HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1864, 1866 & 1878 OF 2017

COMMON ORDER:

One Rupesh Kumar Agarwal, who is the 3rd accused, is the petitioner herein. He requests to quash the First Information Reports in Crime Nos.225, 236 and 224 of 2016 on the file of Central Crime Station, Detective Department, Hyderabad.

2. The petitioner in Criminal Petition No.1864 of 2017, who is arraigned as 3rd accused in Crime No.225 of 2016 along with nine others, alleged to have committed the offences punishable under Sections 406 & 420 of IPC. The petitioner in Criminal Petition No.1866 of 2017, who is arraigned as 3rd accused in Crime No.236 of 2016 along with nine others, alleged to have committed the offences punishable under Sections 420, 406, 411 & 120-B of IPC. The petitioner in Criminal Petition No.1878 of 2017, who is arraigned as 3rd accused in Crime No.224 of 2016 along with nine others, alleged to have committed the offences punishable under Sections 420, 406, 506, 411 & 120-B of IPC. Almost identical allegations have been made in other two complaints, where gold was taken, of course, varying quantities from the *de facto* complainants therein by the 1st accused, there is no necessity to advert to the fact situation occurring in each of these cases.

3. Heard Sri B. Vijaysen Reddy, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

4. In Criminal Petition No.1864 of 2017, one Bipin Jain is the 1st accused in all these three crimes, and his father Sunil Jain is the 2nd accused. On 29.10.2016 the 2nd respondent/*de facto* complainant, Manak Shantilal Jain, in Crime No.225 of 2016, lodged a complaint, dt. 26.10.2016 with the Deputy Commissioner of Police, Detective Department, Central Crime Station, Hyderabad stating that he is the proprietor of 'Mukti Gold Private Limited', Jewellery shop, that during the course of Gold business 1st accused Bipin Jain approached him and selected gold ornaments weighting 4028.88 grms worth Rs.1,21,56,248/- and gave four cheques each for Rs.30 lakhs and only one of them could be encashed by him and he learnt later, on 25.10.2016 that the said Bipin Jain and his team have disappeared. Basing on the said complaint, investigation was taken up and initially A-2 was arrested and he was produced before the Court and police remand was obtained and consequent to his confession-cum-recovery statement, he lead to the shop of A4 where A4 was also arrested and his confession-cum-recovery panchanama was recorded, and later it lead to arrest of accused No.3, and the other accused Nos.2 to 5 & 10 have been absconding.

5. In Criminal Petition No.1866 of 2017, on 8.11.2016 the 2nd respondent/*de facto* complainant, Ayush Kumar Goel, in Crime No.236 of 2016, lodged a complaint, dt. 7.11.2016 with the Deputy Commissioner of Police, Detective Department, Central Crime Station, Hyderabad.

6. In Criminal Petition No.1878 of 2017, on 29.10.2016 the 2nd respondent/*de facto* complainant, Smt. Chandana Shailendran, in Crime No.224 of 2016, lodged a complaint with the Deputy Commissioner of Police, Central Crime Station, Gunfoundry, Hyderabad.

7. The submissions of the learned counsel for the petitioner have been that there is no privity of contract between the *de facto* complainant and the petitioner and that he had transaction with A1, from the contents of FIR the grievance of the de facto complainant is nothing but recovery of money, that the pleaded case of the *de facto* complainant is that A1 used to purchase Gold ornaments from his company and there were business transactions for the last 11 years and for the purchase of Gold made by A1 from 18.10.2016 to 20.10.2016 payment was made; assuming that subsequently when Gold said to have been purchased by A1 has been transferred into the hands of the petitioner or any other trader *per se* cannot be an incident giving rise to commission of offence; when A1 has taken gold ornaments from the 2nd respondent/*de facto* complainant, it is for A1 who has got liability to discharge payment obligation to the 2nd respondent, the transaction is purely civil and commercial one, assuming that the same Gold which was purchased by A1 from the 2nd respondent/*de facto* complainant is given to the petitioner/accused No.3 and for that the petitioner did not make any payment which is an issue between the petitioner and 1st accused, but it cannot give rise to

any assumption that there is conspiracy hatched to commit some offence; the allegations made in the remand case diary that A1 has hatched conspiracy with other accused, including the petitioner/A3 to cause wrongful loss to the *de facto* complainant is without any basis; the instant case is one of the theft or wrongful possession of the property and the transaction between the *de facto* complainant and A1 was an ordinary business transaction relating to purchase of Gold as evidenced by statutory invoices and bank payments and these allegations even taken on their face value do not constitute any offence and at the most they give rise to civil consequences and there is no element of criminality so as to rope in the petitioner/accused No.3 and inclusion of the name of the petitioner as one of the accused amounts to gross abuse of the process of law and continuance of criminal proceedings against the petitioner/accused No.3 would result in miscarriage of justice and, therefore, the First Information Report in Crime No.225 of 2016 is liable to be quashed.

8. Similar grounds have been agitated in the other petitions and also made submissions by the learned counsel for the petitioner in other two petitions.

9. Learned Additional Public Prosecutor for the State of Telangana would submit that there are as many as ten crimes, which include the present three crimes registered against the petitioner, and there has been a big racket that has been operating led by the petitioner herein and the confession-cum-recovery panchanamas

would reflect the dishonest intention to disbelieve in all these crimes is obvious and it was a scheming and the investigation is under progress, majority of the accused have been absconding avoiding arrest and recovery to be made and unravel the complicity of the absconding accused even with the evidences and therefore request made by the petitioner in all three petitions to quash the First Information Reports on the alleged assumption of abuse of process of law in case investigation is conducted is without any merit and, therefore, sought to dismiss the petitions.

10. The case diary produced by the prosecution in order to ascertain the stage of the investigation as well as whether there are any allegations to make out a case showing complicity of the petitioner/accused No.3 in commission of these offences.

11. The Case diary relating to Crime No.224 of 2006 is submitted by the leaned Additional Public Prosecutor, in which the *de facto* complainant is one Smt. Chandana Shailendran. In fact, the case dairy even at the outset would make out *prima facie* allegations against the petitioner and others in commission of offences alleged. However, looking at Case diary, whether the allegations would *prima facie* constitute basis for showing the complicity of the petitioner, it reflects that the *de facto* complainant Chandana Shailendran originally was a jewellery designer and run Jewellery making workshop at her home and sole proprietor for 'Swarna Craft'. According to her, the 1st accused - Mr. Bipin Jain and his elder brother, Anand Jain, were

working in A-Star company and she had some business transactions through A-Star company and thus, she knew Bipin Jain since 11 years, who is doing Diamond Jewellery business. Her submission shows that about seven years back accused No.1 left A-Star company and started individual wholesale diamond jewellery business under the name and style 'Shri Karma Jewels' and about two years back she closed down her workshop and supplying the gold jewellery to the customers; that in June, 2016 when accused No.1 requested her to provide some gold ornaments for business she supplied gold ornaments on credit and accused No.1 used to pay the price within three days or a week and thus, gradually accused No.1 increased business with her and thus used to purchase gold ornaments from her and since he was regular customer she used to supply the jewellery as per his requirement on credit.

12. On 18.10.2016, accused No.1 approached and requested her to supply 22 kt. Gold ornaments; when she insisted on payment he requested that he wanted it on credit as Diwali festival was ahead and on his repeated requests she had given some gold ornaments on credit from 18.10.2016 to 20.10.2016; again on 20.10.2016, accused No.1 requested her to supply gold ornaments on credit, but she bluntly refused his request and asked him to clear the outstanding payments; on 21.10.2016 accused No.1 requested her to supply some more gold ornaments by giving assurance he also brought his old aged father, Sunil Kamdar Jain, who is also known to her, and since a request was

made by him on behalf of accused No.1 and even accused No.1 also sent several SMSs requesting to supply jewellery as he needed jewellery in view of Diwali festival and promised that he would clear the entire payment on 24.10.2016; believing the version of accused No.1 and assurance of his father, accused No.2. and in good faith she supplied total gold ornaments weighing 18.69 kgs to accused No.1 from 18.10.2016 to 22.10.2016 on credit and accused No.1 though, assured that he would clear entire payment by 24.10.2016 evening, when she tried to contact him on 23.10.2016 to remind him of the payment, he threatened her with dire consequences and thirty minutes thereafter, wife of accused No.1, Nisha Jain, called the complainant over phone and requested that accused No.1 agreed to pay the amount on 24.10.2016, but failed to pay the amount and his phone was switched off. These are all the complaint averments.

13. The investigating officer, having registered the crimes, taken up the investigation and initially arrested accused No.1 and recorded his confessional statement during police remand for five days i.e., from 24.12.2016 to 29.12.2016 and according to his confessional statement he alleged to have committed ten crimes and, thus, confessional statement makes it clear that with the help of accused Nos.7, 9 & 10 melted the gold into ingot and intended to sell the same in the market to clear off the debts of accused No.1 and even Gold ingot was seized from the possession of the petitioner/accused No.3, who is a partner of

'Dinesh Gold' basing on his confessional panchanama as accused No.1 led to the shop of the petitioner/accused No.3.

14. Thus, the investigation so far done would reveal that the accused No.1 used to collect gold ornaments from the complainant, after melting the gold ingot in the shop of accused No.4, used to sell the same to the petitioner/accused No.3 and on instructions of the accused No.1, petitioner/accused No.3 transferred certain amounts to the *de facto* complainant and the allegation that the petitioner/accused No.3 colluded with accused No.1 to gain illegal money knowingly purchased the gold ingots without any bills has been the main allegation against the petitioner/accused No.3 herein.

15. Now, the question is whether the matter is of civil nature or commercial one, as sought to be viewed by the learned counsel for the petitioner/accused No.1.

16. When once gold ornaments alleged to have purchased from the *de facto* complainant on credit basis and failing to pay the amounts and converting the gold ornaments into ingot in the shop of accused No.4, and accused No.3 purchasing the same are all the allegations *prima facie* showing the complicity of the petitioner/accused No.3.

17. Therefore, it is not a case to view that further investigation against the petitioner/accused No.3 is nothing but abuse of the process of law, as sought to be viewed by the learned counsel for the

petitioner. In fact, majority of the accused have been absconding and thus, reflects some sort of evil design on their part.

18. Hence, these three Criminal Petitions are dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these Criminal Petitions stand closed.

A. SHANKAR NARAYANA, J

Dt.20.03.2017
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