HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.3783 of 2014

ORDER :

The quash petitioner is no other than the A.1 among the 4 accused in C.C.No.1474 of 2013 pending on the file of the learned XI Additional Chief Metropolitan Magistrate, Secunderabad that was taken cognizance and issued summons based on a private complaint vide order dated 30.09.2013, for the offences punishable under Sections 406,420 and 120-B IPC. Impugning the said order of taking cognizance and issuing of summons, this criminal petition is filed with the contentions of it is purely a civil dispute in nature, outcome of partnership firm business affairs, with no any criminal elements much less to add any criminal flavor to the civil lis to sustain apart from no ingredients of the offences made out from the allegations besides same is abuse of process and non-disclosure of material facts and the cognizance taken is outcome of non-application of mind and the accused cannot be put to harassment to enable the complainant to settle the scores of the civil lis by sustaining criminal prosecution, apart from the transactions relates to 13 years old and the filing of the criminal complaint, taking cognizance and issuing of summons ignoring vital facts when not sustainable, same is liable to be quashed and by referring to several expressions in support of it including any written submissions in nutshell.

2. Whereas, it is the submission of the learned Public Prosecutor vis-a-vis the learned counsel for the complainant-2nd

respondent that there is nothing to make out for the offence under Section 420 of IPC, the inducement and deception by presence of accused in express words, for same can be inferred from overall facts and circumstances including conduct of accused in obtaining property or dominion over property, whether the complainant was truly mistaken and misdirected with the information given by the accused directly or indirectly being privy with other accused if any and the intention of the accused that are criteria in deciding for a thin line of such difference in between the civil and criminal liability and once it requires elaborate evidence for fact finding, it is allowed to be continued to face trial rather than nipping at the bud, that too, when the complaint itself discloses besides the sworn statement which is part of the quash petition material, suffice to say the offence is made out and thereby the quash petition is liable to be dismissed for nothing to interfere.

3. Heard both sides at length from the rival contentions supra with reference to the facts and law and perused the entire material on record.

4. The expression of this Court referring to catena of expressions including of the constitution Bench expression of the Apex Court, in Sun pharmaceutical Limited Mumbai Vs. State of Telangana[1] at para 56 is that for taking cognizance on a private complaint and issuing of process, once the material is there even non-assigning of reasons to the conclusion of taking cognizance, no

[1] (2016) 2 ALT Crl.165

way fatal much less to quash on that ground. No doubt, the ingredients of each IPC offence to be read with is, with reference to section 6 of IPC, leave about right of accused to plead or prove the general exceptions under the IPC with reference to Section 105 of Indian Evidence Act, as also laid down therein at para-63.

5. From the above now coming to the facts, the very complaint averments vis-à-vis the sworn statement in taking cognizance of the offence by the learned Magistrate against the 4 accused reveal that the complainant Cardiologist NRI working in United States of America(USA) saying with flair to serve in the State Capital, Hyderabad to the people in need of a medical aid by investing to improve treatment conditions of heart patients, no doubt, get reasonable returns therefrom and when have such an idea, the A.3 S.Ramesh Babu met him in the year 1997(about 18 years back) in USA saying supra along with the other accused viz; A.1 N.Subhash, A.2 K.V.Sreenivasa Rao, and A.4 S.Prabhakar who are the big business people and all invested in improving existing health conditions and are already in league with some leading Cardiologists in Hyderabad. Pursuant to the words of inducement, the A.1 to A.4 met him when he came to India in the year 1998 and informed that his treatments helping to improve the health conditions of heart patients in Hyderabad will come true, if a vacant plot is purchased and hospitals are constructed to run by them together at Hyderabad and the other people, running other corporate hospitals, are very much interested and are asking the A.1 to A.4 to take up and they already advanced major portion of

payments towards purchase of land for establishing corporate hospital and assured that the rent payable by the hospitals in Hyderabad will be so high and if the complainant invests to get returns with interest, he could be benefitted to achieve their goal saying it is unsafe to complainant if he keeps above one million U.S.dollors as security deposit in any multinational bank having approached in India which in turn will release funds of loan in Indian rupees with which they can purchase vacant plot suitable for the hospital and that they will provide 5 acres of land in Sy.No.83 of Rayadurg (Panmaqtha) of Serilingampally Mandal, Ranga Reddy district, with security of the complainant towards the bridge loan arrangement for a period of six months and the security will be replaced with the mortgage of proposed hospital site to register for a purpose of registration of hospital site is completed and the A.1 to A.4 shall oblige their respective shares that the partnership firm to enter with the complainant and the complainant keep the deposits as security in the bank which would remain intact repayment of loan together with interest to take back. It is from their say of complainant, much less the accused, need not invest any money except what they allegedly already invested but for loan amount advanced by bank to the anticipated business to run and to share profits at 20% to the complainant and similar to 4 accused and the A.1 to 4 bear entire loss if any equally, with no liability of complainant. With said assurance, he was inducted by them as one of the 5 persons of the firm with name and Style "M/s Health Organizations" by deed dated

09.06.1998 to which the A.1 and A.2 are the Managing Partners and the complainant is its titular head i.e. the Chairman and there was a memorandum of understanding(MOU) inter se dated 10.06.1998, complainant to advance them 1.1 million U.S.Dolloars, to the bank as security deposit for the accused alleged payment of balance amount for the loan amount for the land and to get the hospital registered, which they proposed as entered with land owners and to construct hospital therein within two years period therefrom. However later the accused did not provide 5 acres of land in Sy.No.83 supra as security as promised during six months period of bridge loan arrangement, nor was the security replaced with the mortgage of the hospital site, since no site was registered in the name of Firm and consequent thereto, the very purpose for which the complainant kept his FCNR deposits in the bank as security for the release of funds to the Firm, were defeated and by putting him wrongful loss and injury, with no answer to his questioning later and they ultimately executed sale deed, dated 24.12.1999 in their individual capacities in favour of the complainant in his individual capacity, in respect of A-schedule property, which is pursuant to the agreement of sale, the A.1 to A.4 entered with 1) M.Dhanunjay S.Naik, 2) Smt. Kamala Bai, 3) Mrs. Nalini P.Behare, who are respective owners on respective dates of 06.07.98, 01.07.1998 and 04.07.1998 consisting of land and building H.No.6-3-1215 known as Muktha Ashram, Begumpet, at Hyderabad of double storied main building with kitchen and bathroom etc., within the extent of 7,000sq.yards and that too, after a major part of loan account against what was released by the bank to the Firm before that on 29.06.1998 and what they have drawn for the purpose of alleged site purchase, to construct and run hospital, is a false pretence and assurance with which he was duped. In fact there was a litigation in O.S.No.1609 of 1983 that came to know of any final decree and execution and the A.1(quash petitioner) however, executed MOU dated 14.08.2000 to repay the amounts of deposits and to pay 5% interest, paid by the bank, from the date of deposit by the earliest that works out to Rs.8,66,24,370/- as on date and also undertake to pay additional equivalent amount in Indian rupees corresponding to interest at 4% per annum on U.S.dollers of Rs.1,75,000/- which works out to this day Rs.1,01,64,000/- and to pay the related expenses that comes to total liability of A.1 as per MOU dated 14.08.2000 of Rs.10,20,31,926/- and arranged for mortgage of property owned by his relative by name B.Ratnakumari of Ac.5.20guntas of Rayadurg which is plaint-B schedule vide mortgage dated 14.08.2000 by deposit of title deeds delivering property viz; registered sale deed dated 27.05.1996 in her favour as per document No.4852 of 1996 in Ranga Reddy district, registered and after that they were postponing and the enquires revealed that they paid only two crores out of 4.59crores released as loan amount to the firm and appropriated remaining for their personal benefits and the same is by cheating and defrauding complainant which he came to know after 2008 and in the year 2009 when complainant asked them there was no response and he came to know on enquiries, filed O.S.No.110 of 2009 which is pending on the file of the I Additional Chief Judge, Secunderabad and the accused committed criminal misappropriation and cheated the complainant by their conspiring together and they all thereby liable for prosecution. No doubt from the above on its face, so far as the criminal misappropriation for the offence under Section 406 of IPC concerned, the complainant claim is barred by limitation of three years as provided by Section 468 of the CrPC, but for to consider the offences punishable under Section 420 read with 120-B of I.P.C. against the accused persons 1 to 4.

6. In this regard, coming to the quash petition averments, the contention that out of several guidelines laid down by the Apex Court in Bhajanlal Vs. State of Haryana[2] the condition No.1 applies to him in saying the allegations in the FIR or complaint even taken on face value no way makes out any offence, is untenable as the very allegations supra makes out the offence is cheating with the intention dishonestly from the inception from the complaint averments, leave about ultimate success. In this regard the three judge Bench expression in Shivanarayan Khadri Vs. State of Maharashtra[3] categorically held that to prove the offence of cheating under Section 420 of I.P.C. the accused need not make a false pretence in express words but for to infer even from entire facts and circumstances including the conduct of the accused in obtaining property or valuable security or dominion over

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[2] 1992 Supp(1) SCC 335

[3] AIR 1967 SC 986

it. However, the Apex Court in S.P. Gupta vs Ashutosh Gupta[4] held that when there is a positive assurance is given by the accused to the complainant that the property in question is free from encumbrance and he is the owner and that it is not such a representation made relating to status of ownership in question, the complainant may not have entered into the transaction at all and whether it is truly mistaken as a result of information given by him is an issue and even accepting such contention when it requires to be decided in answering the charge made suffice to say there is a prima facie case for putting the parties to trial and hence no interference is required to quash the proceedings for the offence of cheating.

7. No doubt in the written submissions, the complainant relied on Varinder Singh Vs. State of Punjab[5] in which the Apex Court quashed the FIR holding that the case fell under category(1) of the grounds of quashing mentioned in Bhajanlal(supra). In Binod Kumar Vs. State of Bihar[6] the Apex Court quashed the prosecution saying the very complaint averments when does not disclose fraudulent or dishonest intention of alleged accused for not a case of accused has no title and not competent to enter the sale agreement and admittedly amount with interest repaid, there is nothing to say any offence of cheating made out. In Rishpal Singh Vs. State of U.P.[7] the Apex Court quashed the criminal

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[4] 2010 (6) SCC 562
[5] (2014) 3 SCC 151
[6] (2014) 10 SCC 663
[7] (2014) 7 SCC 215,

proceedings holding that a litigant should not be allowed to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold and the learned counsel submits that the ratio of this judgment applies on all fours to the complaint in the instant case which is nothing but misuse and abuse of the process of criminal law by the complainant. In the expression of Apex Court in Alpic Finance Limited Vs. P.Sadasivan[8] upheld the order of the High Court quashing the criminal proceedings wherein the substantial amount was paid to the complainant. In Suresh Vs. Mahadevappa[9] wherein the complaint was filed after a lapse of 10½ years and the accused challenged the issuance of process by the learned Magistrate by filing criminal revision which was dismissed by the High Court and it was held that the complaint is liable to be dismissed on the question of inordinate laches on the part of the complainant himself and held that the very private complaint held by the complainant after 10½ years is not at all maintainable at this distance of time and the learned counsel submits that similarly in the present case, the complainant has filed the complaint after a period of 13 years and on this ground itself, the complaint filed is liable to be quashed. In Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre[10] it was held that the Court cannot be utilized for any oblique purpose and if no useful purpose

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[8] (2001) 3 SCC 513
[9] (2005) 3 SCC 670
[10] (1988) 1 SCC 692

would likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of the case to quash the proceedings even though it may be at a preliminary stage. In G.Sagar Suri Vs. State of U.P.[11] it was held that the criminal proceedings are not a shortcut of other remedies available in law. The said principle laid down by the Supreme Court squarely applies to the facts of the present case since the object of the complainant is to get land and towards achieving the said purpose, the complainant has filed the present complaint which does not disclose commission of any offence by the Accused. In Hridaya Rangan Prasad Verma Vs. State of Bihar[12] the Apex Court held that the distinction between mere breach of contract and the offence of cheating is a fine one and thereby mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.N.Palanitkar Vs. State of Bihar[13] it was held that many a times, complaints are filed under Section 200 of the Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass and to wreck vengeance, to pressurize the accused to bring them to their own terms or to enforce the obligation arising out of breach of contract touching commercial transactions instead of approaching civil Courts with a view to realize the money at the earliest. Hence, before issuing process, a Magistrate has to essentially keep in mind

[11] (2000) 2 SCC 636
[12] (2000) 4 SCC 168
[13] (2002) 1 SCC 241

the scheme contained in the provisions of Section 200 to 203 of Cr.P.C. keeping in mind the position of law and pass an order judiciously and not mechanically or in routine manner. In Anil Mahajan Vs. Bhor Industries[14] it was held that in the absence of intention, it will be a single case of civil dispute and hence, the complainant filed by the complainant is liable to be quashed. In Uma Shankar Gopilika Vs. State of Bihar[15] it was held that the complaint does not disclose any criminal offence at all much less any offence either under Section 420 or section 120-B of I.P.C. and the case is purely civil dispute between the parties for which remedy lies before a civil Court and continuing the prosecution in such cases would amount to abuse of the process of Court. In Paramjeet Batra Vs. State of Utara Khand[16] it was held that the High Court must see whether the dispute which is essentially of a civil nature is given the cloak of criminal offence. In Chandran Ratnaswamy Vs. K.C.Palanisamy[17] the Supreme Court referred to and relied on the judgment rendered to State of Karnataka Vs. L.Muniswamy[18] wherein it was held that the wholesome power under Section 482 of Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of the justice requires that the proceedings

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[14] (2005) 10 SCC 228,
[15] (2005) 10 SCC 336
[16] (2013) 11 SCC 673
[17] (2013) 6 SCC 740
[18] (1977) 2 SCC 699

ought to be quashed. In Indian Oil Corpn. Vs. NEPC Ltd.[19] pointed out to be cautioning made about growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that the civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal proceedings should be deprecated and discouraged. In Murari Lal Gupta Vs. Gopi Singh[20] it was held that merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. In Velji Raghavji Pael Vs. State of Maharashtra[21] where in the Supreme Court considered the meaning of entrustment in partnership in the light of criminal breach of trust as defined in Section 405 of I.PC. it was held that in the case of a partnership, every partner has dominion over the partnership property by reason of fact that he is a partner. It was held that a partner has undefined ownership along with the other partners over all the assets of the partnership. If the partner chooses to use any of them for his own purposes, he may be accountable to the other partners but he does not thereby commit any misappropriation.

8. The above expressions are on the own set of facts and what was the principle laid down respectively when applied to the

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[19] (2006) 6SCC 736

[20] (2005) 13 SCC 699

[21] AIR 1965 Sc 1433

facts on hand from the facts discussed supra, this Court feels that this is not a fit case for quashing in entirety including for the offence under Section 420 r/w 120-B IPC but for of the offence under Section 406 IPC.

9. Thus, from what is discussed supra, there is a prima facie material to sustain the accusation for the offence under Section 420 r/w Section 120-B IPC and the cognizance taken by the learned Magistrate and issuance of summons, so far as to that extent only, there is nothing for this Court while sitting against it under Section 482 of Cr.P.C. but for to the extent of cognizance taken for the offence under Section 406 IPC.

10. Accordingly and in the result, the petition is allowed in part while quashing the cognizance order in C.C.No.1474 of 2013 pending on the file of the learned XI Additional Chief Metropolitan Magistrate, Secunderabad, so far as the offence under Section 406 IPC concerned; dismissed the petition so far as the offence under Section 420 r/w 120-B IPC for there are no grounds to quash the proceedings but for putting him to face pre-trial charge enquiry with the other persons and without prejudice to any available other rights and defence of him.

11. Consequently, miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:17.10.2016
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