

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
CRIMINAL PETITION Nos.3447,7201,7202 and 7197 of 2014

COMMON ORDER :

These four criminal petitions are filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the accused persons (Crl.P.No.3447 of 2014 by A.9, Crl.P.No.7197 of 2014 by A.5, Crl.P.No.7201 of 2014 by A.8, Crl.P.No.7202 of 2014 by A.7) in C.C.No.568 of 2013 on the file of the Additional Judicial Magistrate of First Class, Kavali, aggrieved by the cognizance taken by the learned Magistrate and referring the private complaint filed by the 1st respondent/Defacto-Complainant, for the offences punishable under Section 420, 406, 468, 477, 469, 477, 341, 506, 120B and 109 of IPC, seeking to quash the proceedings in the case supra.

2. The private complaint with the averments supra filed citing two witnesses viz; M.Venugopal Reddy and Nagendella Harikanth reddy in support of the complaint, and placing reliance on 68 documents in all. It is therfrom the learned Magistrate referred the complaint for police investigation, under Section 156(3) of Cr.P.C. vide order dated 05.03.2012 which reads "*The Complainant is present. Heard the learned counsel for the complainant. Perused the case on record. The Court feels that the investigation by police is necessary in this case. Hence, this complaint is forwarded to Station House Officer, Kavali I town police station for investigation and report by 12.04.2012*". It is therefrom the crime is registered by the Sub Inspector of Police I Town Police Station for the offence referred supra and after investigation, the police filed the final report which reads that in the television network established by the complaint along with 12 local operators namely K.C.V., out of the 12, 8 came out and established another network namely KEN and therfrom disputes arose between them maintaining the cable network in Kavali and both the networks are taking signals from channel plus company of Chennai, the distributor of Gemini and Teja channels, previously the complainant paid Rs.31,19,066/- to the

company for signals through decoders but the signals were stopped by the company as the complainant committed default in payments, the complainants main allegation of even he paid the amount supra for 21 months from July, 2006 to March 2008 and requested to furnish accounts and ledger statements of complainant network, but A.5 to A.9 did not provide but provided only ledger of April, 2008 and the account staff of A.5 to A.9 stated that the accused network furnished all statements of accounts as maintained to the complainant and further revealed that the network company of A.5 to A.9 shown all connections given to the complainant from July, 2006 to March, 2008 and they were never misused and when all the connections remained with the complainant network, the question of received amounts, diverted and credited to account of A.1 to A.4 does not arise and the complainant suffered no loss, when the complainant went to A.5 to A.9 net work company which is situated at Chennai, no accounts stated maintained for the payments made by him except for July, 2006 to March, 2008 , thus maintaining proper accounts arose at Chennai but not at Kavali thereby Kavali Police has no territorial jurisdiction to investigate from that allegation if at all to file a complaint in concerned police station of Chennai and further investigation reveals that A.5 to A.9 as per the version of accounts staff of channel plus AP Television Network properly maintaining the accounts relating to complainant network company for his payments during the period of July, 2006 to March,2008 and also furnished the required accounts to the complainant and further stated that on 17.02.2012, A.9 was not present and he was traveling in Aircraft and the alleged threatening by A.9 of the complainant over phone of A.6 and with A.8 is not reliable to believe, further the investigation reveals that subsequent to the complaint sent by the complainant to police, on 04.04.2012 the complainant alleged that from July, 2006 to March,2008, the complainant paid for 21 months of Rs.31,91,066/- in which period the complainant made several representations to furnish the accounts and

ledger statements pertaining to the complainant Network but not provided but for only the ledger copy for the month of April, 2008 therefrom he got suspicion on A.1 to A.9 that they colluded and conspired with him and not maintaining accounts pertaining to the network or they misused the amount etc., averments of alleged misappropriation in relation to Rs.11,999/- accounts of complainant and alleged commission of fraud in alleged diversion of the complainants network into accounts of A.1 to A.4 network by A.5 to A.9 for wrongful gain or misappropriation or for its questioning alleged threats by A.6 or A.8 or A.9 or in saying they cheated the company by non-payment of service tax to a tune of Rs.3,20,000/- are concerned, L.W.4 who is the accountant of KEN network stated KEN network, Kavali has not been maintaining account of complainant for the company has no business dealings with the complainant and KCB is one of the customers network of channel Plus company of Chennai, the distributors of Gemini, Teja channels, and the complainant used to pay the amounts to Channel Plus network by signals through decoders and the complainant delayed the payments to Channel Plus company for signals for which they stopped the signals to complainant net work and later the complainant filed a petition in the year 2010 before the Telecom Disputes Settlement-cum- Appellate Tribunal(hereinafter called as 'Tribunal') New Delhi and the same was ended in dismissal for complainant not made payments to the company for the services availed. Even the allegation regarding not furnished the accounts he got efficacious civil remedy for rendition of accounts and there is no any element of criminal intent but for purely a civil nature of dispute, hence, filed the referred report after examining L.Ws. 1 to 4 and recording their statements and from the investigation as the dispute is of civil nature and the complaint is offshoot after Telecom Disputes Settlement Appellate Tribunal dismissed the petition of complainant and thereby filed the referred report.

3. It is therefrom on the protest application, the learned

Magistrate taken cognizance by recorded the sworn statements of the complainant M.Venugopal Reddy as P.W.1 who reiterated the complaint averments and P.W.2 N.HariKanth Reddy, no other than son-in-law of the complainant, stated that A.1 to A.9 were causing problems to the complainant from which he filed petition before the Tribunal against Channel Plus Network and thereafter the A.1 to A.9 are harrasing him mentally by providing poor quality of signals through decoders and the complainant did business against the monopoly of A.1, A.2, A.4 and A.6 in Kavali from which they hatched a plan by taking support of A.5,A.7 to A.9 and A.5 not shown accounts to the complainant and later he has shown false accounts by diverting payments made by him to the account of A.1 to A.4 and A.6 from which report given to police including DSP, Kavali and S.P. Nellore and Circle Inspector was instructed to look into the matter and on 17.02.2012 A.1 and A.2 came to their office and represented that the A.6 came to their office in Christianpet, Kavali and called the complainant to come to their office to settle the matter and another day at about 11.15A.M., the complainant and himself (P.W.2) went to the office of A.1 and A.2 where A.1 to A.4 and A.6 present who asked the complainant to withdraw the police report for which he did not agree and A.6 gave phone to the complainant saying A.8 is on line and A.8 threatened him to kill and again A.6 gave his phone saying A.9 is on line and A.9 also threatened him to harm unless he withdraw the police report from which the complainant and P.W.2 were frightened by A.1 to A.4 and A.6 even were confined by the accused persons not to leave the place by threatening to kill unless they sign on blank papers and somehow they left the place and reached I town police station where a complaint is given to the Sub Inspector of Police who replied of many influential persons involved and he cannot help the complainant and it is therefrom filed the private complaint that was referred to police for investigation. This is the only material on which the learned Magistrate has taken cognizance by the order which reads

as:- *“Heard. Perused the case record, has not from the detailed sworn statements of complainant Mavuluri Venugopal Reddy and other witnesses N.Harikanth Reddy prima facie case made out and after going through their statements and after hearing the learned counsel for the complainant, this Court is of opinion that there are grounds to proceed further. Hence, cognizance of the case is taken under Section 190 read with 200 Cr.P.C. on file for the offences punishable under Sections 109,120-B, 506,420 and 409,468,469,477,477-A and 341 IPC against A.1 to A.9 and to number C.C.No.568 of 2013(C.F.No.1775 of 2012) for the alleged offences are warrant trial, this Court is of opinion that issuing of summons will be enough. Hence issue summons to A.1 to A.9 through Court and Registered Post on payment of process to correct address. For hearing call on 26.03.2014.”*

4.It is the same now impugned by filing the quash petition with the contentions in all the quash petitions that it is false the version of the defacto-complainant in his complaint that from the month of July 2006 to March 2008 he paid an amount of Rs.31,19,066/- for which the petitioner did not furnish the ledger copies of the accounts, that the issue under complaint was subject matter before the Tribunal vide Petition No.127© of 2005 etc., that the defacto-complainant himself stated that the A.1 and A.2 are the distributors in particular area and some amounts were paid to the A.1 and A.2, there is no access and contacts between the petitioners and the defacto complainant, thus, alleged payment by the complainant to the petitioners does not arise, that the Investigating officer conducted a thorough investigation and filed final report before the Additional Judicial Magistrate of First Class, Kavali, seeking closure of the case is of civil nature is only after holding discussions with his higher authorities and suggested the case is only for rendition of accounts, that the learned Magistrate without considering the case is of civil nature as opined by the Investigating officer, issued summons mechanically, that the case of the

complainant of the year 2012, is that the petitioners/accused petitioners did not provide signals of the TV Channel to the defacto-complainant and that the respondent/complainant due to the same he preferred a petition before Tribunal and the same was dismissed, that the proceedings initiated against the petitioners are without factual or legal basis and it is clear abuse of process of Court. The proceedings are therefore liable to be quashed for the learned Magistrate, Kavali erred in taking cognizance of the case erroneously though the Investigating Officer found that the petitioners supra were not involved in the alleged offences after thorough investigation into the alleged offences, that the learned judge failed to see that the petitioners have no knowledge, role or involvement in day to day affairs pertaining to the complaint subject matter. In fact, going by the complaint the subject matter of the complaint is of civil nature as the subject as stated by the respondent complainant relates to petition No.127© of the year 2005 of Tribunal that the findings of the investigating officer are very clear, elaborate and as per law, hence, the same is final and reopening the same will put the petitioner through rigors of trial violating his fundamental rights as putting the petitioner through the said misery will only lead to permitting the respondent/complainant to harass the petitioners for commercial gains etc., that the learned Judge erred in taking cognizance of an alleged offence of the year 2012 as the complaint and the detailed final report does not disclose any indulgence of the petitioner who is shown as A.5, and further failed to see that the complaint is wholly misconceived, that the report submitted by the investigating officer is in accordance with the law and the action of the learned Judge is taking cognizance is incorrect and will put the petitioner through unnecessary harassment which is the idea of the respondent/complainant to extract commercial gains from the TV channels at issue, that no specific allegations are pointed out against the petitioners as required under law, that the provisions under the Sections supra are not attracted against the petitioners at all

from a reading of the complaint or from any angle, that in the instant case there is no direct or indirect case made out against the petitioner. Hence, prays to quash the proceedings in C.C.No.568 of 2013 against the petitioners in all the criminal petitions.

5. Pending the quash petitions there are interim orders obtained and defacto complainant filed stay vacate petition.

6. Heard the learned counsel for the quash petitioners supra and also the learned counsel for the 1st respondent-defacto complainant and perused the material on record including counter-affidavit filed by the 1st respondent/defacto complainant to vacate the interim order.

7. As all these criminal petitions are arisen from the same C.C., these are taken up together for common disposal.

8. Now the point for consideration is whether the cognizance taken by the learned Magistrate against the accused persons is sustainable for any of the respective offences or the proceedings are liable to be quashed?

Point:

9. From the very complaint averments, it discloses that the complainant is running a cable TV network business in Kavali since 1986 and along with 12 persons formed into association and the 12 TV net work business holders were even Telecasting by formed into Syndicate pay channels also by electing A.1 N.Sai Kumar Prasad as Manager of their network syndicate and two others and A.1 and A.2 C.Mallikarjuna Rao jointly started a New Cable Net work at kavali, with the support of A.6 Chatla Dhanunjayarao and they used to provide signals to the complainant and others on monthly payment basis and the 12 operators issued 12000 network connections of whom nearly 3000 customers belongs to the complainant and out of the 12 members subsequently 4 withdrew from the association and formed into another association from where A.2,A.1 and A.6 were parties under whom A.6(the brother of A.2) is Technical Director in

Gemini T.V. Net work and also for Channel Plus A.P. Though prior to 2002 Gemini and Teja were free channels, they became pay channels and the A.6 was in charge of Sun network that belongs to A.9 its Managing Director and Gemini and Teja are the sub Units of the said Sun Network of A.9 and aforesaid channels were telecasted through the channel Plus AP which is the deprived of Sun network for the Nellore district for AP for which A.5 is Manager and also the cable operators in A.P. shall purchase and decoder and only from channel Plus AP for which A.5,6,7 and 8 are technical directors and managers and others staff to work under the control of A.6 no other than the cousin of A.2 since A.2 is sole distributor for channels under Sun network for the Nellore District known as Akash Cable Network objected A.3 and A.4 were given monopoly for Nellore district, that A.2 to A.4 with active role of A.5 and A.6 and therefrom A.1,A.2 and A.6 became partners in the Kavali Entertainment Net work which they formed consideration from original 12 operators formed into syndicate.

10. From the above there is no offence practically that could be made out against most of the accused persons insofar as the complainant is concerned to attribute against them to make grievance by setting criminal law into motion. It is therefrom further averred and even deposed under the protest petition sworn statement that as the channels of net work made demand for agreement with members of said Kavali Entertainment Network and the cable operators are getting signals from them by paying necessary amount have in turn used to provide the sun network channels to the respective subscribers and A.1,A.2 and A.6 from that monopoly in the absence of Sun Net work channel including Gemini and Teja channels, he used to demand huge amounts and they were causing interruption in the signals with poor quality signals even getting confirmation from the other cable network providers, whereas they are giving good signals to their network which is part of the fraud at their part to attract the customers of

complainant by causing loss.

11. From this allegation against the A.1,A.2 and A.6 if not also against A.1 to A.6, he is getting of poor signals, stating A.1 and A.6 mainly responsible, undisputedly whatever the grievance against the channel Plus A.P., the complainant already approached the tribunal and as can be seen from the police referred report, the same was ended in dismissal by finding fault of the complainant that he committed default in payment of subscribers from which they stopped providing of services for getting signals through decoders to Teja and Gemeni etc., paid channels, thereby there is nothing to say therefrom any criminal offence. The further allegation is the complainant and others applied from channel plus AP to provide decoders necessary for decoding the signals directly and addressed a letter to A.5 and also made representation for which they were postponing and same is known to A.9 and it is outcome of their collusion. The request for providing decoders and exercise for decoding signals directly as part of the business process even any of the accused which does not constitute any offence against any of the accused to set the criminal law into motion against them. The further averment is the complainant suffered one year and filed a petition before the Tribunal against the Channel Plus A.P. and Sun network and A.8 and A.4 also impleaded in the petition and in March, 2006, the said complainant got orders against Sun Net work and Channel Plus AP to issue decoders to complainant and his group and therefrom he issued notice to issue decoders directly which they did not oblige and he filed contempt petition before the tribunal against Sun network and channel Plus AP. It is further averred there is a representation by the learned counsel for the respondent to the contempt proceedings before the tribunal. In fact, there is no basis filed with the complaint in support of it even if at all anything to say that could be recorded as form part of the record to consider. In fact, it is the sworn statement that in the presence of A.1, A.4 and A.5 prepared minutes that sent representation to the

complainant saying decoders are not available immediately, hence to take temporarily the decoders, by promising to provide regularly later and obtained Demand Draft for the value of decoders and having collected decoders value and activation charges and monthly subscriptions from July, 2006 to March, 2008. the A.8 with support of other accused collected Rs.1,33,240/- per month and did not provide best quality signals and was creating problems even from the representations with assurance to provide good quality of signals and in further say of from increase in the channel Plus, Sun net work, Subscription raised from Rs.1,32,240/-to 1,75,282/-p.m. including service tax and in all paid Rs.31,19,066/-(Rupees thirty one lakhs nineteen thousand and sixty six) for 21 months to A.5 and A.5 failed to pass receipts and failed to account for the same that is the allegation mainly about A.5 at best and not against any others to sustain. The other grievance is at his enquiries the complainant came to know that the amounts collected were accounts of Kavali Entertaining Net work and they used to get free signals of Sun net work and used to provide channels to their subscribers at low costs to attract customers. It is part of the business competition if any wants its directly application for the pay channels service providers, there is nothing to complain but for at best to the tribunal concerned afresh and it does not prone to any criminal prosecution including against A.5, leave about others.

12. The allegations is in rendering all accounts even asked when it is the complainant who makes payment according to him, that too, monthly and getting signals but for saying poor signals, he could stop for getting the same, if at all it is poor and to think any other alternative or to proceed for the tribunal is concerned or have no other civil remedy even got poor signals without effective and clean signals through decoders, hence rendering of accounts no way prone to criminal prosecution for any of the offence. From the above background what further alleging that including through P.W.2 no other than the son-in-law of the complainant with a promise to settle the

matter, they went to the office of A.1, A.6, A.8 and A.9 threatened over phone and criminally intimidated to withdraw police complaint, otherwise to face risk. That shows a criminal flavor added to the civil dispute which is untenable for no immediate written report even clean approach to I town police and no copy of it even with any endorsement in proof but for filing alleged copy of the report as many as 68 documents filed with the complaint. Leave about final report clearly speaks in this regard of alleged incident from so called phone threats received from A.8 and A.9 in Chennai is a separate and distinct offence to prone to the jurisdiction and investigation calling to the police station in Chennai but for that there is nothing to rope A.8 and A.9.

13. Having regard to the above, the cognizance taken by the learned Magistrate is unsustainable including as to for need not furnish all the accounts what are the balance known to him, there is no question of rendition of accounts for in a case of they were collecting uncertain amounts with a promise to say what is monthly subscription, that too, when clearly speaks what is monthly subscription when he is remitting, the question of rendering accounts to attract any of the penal consequences therein.

14. Accordingly and in the result these Criminal Petitions (Crl.P.No.3447 of 2014 by A.9, Crl.P.No.7197 of 2014 by A.5, Crl.P.No.7201 of 2014 by A.8, Crl.P.No.7202 of 2014 by A.7) are allowed by quashing the proceedings in C.C.No.568 of 2013 on the file of the Additional Judicial Magistrate of First Class, Kavali, against the respective petitioners, by left open any civil remedy. The bail bonds of the petitioners, if any, shall stand cancelled. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22.12.2015
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