THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.45348 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

> "......to declare the action of the 2nd respondent in initiating proceedings in F.I.R.No.209 of 2016, dated 05-10-2016 registered on the file of Central Crime Station, Hyderabad, Telangana, i.e., 2nd respondent herein as being illegal and arbitrary and issue consequential directions :
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> A. to quash the proceedings in F.I.R.No.209 of 2016, dated 05-10-2016 registered on the file of Central Crime Station, Hyderabad, Telangana, i.e., 2nd Respondent herein as being illegal in nature, arbitrary and in violation of Article 19(1)(g) and 21 of the Constitution of India, and
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> B. to declare that the business activities of the petitioners does not violate any provisions of the Indian Penal Code; and
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> C. In the alternative, be pleased to permit compounding of the offence in so far as the complainant is concerned....."

2. In the affidavit filed in support of the petition, it is stated that the 3rd respondent in the name of 'Investors' invested an amount of USD 7 million into V-Soft Mauritius (Petitioner No.2) by way of share subscription in accordance with Investment Agreement, dated 29.12.2006. Thereafter, due to certain reasons, the 3rd respondent-*de facto* complainant chose to exit from the 2nd petitioner Company vide Termination Agreement dated 02.05.2012, which was signed by all parties, whereby, the Investment Agreement, dated 29.12.2006, referred to above, was terminated by mutual consent. It is alleged that due to failure of 3rd respondent to comply with certain

obligations arising under the shareholders agreements, various disputes arose between the parties under various agreements. In spite of the arbitration clauses provided in the agreement as well as the New Agreement, the 3rd respondent wrongfully filed a petition for winding up on 12.08.2013 against 2nd petitioner in the Bankruptcy Division of the (Mauritius) Supreme Court. The Supreme Court, vide its order, dated 25.07.2014, closed the said proceedings filed by the 3rd respondent in view of subsistence of the arbitration agreement between the parties. The 3rd respondent chose to invoke the arbitration clause, as such the parties entered into a separate Arbitration Agreement, dated 15.07.2014, in the light of the disputes arising between the parties out of the various agreements. The petitioner submits that Arbitration Award was passed on 08.01.2015 directing the 2nd petitioner to pay an amount of USD 22, 855, 741 inclusive of interest computed as on 12.10.2014 and such further sum as may accrue thereon as interest, until the date of final payment. Further, it was directed to pay an amount of USD 185,000 as damages and USD 418,639 towards costs. Thereafter, the 3rd respondent sought to execute the said Award by sending a Statutory Demand notice for the above mentioned amount under Section 180 of the (Mauritius) Insolvency Act 2008, dated 02.02.2015. This is in the light of the fact that the Award is an executory title for the Investors. In the meanwhile, the 2nd petitioner filed an application before Mauritius Supreme Court to set aside the Arbitration Award passed on 07.04.2015 and the same is adjourned to January, 2017. While the said case is pending, the 3rd respondent filed O.S.No.730 of 2016 seeking to grant permanent injunction against the petitioners and to declare that the shareholders agreement, dated 02.05.2012 is subsisting and binding. Along with suit, I.A.No.517 of 2016 was filed seeking ad-interim injunction. While the aforesaid suit was instituted and notice was ordered, the 3rd respondent filed Arbitration Application No.98 of 2016 seeking protection. This Court vide interim order, dated 22.09.2016 directed the petitioners not to alienate the shares in the 1st petitioner company. While above referred proceedings are pending consideration and adjudication, the 3rd respondent lodged a complaint, basing on which, the impugned F.I.R was registered for the offences punishable under Sections 420, 409, 467 and 120-B IPC.

3. Heard and perused the material available on record.

4. Learned counsel for the petitioners would submit that the dispute between the petitioners and the *de facto* complainant was already adjudicated before the Supreme Court of Mauritius, where there was an undertaking given by the petitioners as well as *de facto* complainant that they will not raise any further litigations in connection with the matters pending between them, but contrary to the same, the present complaint is lodged and the petitioners apprehend the arrest in the name of the investigation; that initially a private complaint was lodged before the Magistrate concerned, but the Magistrate concerned without applying his mind simply referred the case to

police invoking the provision under Section 156 (3) Cr.P.C. that the petitioners are ready to co-operate with the investigation.

5. Considering the facts and circumstances of the case and the grievance of the petitioners and in view of the fact that the petitioners are ready to co-operate with the investigation, respondent-police are hereby directed to complete the investigation in the aforementioned crime and file a final report, in accordance with law in either way, without arresting the petitioners. The petitioners are directed to appear before respondent-police and execute a personal bond for a sum of Rs.5,000/- (Rupees five thousand only) each with one surety for the like sum each for their appearance as and when required for the purpose of investigation.

6. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE RAJA ELANGO

26.12.2016
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