HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13081 of 2010

ORDER:

Petitioners are accused 1 & 2 in Crime No. 300 of 2010 dated of Central Crime Station, Hyderabad registered for the offences punishable under Sections 120-B, 379, 403, 406, 408, 420, 425, 468, 471, 477A, 511 IPC and Section 3 of Prevention of Money Laundering Act, 2002.

2. First respondent is the complainant entity representing by its Director. It is the private complaint of the second respondent dated 8.10.2010 referred to police for investigation by the learned Magistrate under Section 156 Cr.P.C and the police registered the crime for investigation on 12.11.2010 for the offences referred supra.

3. The private complaint averments read that the alleged offences taken place between 29.10.2009 to 22.09.2010 and are continuing against the petitioners/accused 1 &2. The complainant M/s AVU Engineers Private Limited represented by its Director Vijaya Kumar Rana, who filed the complaint says his father Mr. K.C. Rana started the company in 1981 in the business of manufacture, supply of Waste Heat Recovery Systems, Industrial Boilers, Economisers and other engineering goods and their Erection and Commissioning and the said Mr.K.C.Rana, died on 29.08.2010 who none other than the father of the present director Sri Vijay Kumar Rana, who is authorized by the Board of Directors to file the complaint and prosecute the accused. That A1-Paramvir Singh Kanwar is the brother-in-law of V.K.Rana joined in the entity on 1.1.2004 and later made as Employee Director to take care of the operation of the company with complete charge during October 2009 till 22.09.2010 when from he is absconding. It was when K.C.Rana, Original

Founder and Managing Director fall ill, and hospitalized for the cancer disease having been totally bed ridden and passed away, A1 was complete charge of the affairs since October 2009, as referred supra, A2 joined the company on 4.8.1989 was taking care of Engineering Design and Projects till 25.9.2010 since he is absconding. A1 having access to the company's precious and critical business information, technical data, design data, clients data, intellectual properties, financial dealings and information, and clients documents/intellectual property documents of entity and that information is in his laptop computer provided by the company being custodian of the same and also the company cars viz., Innova-make registration No. AP 28 BB 8662 standing in the name of Mr. Ajay Kumar Rana-one of the Directors and Indica Vista registration No. AP 28 BL 8566 and mobile phone bearing No. 9000774820 with SIM Cards/wireless internet connections and a laptop and A2 also was having access to the company's said critical information along with A1 in his laptop provided by the company and they are the custodians of the critical business information, laptops cell phones and SIM cards and A1 abruptly walked out of the company on 22.9.2010 by stealing information and also deliberately locked and tampered with the computer system of the company on which important, precious and vital information and data stored, causing unquantifiable damage to the company thus the successors unable to retrieve or operate by completely frozening since he is absconding despite the company called A1 including by letters to return laptop computer, vehicles and the cell phones he did not comply with malafide intention. A2 too is absconding from 25.9.2010 with the company's data and by securing expertise personnel in IT; the company is retrieving the data that was locked by the accused persons. Accused also committed serious embezzlement and money laundering in collusion *inter se* having conspired with an overseas person based in China namely Mr. John Cross claiming to be an Executive Director of an alleged company called AARE CUN TATHERMAL Ltd, based at Jiang Su Province at China understood the procurement agent from other real manufacturers based in China by entering into a contract for the import of certain equipments required for the complainant Company's onward project execution for their customers, appears to have been the contract entered into on 29.10.2009 and the e-mail dated 15.10.2009 exchanged between A2 and the said overseas party and payment terms and drafts of the contract, scope of supply that has been retrieved and disclosed the sum of the total value of the contract was Rs. 4 to 4.5 crores. It was also found that an amount of Rs. 2,61,55,560/- covered by 12 remittances remitted to the account of the said overseas party at the instructions of A1 between 4.11.2009 till 9.8.2010, as can be seen from the bank accounts of the complainants company maintained with ABN AMRO BANK (RBS) at Banjara Hills, Hyderabad, and Union Bank of India, Bowenpally. A1 and A2 also traveled and stayed in China on 18.6.2010 to 8.7.2010 and A2 again traveled and stayed in China between 13.8.2010 to 31.8.2010 at the cost of complainant's company. They also tried to contact the manufacturers and suppliers Wuxi Xuelang Alloy Steel Foundry, Wuxi Cast Company Limited different from the procurement agent in China, and they confirm that they have not received any amount by way of advance and complainant's efforts to contact Mr. Join Cross, Executive Director of AARE CUN TAITHERMAL Ltd., based at Jiang

Su Province China whose favour the said amounts are remitted, turned out to be futile for not responding including all the mails delivered. From the mail box of the A1, on 3.10.2010, he received a mail from one Mr. Rajesh Mehra of Purab Urja Private Limited, Dharamkunj attaching thereto a draft letter A1 to sign and return that shows inviting a confirmation from A1 saying that "we are pleased to confirm that we are agreeable to invest a sum of Rs. 262.50 lacs (Rupees Six Crores Only) in the Share Capital of the Company equivalent to about 12.5% of Equity share capital of the Project". This letter is invited from a company called "AVU BOIILERS LTD", which is neither known nor were they contemplating and in fact A1 applied in the name of the said company the Registrar of Companies with an intention to incorporate the same in that name. It is the transparency between A1 & A2 in committing offences of theft of the valuable information, breach of trust and cheating, and using forgery documents for the purpose of cheating and hence to take action.

4. The learned counsel appearing for petitioners/A1 & A2 to the quash petition contends that the said prosecution is unsustainable and same is nothing but abuse of process and A1 and the complainant are brother-in-laws. The de-facto complainant issued notice dated 27.9.2010 but A1 and A2 replied for the same and the same is not disclosed in the private complaint supra, and in the said notice nowhere finding place the allegations covered by the complainant regarding retaining of vehicles and taking away the laptop and the de-facto complainant also filed O.S.No. 1926 of 2010 on the file of VII Senior Civil Judge, Ranga Reddy District at L.B.Nagar against A1 and there are no allegations of transfer of

money etc., and similarly the wife of A1 filed another declaratory suit for injunction and status quo orders against the alienation was granted and wife of A1 also filed a complaint dated 23.9.2010 against the said K.C. Rana, and her brother who is the authorized signatory of the complainant and there are long pending disputes between them and there are no offences made out thereby sought for quashing. It is also the contention that the private complainant was filed in Hyderabad though the company is situated in Ranga Reddy District also lacks jurisdiction of the crime to register and investigation.

5. Learned counsel appearing for first respondent/complainant reiterated the same with the contentions of the complainant/second respondent in the stay vacate petition to vacate the interim stay of all proceedings of the said crime obtained by the accused persons earlier, by reiterating the private complaint averments that the quash petition is liable to be dismissed and the police have to investigate the facts and there is no need to interfere and the stay is liable to be vacated to sub serve the ends of justice.

6. So far as the technical contention that the Police CCS, Hyderabad has no jurisdiction is concerned, Section 156 Clause (2) Cr.P.C., speaks no proceeding on the jurisdiction of the police officer investigating can be called in question, pending investigation but for if at all investigating agency have no jurisdiction may transfer the Crime to any police station got jurisdiction. In fact, the complaint averments show from the above, the place where cause of action arose is having jurisdiction and nothing to interdict the investigation of the crime proceedings. So far as the filing of the civil matters and disputes pending are concerned, that itself is not a ground at all

much less to quash the proceedings as also held by the Apex Court in ***Pratibha vs. Rameshwari Devi and others***[1]. In fact there are allegations showing the accusations and it is a matter to be investigated. Thereby, there is nothing to interdict the investigation but for to say since the petitioners by virtue of the interim stay granted in 2010, are under the protective shield all through while vacating the stay and disposing of the quash petition, for nothing to quash the proceedings but for a while investigation is directed to be completed, the petitioners shall not be arrested but however made clear it will not prevent the police to secure the presence of the petitioners/A1 & A2 for the purpose of investigation.

7. Accordingly, the Criminal Petition is disposed of. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 05.10.2017
KA

[1] (2007) 12 SCC 369