

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION Nos.8905 and 9135 of 2015

% 04-11-2015

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CRIMINAL PETITION No.8905 of 2015

#A.Sai Siva Jyothi and 3 others

....Petitioners

Vs.

\$ The State of Telangana rep. by its Public Prosecutor and another

.... Respondents

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CRIMINAL PETITION No.9135 of 2015

#Gemini Film Circuit, rep. by its Managing Partner and 2 others

....Petitioners

Vs.

\$ The State of Telangana rep. by its Public Prosecutor and another

.... Respondents

!Counsel for the Petitioners : Sri A.Nava Mohan Rao

Counsel for the Respondents: Sri B.Vijaysen Reddy

<Gist :

>Head Note:

? Cases referred:

1. AIR 1969 SC 667
2. (2014)7 SCC 215
3. (2009)1 SCC 516
4. (2008)2 SCC 705
5. (2005)13 SCC 540
6. (2010)6 SCC 562
7. (2015)4 SCC 609
8. (2005)8 SCC 89
9. (1987)3 SCC 684
10. (1997)3 SCC 491
11. (2005)4 SCC 230
12. (2011)1 SCC 74
13. (2010)3 SCC 330

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.8905 & 9135 of 2015

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COMMON ORDER :

The petitioners are A-1, A-2 and A-7 in Criminal Petition Nos.9135 of 2015 and A-3 to A-6 in Criminal Petition No.8905 of 2015 in Crime No.826 of 2015 of P.S.Banjara Hills registered for the offence punishable under Sections 415, 418, 420 and 120-B (sic.120-A) read with 34 I.P.C on the report of the 2nd respondent/defacto-complainant dated 23.07.2015. It is mentioned the date and time of offence was 23.07.2012 and the names of the accused mentioned were A-1 entity M/s.Gemini Film Circuit represented by its Partner A.Manohar Prasad, A-2 A.Manohar Prasad, A-3 Mrs.A.Sai Jyothi, A-4, Mrs.A.Lakshmi Anandi, A-5 Mr.A.Anand Prasad, A-6 Mr.Kovelamudi Bapaiah, A-7 M/s.Gemini

Industries & Imaging Limited represented by its Joint Managing Director Mr.A.Manohar Prasad. A-7 is no other than A-2 individually and representing A-1 firm and its partner. The petitioners sought for quashing F.I.R supra.

2) The report of the defacto-complainant speaks in nutshell that A-1 entity obtained a loan of Rs.7.50 crores from the Company M/s.Venkateswara Financiers represented by its General Manager (finance) K.R.Reddy (defacto-complainant) for production of Tamil Film Madagaja Raja, against security over the entire negative rights of the above film and its release, prints including overseas, dubbing, remaking rights of all languages and all electronic media rights i.e., satellite, television, terrestrial, Doordarshan, Cable, DTH, Video, Internet, compact video, digital video, local delivery service, MMDS, cable wire, wireless or any other system of said film, by suppressing the fact of their having sold satellite rights of the film to a third party for Rs.5.00 crores even before complainant entity advanced the loan to them. The further averments in this regard are that as per the loan agreement executed by A-1 and the guarantors, confirms that they have not entered into any agreement, commitment or dealings of any nature whatsoever in respect of grant of any of the rights of the said film including the rights of the distribution, exhibition, satellite, exhibition or creating any lien or hypothecation of said film (clause 7 of the agreement) that pursuant to the agreement, the borrower created charge over the entire negative rights of the film supra and its release as detailed supra and borrower agreed to repay the entire loan with interest by demand draft or RTGS to the complainant at least two working days before releasing of the above film or on or before 30th November, 2012 whichever is earlier and believing and releasing on assurance contained in the loan agreement referred supra, the complainant lend the amount by crediting the amount to the account of the A-1 entity of Rs.5.00 crores on 25.07.2012 and Rs.2.5 crores on 02.08.2012 through RTGS and the same and the said loan is still outstanding for not repaid, thereby the complainant is contemplating the film rights as the film got censor certification and is ready for release and while so on 02.07.2015 the complainant came to know that A-1 firm sold the satellite rights of the above film to M/s.Vijaya Television Private Limited of Chennai and suspecting the foul play, complainant addressed letter of even date to M/s.Vijaya Television Private Limited to inform whether they really purchased the satellite

rights and the particulars and for which M/s.Vijaya Television Private Limited informed through e-mail that cable and satellite rights along with certain other broad casting rights were licenced to them for A-1 entity for a sum of Rs.5.00 crores and the licence agreement dated 22.12.2012 executed by A-1 entity represented by its partner-cum-power of attorney holder A.Manohar Prasad, A-2 and that in view of the above licence M/s.Vijaya Television Private Limited released Rs.2.50 Crores as advance and also furnish copy of the licence agreement to the complainant by said Vijaya Television Private Limited. It is further averred that copy of the power of attorney dated 14.12.2012 shows all partners of A-1 entity authorized A-2 Manohar Prasad to negotiate and licence the satellite rights of the film and two other films to any third parties and fix consideration amount in the same and execute the licence agreement and it is pursuant to which the licence agreement dated 22.05.2012 in favour of M/s.Vijaya Television Private Limited executed by A-1 represented by A-2 and however, A-1 entity again approached the complainant for loan in June, 2012 and executed the loan agreement dated 23.07.2012 without disclosing the licence rights covered by agreement dated 22.05.2012 to M/s.Vijaya Television Private Limited. It is further averred that in this manner A-1 entity and all its partners playing fraud on the complainant by suppression of the agreement dated 22.05.2012 supra, not availing loan to the A-1 entity and execution of the loan agreement in favour of the complainant on 23.07.2012. It is further averred that, had the fact of agreement dated 22.05.2012 to M/s.Vijaya Television Private Limited known to the complainant, they could not have financed to the A-1 entity and its partners by agreement dated 23.07.2012. The further averment is A-1 entity issued cheques for discharge of loan amount, all those were dishonoured for non-payment and again in June, 2014; A-1 entity issued three cheques that were also dishonoured and they filed against A-1 entity and its partners, the criminal cases under Section 138 of the Negotiable Instruments Act, 1881 vide C.C. Nos.1326, 1327 and 1328 of 2015 pending on the file of III Additional Chief Metropolitan Magistrate, Hyderabad. It is further averred that A-1 entity and its partners and guarantors have no intention to repay the loan dues to the complainant and they have cheated by inducing to part with the amount of Rs.7.5 crores covered by the agreement supra and by dishonestly concealed the fact of satellite rights licenced to Vijaya Television Private Limited. It is further averred that A-1 entity and its partners fully knew

that their actions would cause loss to the complainant and entered conspiracy and cheated the complainant and the loan agreement signed is deemed as signed by all partners of A-1 entity and thereby A-1 entity and all the partners liable for the offences supra.

3) It is pending said crime, from the submissions across the bar, the accused persons obtained bail with conditions. It is submitted in the course of hearing by the counsel for petitioners that the police are harassing despite the bail conditions are modified one way or the other requiring them to appear before the police station and to oblige to the dictates of the complainant. There is no such material in support of it before this Court as part of the quash petition.

4) It is in the background of facts supra, impugning the crime supra, the two quash petitions are filed by the accused persons 1 to 7 supra mainly with the contentions that it is purely a civil dispute and there is no deception muchless from the inception and there is no any element of cheating and there is no conspiracy to commit any offence to attract any of the penal consequences even against A-1 entity muchless for the loan agreement executed on behalf of and by A-1 represented by A-2 and there is no even any allegation so far as against A-3 to A-7 to make them liable for any of the offences for they are not parties to the loan agreement muchless to say on the core contention of the agreement executed is by suppression of the so called licence rights entered by agreement with M/s.Vijaya Television Private Limited on 22.05.2012 and thereby the proceedings are liable to be quashed.

5) No doubt, it is also mentioned in the grounds as if it is a private complaint referred to police for investigation and the learned Magistrate without application of mind referred the same. In the course of submission, it is admitted by counsel for the petitioners the same is outcome of a mistaken mention.

6) From the above now, the point for consideration is

i) Whether the prosecution is sustainable or liable to be quashed, if so against all the accused persons or against any one or more of them and with what observations?

7) Undisputedly, the loan agreement dated 23.07.2012 was executed on Rs.100/- non-judicial stamp paper purchased in Tamilnadu dated 18.07.2012 in the name of A-1 entity. The loan agreement mentions it was executed at Hyderabad between A-1 entity and partnership firm represented by its Managing Director and producer Sri A.Manohar Prasad (A-2), known as borrower and M.P.Ravi Shankar Prasad and Kiran Parvathaneni who stood as sureties to the agreement and the complainant entity, company with registered office at Hyderabad as the lender. The agreement was also signed on behalf of A-1 entity by Manohar Prasad as Managing Partner and said Manohar Prasad (A-2) even individually and the other two persons who are not accused by name A.Ravi Shankar Prasad and P.Kiran, the sureties who executed simple mortgage and the complainant entity by its managing director A.V.Reddy. In the agreement there is nothing to say who are the other partners other than A-2 and A-1 entity and as to any liability of other partners, but for to govern by the provisions of the Indian Partnership Act so far as the civil liability concerned. No doubt, the agreement among 24 clauses, clause 7 speaks that the borrower and surety/guarantors hereby confirms that they have not entered into any agreement, commitments, or dealings of any nature whatsoever in respect of grant of any of the rights of said film, including the rights of distribution, exhibitions, satellite, exploitation or creating any lien or hypothecation of the said film. The said warranty given by the executant to make them liable if at all that tantamounts to cheating from the alleged non-disclosure of A-1 entity entered into licence agreement with M/s.Vijaya Television Private Limited dated 22.05.2012. So far as A-3 to A-7 concerned of whom A-7 is another entity, there is nothing to show from the agreement to make them criminally liable even from that clause No.7 of agreement supra that tantamounts to suppression of a material fact with intent to deceive as it is at best to apply only to the executants. The report but for a vague or stray sentence of A-1 entity and its partners and guarantors have no intention to repay the loan dues and have cheated. It is not even averred that how all the partners are liable and it is not even averred that all the partners before entering into agreement made any assurance muchless in writing to say from the inception there is any deception on their part also, but for at best to attribute to the executant A-2 including personally if any apart from A-1 entity roping by A-2. The general averment that the complainant is advised that A-2 and all other partners of A-1

entity signed the loan agreement as such and committed the offence is even untenable muchless to apply any deemed liability for no legal fiction and for not being parties so far as A-2 to A-7 concerned. It is the contention of the counsel for the complainant/respondent No.2 herein to the quash petition that under Section 25 of the Indian Partnership Act, the liability of a partner for the acts of A-1 firm is joint and several and it extends even to the criminal liability. Same is untenable as it is only the general provision regarding the civil liability that is also can be seen from the expression of the Apex Court in ***Sahu Rajeshwar Nath V. ITO, Meerut***. It is the contention no doubt of the fact for the complainant that alternatively from the licence agreement in favour of M/s.Vijaya Television Private Limited dated 22.05.2012 executed by A-1 represented by its partner A-2 also referred as power of attorney holder as licensor in favour of M/s.Vijaya Television Private Limited, the licensee; and it reflects the power of attorney executed by other partners in favour of A-2 dated 14.05.2012 authorising A-2 to negotiate and licence the satellite rights of the film Madagaja Raja and two other films to any third parties and fix consideration and execute licence agreements and thereby the partners are also liable. Same is also untenable for the reason that it is a power of attorney dated 14.05.2012 authorising A-2 by the other partners of A-1 firm for A-2 also partner of managing partner, to negotiate and licence the satellite rights of the three films and execute licence agreements for consideration. It is not by itself make them for any criminal liability by any stretch of imagination It is only for that limited purpose the power of attorney was there and it is pursuant to which at best, the licence agreement in favour of M/s.Vijaya Television Private Limited dated 22.05.2012 executed by A-1 entity represented by A-2 as its Managing Partner and also as power of attorney holder on behalf of other partners. It is not the claim by M/s.Vijaya Television Private Limited as was cheated in any manner pursuant to the agreement dated 22.05.2012. In fact it is subsequently even admittedly i.e., on 23.07.2012 the loan agreement is entered with complainant by A-1 entity represented by A-2 and also by A-2 and two other persons who are not accused herein as guarantors all signed along with the complainant entity represented by its Managing Director as a mutual agreement and the clause 7 what is referred supra of any assurance or warranty is made by the said guarantors including A-2 individually apart from A-1 entity represented by A-2 and not even referred the power of attorney representing other partners,

muchless even such power of attorney hardly suffice to stretch any liability therefrom against other partners who are A-3 to A-7.

8) No doubt, it is one of the contentions of the counsel for the petitioners that there is no any element of cheating and it is purely a civil liability and any mistake in non-mention in the agreement obtained by the complainant, from its clause No.7, about the licence agreement with M/s.Vijaya Television Private Limited dated 22.05.2012 is not with intent to cheat or with any element of deception muchless with conspiracy and none of the offences are made out. The counsel submitted therefrom that, it is purely a civil dispute and with criminal colour without basis for not even can make use of this mistake or lapse, by the complainant to make mountain of no even a moule-hill and continuation of the crime proceedings is nothing but abuse of process and nothing but vindictive outcome with frustration by the complainant and it is liable to be quashed as laid down in ***Rishipal Singh V. State of U.P.***.

9) In the case of [Uma Shankar Gopalika vs. State of Bihar and Another](#), (2005) 10 SCC 336, this Court has held as under:

***“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under [Sections 420/120-B](#) IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under [Section 420](#) IPC.*”**

10) The other decision is ***R.Kalyani V. Janak C.Mehta*** in saying vicarious liability can be fastened only by reason of a confession of a statute and not otherwise and for said purpose a legal fiction has to be created thereby for the I.P.C offences of cheating and forgery or breach of trust of the respondents charged in individual capacity along with the counsel in sending a copy of the letter to the National Exchange claimed as fabricated document besides not alleged therefrom entrusted with or otherwise had dominion over the property, there is no vicarious liability that can be fastened in the absence of showing how personally liable, referring to several expressions and upholding the F.I.R proceedings quashed by the High Court, by the Apex Court for no interference; it was in that context observed on the scope of the quash proceedings of the F.I.R. in para Nos.15 and 16 of the F.I.R. quash would not ordinarily be exercised invoking the inherent power unless if the allegations on its face value even taken to be correct in its entirety not disclosed any cognizable offence and for that purpose other than in exceptional circumstances Court would not look into defence documents and mere civil dispute pending or proceeding appears in civil in nature not a ground to presume no *mens rea* to sustain the F.I.R accusation for invoking the inherent power but for in discharge of paramount duties to see a person apparently enhancement is not subjected to persecution and humiliation on the basis of false and wholly untenable complaint/report. In this Judgment referred in ***Sunitha Jain V. Pavan Kumar Jain*** para No.39 that inherent power of High Court would not embark upon an enquiry as to whether evidence is reliable or not which is a function of trial Magistrate to appreciate as to the accusation is not sustained or not ultimately. It was also held referring to ***State of Orissa V. Saroj Kumar Sahu*** para Nos.11 and 14 that where entire facts are incomplete and evidence not collected and produced before Court on the issues involved the magnitude and it cannot be seen without sufficient material to quash though no hard and fast rule can be laid down in exercise of the extraordinary jurisdiction of the High Court, but for to say it is not permissible for the High Court in exercise the jurisdiction to act as if it was a trial Court but for prima facie to satisfy about existence of sufficient ground of accusation for proceeding or not and to evaluate the material for the limited purpose with reference to documents.

11) In fact the learned Public Prosecutor in support of the complainant, during his submission of the arguments cited decision of the Apex Court in **S.P.Gupta V. Ashuthosh Gupta** where the crime registered is for the offences punishable under Section 420 read with 34 I.P.C from the averments that accused gave an assurance who is the power of attorney holder of other person, to the complainant of the property in question was free from all encumbrances and A-1 is sole owner. When such is the case, it was held whether it is a truly mistaken or intentional is an issue which needs to be decided in answering the charge to be made and premature to decide to quash the F.I.R invoking Section 482 Cr.P.C. The learned Public Prosecutor submitted therefrom that in this case also from the very report registered as crime there is a non-mention of licence agreement entered by A-1 entity and its partners represented by A-1 as power of attorney holder in favour of M/s.Vijaya Television Private Limited dated 22.05.2012, in availing the loan from the complainant by execution of the agreement by A-1 represented by A-2 as its Managing Partner and also as guarantor A-2 besides two others and also given warranty of so far no any agreements executed conveying or creating any rights and whether it is a mistaken outcome or intentional thereby requires to be decided only after a police final report in the event of any cognizance taken in the course of hearing before the charge or during trial and premature at the F.I.R state to decide.

12) Even taken the same proposition it is extending only so far as continuation of the F.I.R proceedings against A-1 and A-2 representing A-1 and not against A-3 to A-7 for they are not directly parties to the said agreement nor there is anything to say they did anything mentioned in writing in favour of the complainant either before or on that day of the agreement for admittedly not signed the agreement to make them liable. The law is very clear on this aspect of the persons who are not parties to the agreement from which the crime is alleged cannot be made liable in the absence of showing by any specific averments to attribute criminal liability with mensrea, vicariously or otherwise. The Apex Court's latest expression in **Sunil Bharathi Mittal V. C.B.I** is an authority in this regard referring to several earlier expressions including three Judges bench expression in **S.M.S.Pharmaceuticals V. Neeta Bhalla** though **Neeta Bhalla** is a case under Section 138 of the Negotiable Instruments Act,

1881, the expression in ***Sunil Bharathi Mittal*** supra for I.P.C offences and further the Apex Court in ***Sunil Bharathi Mittal*** referred other expressions including ***U.P.Pollution Control Board V. Modi Distillaries*** and ***State of Madras V. C.V.Parekh*** among other expressions including ***Standard Chartered Bank V. Directorate of Enforcement*** and ***Iridium India Telecom Ltd. V. Motorola Inc.*** and ***National Small Scale Industries Corporation v. Harmeet Singh.***

13) Having regard to the above, the petition is partly allowed by quashing the F.I.R proceedings in Crime No.826 of 2015 of Banjara Hills Police Station so far as A-3 to A-7 concerned and not interfered with the investigation of the crime so far as A-1 and A-2 concerned which is without prejudice to the future defence and right of A-1 and A-2 after police final report and any cognizance, if taken, by the learned Magistrate concerned, with liberty to move the Court afresh therefrom. It is needless to say, the core aspect is loan agreement dated 23.07.2012 condition No.7 assurance and it is knowingly or inadvertently, when such is the case of the agreement already filed before police by complainant, there is nothing for the police to harass the A-2 or other persons connected with the agreement by frequently calling to police station under guise of investigation.

14) As a sequel, miscellaneous petitions pending if any in the above criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

04.11.2015

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