 3 of Rayakal, pending disposal of the suit.

6. D.2, as Managing Director to D.1, filed counter in the injunction petition I.A.No.887 of 2015 saying as per the terms of the agreement entered between the parties dated 16.05.2013 to pay Rs.26,17,975/- each to all the Directors the amounts were paid and the plaintiff and other Directors admittedly acknowledged the same and D.1 also agreed to pay Rs.65,01,956/- to each Director after disposal of the left over property i.e. Ananda Nilayam project and paid Rs.26,20,000/- acknowledged by the plaintiff covered by voucher and it is a false claim of such an amount due and plaintiff admittedly also executed sale deeds in favour of prospective purchasers on behalf of D.1-entity and from 03.06.2013 to 26.11.2013, D.1 paid to plaintiff 65 lakhs and add. There is a consent agreement entered by plaintiff and other Directors on 26.03.2014 as per report nothing is payable and on behalf of the D.1-entity but for D.2 plaintiff being not a Director and accounts already settled and resigned as Director issued a detailed notice, and to the reply issued rejoinder, the claim of plaintiff is false and thereby sought for dismissal.

7. Counter filed was in April, 2015. The interim order passed in I.A.No.887 of 2015 by the II Additional Chief Judge, City Civil Court, Hyderabad dated 23.04.2015 by dismissing the temporary injunction application by detailed order discussing all the facts by scanning the pleadings after referring to 26 documents placed reliance by plaintiff and 15 documents placed reliance by defendants 1 and 2. The Private complaint referred supra filed was on 27.04.2015 which is three days after dismissal of the temporary injunction application supra.

8. In fact, a perusal of the complaint and injunction petition averments referred supra no way speaks any conspiracy or collusion or cheating but for saying the civil liability and entering of the agreement to settle and in modified agreement. The main agreement to settle dated 16.05.2013 shows in plaintiff entity, the Directors invested 25lakhs each of them friends doing the business and they settled the accounts and thought of amicably go out from the entity and arrived amount after settlement of accounts of Sai Abhaya township, Sai Bhavani Nagar, Airport Paradise Venture, and Visakhapatnam Sai Abhaya gardens total 6 ventures of Rs.5,47,19,587/- of which Rs.1,57,07,848/- is lying in cash and Rs.3,90,11,739/- is in the form of property as assessed and the same to be divided into 6 shares from which each would get Rs.91,19,931/- to take the respective amounts and to resign and the cash remaining as on that day of Rs.1,57,07,848/- divided into 6 shares each got Rs.26,17,975/- taken by way of cheques and in the property value arrived supra D.2 Ranga Rao(A.1) to sell within 6 months and to pay each of the other Directors Rs.65,01,956/- and so far as the rate of venture Ananda Nilayam concerned to render accounts within 6 months, therefrom it was agreed to say 50% of profits therein to get M.Ashok Kumar(complainant/plaintiff) and remaining 50% to others to share equally. The subsequent agreement is dated 26.03.2014 the cause of action of the 1st agreement dated 16.05.2013 not in dispute. Coming to the second agreement supra 26.03.2014 by referring to earlier agreement dated 16.05.2013 insofar as the amounts of each to get Rs.91,19,931/- concerned, as per the agreement, each to get Rs.66,04,436/- as in the Sai Abhaya township, Bhagyanagar Residency, Bhagyanagar township, three ventures. As per the government rules 10% of the land is only shown consequently the net profit therefrom after meeting expenses.

9. The contention of the quash petitioners from the above material is that as per the

modified agreement dated 26.03.2014, when it is agreed in spite of Rs.91.19.931/- including the amounts already covered by cheques for Rs.26,17,975/- to each, but received only Rs.66,04,431/- including that amount and so far as 50% profits entitled in Ananda Nilayam venture after expenses, net arrived of 3(three) crores i.e. is 1.5crores to the plaintiff/complainant's share besides of remaining 1.5 crore valued $1/6^{th}$ comes to Rs.25 lakhs total of Rs.1,75lakhs and the complainant has withdrawn of Rs.1,04,000/- and remaining amount of Rs.71,00,000/-,
50lakhs received by the complainant under different vouchers admitted and acknowledged and later received the balance of Rs.21,00,000/- and there is nothing due and the complaint filed is nothing but abuse of process and rightly be quashed by referring to suppression of the filing of civil suit went unsuccessful in the temporary injunction by the elaborate order passed by the learned Judge, City Civil Court.

10. Undisputedly, the civil suit injunction petition went unsuccessful and the complaint filed subsequently and in the civil suit, complaint and injunction petition so called cheating or forgery etc., not pleaded but for to say for recovery of amounts due, as not paid despite demands, by postponing under one or other pretext and by questioning the A.1's giving a public notice as illegal.

11. The learned Magistrate in the impugned order did not apply his judicial mind much less assigned any reasons for nothing reflects of any little application of judicial mind in invoking Section 156(3) Cr.P.C. of referring the complaint to police for investigation by registered crime. In fact, among the Sections as referred supra there is nothing to show any element of cheating and so far as the pleading supra as discussed above when civil suit is silent regarding the averments and after went unsuccessful in the injunction application, filed the complaint by engineering the version, it is a clear case of abuse of process by suppressing the filing of the civil suit and the temporary injunction application and about went unsuccessful. So far as the breach of trust concerned, once there is a settlement of accounts between the parties, there is nothing to say any element of cheating but for pursuant to the settlement for any non-payment to recover. The complainant claims in the complaint, amounts not paid and the so called receipts are forged, whereas, the accused claims amount paid and covered by vouchers. The civil Court can adjudicate the same and the temporary injunction application ended in dismissal is after scanning the material. The entity was not made accused herein but its Managing Director

personally as A.1. So far as the A.2 is concerned, there is nothing to show she is a Director or any way party to implicate. So far as the offence Section 471 apart from Section 467 and 468 aggravated forms of Section 463 IPC, the police investigation and final report are a bar under Section 195 of Cr.P.C. but for a private complaint that was not drawn attention by the learned Magistrate in referring the same to police for investigation.

12. Having regard to the above, the F.I.R. proceedings are liable to be quashed as laid down in **Maksud Saiyad Vs. State of Gujarat** and **Anil Kumar Vs. M.K.Aiyappa**

13. Accordingly, the Criminal Petition is allowed quashing the proceedings in F.I.R.342 of 2015 on the file of the Sanjeea Reddy Nagar Police Station, Hyderabad District. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:11.10.2015

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