THE HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.3053 & 3852 of 2010

COMMON ORDER:

The petitioners-Sri Pulipati Chandrasekhar and Sri Anil Kumar Agarwal are A3 and A4 and the first respondent-K.Sudhakar is the complainant in C.C.No.535 of 2009 on the file of the IV Additional Munsif Magistrate, Guntur for the offences punishable under Sections 336, 409, 420, 506 and 120-B r/w 34 IPC.

In fact, on the private complaint by the first respondent-complainant, dated 19.02.2008, before the learned Magistrate in CFR.No.1443 2008, the learned Magistrate directed the Station House Officer, Lalapet Law & Order Police Station under Section 156 (3) Cr.P.C. to register the crime and investigate. The police registered Cr.No.118 of 2008 and, after investigation, filed the final report. The complainant was issued notice while referring the complaint as false in the final report that was submitted to the learned Magistrate. It is therefrom the complainant filed, by protest to it, another private complaint dated 10.09.2008. Then, after recording the sworn statement of the complainant and two other witnesses, the learned Magistrate has taken cognizance against four accused, including the petitioners herein-A3 and A4, besides A1 and A2 for the said offences by ordering to issue summons vide order dated 02.12.2009 by allotting C.C.No.535 of 2009 which is now impugned in the two petitions by the petitioners-A3 and A4 seeking to quash the said proceedings of cognizance taken by the learned Magistrate against the protest complaint of the complainant on examination of the complainant and two more witnesses referred supra for the offences supra.

The factual background in the original complaint vis-à-vis protest application reiterating the same vide F.I.R.No.118 of 2008 of Lalapet Police Station, Guntur District is that the complainant is one of the partners of Sri Vishnu Priya Chillies Company and Sri Uma Sankar Chillies Company and in the course of business dealings he sent stocks on credit basis to Kailash Kirana Company, Kanpur, represented by its partner-Anil Kumar Agarwal-A4, during 17.03.2017 to 21.05.2007 under credit invoices and one Pulipati Chandrasekhar-A3 is the commission agent of Kanpur, in that business dealing as part of the duty to arrange for the credit sales and collect amounts from the traders and remit the same to the supplier and for the delay and default, the commission agent is also jointly and severally liable for the supplies along with the credit purchasers. The complainant maintained accounts of the business dealings and those credit transactions are entered in their ledgers. A4 along with A3 have fallen due to a tune of Rs.1,95,772.29 ps to M/s Vishnu Priya Chillies Company, Guntur and Rs.12,14,453.02ps to M/s Sri Uma Sankar Chillies Company, Guntur, in total to a tune of Rs.14,10,225.31ps, other than interest by 21.05.2007 and for the demands made by the complainant both A3 and A4 turned a deaf ear including for the notice with no reply for which the complainant was constrained to go to Kanpur to ask them for payment of the amount and requested A3 and A4, but they sought for some time and believing their words he returned back. However on 07.09.2007, A3 got issued a registered notice to the complainant and his two firms with all false allegations demanding as if amount was fallen due by the complainant without any details or information and as if received stocks under sale on commission instead of credit invoices for which the complainant telephoned to A3 and questioned about the false notice. He replied that he has to pay some amount to A1 and A2 and to overcome from their pressure he got issued such notice and shown to him and he is not going to take any action saying that there is no need to reply. Then, subsequently on 01.12.2007, A1 and A2 with ten unknown people came to the business premises of the complainant stating that they relate to M/s B.N.Khammam, a firm situated at Khammam, and they sent stocks to A3 on credit and A3 represented them that he sold the stocks to the complainant and the complainant failed to pay any amount to him without mentioning the sum of amount which was due from A3 or any document in relation to the transactions between A1 to A3 and they shouted loudly with unparliamentary language against the complainant and beat him with hands and torn his shirt. Meanwhile, other persons of nearby vicinity interfered and questioned their behaviour without showing any evidence with a warning to take them to police and A1 and A2 along with other followers left the premises shouting that they will come back once again and see the end of the complainant. Again on 28.12.2007 A1 and A2 along with 25 unknown persons came to the business premises of the complainant. At that time the complainant was not in the shop and one Roja Anjaneya Kumar, clerk of the complainant, was alone in the business premises. A1 and A2 grew anger on the complainant and damaged the furniture in the premises with a warning that they would come back and do away the complainant and his clerk. When the complainant came back to the shop, his clerk intimated to the elders of near vicinity and telephoned to A1 and A2 and warned them for their illegal activities and gave a reply to A3 for his notice dated 07.09.2007 and demanded payment of the amount due from A4 and when no reply was received from A3, the complainant got issued legal notice to A3 and A4 again. Subsequently, A3 and A4 got issued false reply, dated 05.01.2008, stating that they never purchased any stock from the complainant's firm under credit invoices and they purchased stock on sale on commission basis and thereby they committed breach of trust and cheating and are liable to be punished. It is also averred that A3 and A4 on 09.02.2008 telephoned to the complainant and threatened him that they would come to Guntur along with A1 and A2 and in the case of failure to pay the amount due under their replies they would kidnap the complainant and this shows the criminal conspiracy of the accused. For the illegal acts they committed, all the accused are equally liable for the offences supra.

Pursuant to the F.I.R., the police final report of August/September, 2008 with service of notice of the same to the complainant on 04.09.2008, submitted to the learned Magistrate reads that during investigation, after registration of Cr.No.118 of 2008, pursuant to the private complaint referred by the learned Magistrate to them, they examined five witnesses and recorded their detailed statements and also perused various documents and came to light that there were financial transactions between A3 and A4 for the supplies made on credit basis to A3 and A4 by the complainant. Later, A3 got issued legal notice to him, A1 and A2 came to the shop of the complainant and demanded to pay amount allegedly due to A3 and A4 on 01.12.2007. However, except the complainant none of the witnesses examined supra, including the clerk of the complainant, did support and, as the financial transactions between A3 and A4 on one hand and the complainant on the other no where makes out any offence. Thereby their version is nothing but false. In fact, A3 filed a private complaint before Kanpur police against the complainant herein covered by Cr.No.704 of 2008 for the alleged occurrence on 15.08.2007 saying that A3 was already working under the complainant and left the services under him and came to Kanpur and for that being annoyed he came to Kanpur to the house of A3 on 15.08.2007 and in the course of discussion abused, warned, beat the complainant and also pointed a revolver and made him to sign on blank papers with a threat to kill. Hence, to take action.

Even coming to the telephone version alleged on 09.02.2008, apart from no details to the said phone calls from which number to which number and as to what made to wait for eight days if at all really there is any threat or intimidation from the said phone call and even protest petition ordered covered by CFR No.8223 of 2008 from the statements recorded during investigation, there is no correlation.

Leave about the truth or otherwise of that, Cr.No.704 of 2008 registered on the report of A3 herein against the complainant herein, so far as the present petitions to be taken cognizance by the learned Magistrate impugned by the said charge sheet, A3 and A4 so far as against them there is allegedly a false notice issued by A3 to the complainant as if amounts due to him and he has to pay amounts to A1 and A2 of Kanpur and A1 and A2 and others came and demanded for that amount and so far as A1 and A2 though not concerned there are exchange of notices between A3 and A4 on one hand and complainant on the other and for the amount allegedly due besides exchange of notices A3 and A4 allegedly telephoned on 09.02.2008 to the complainant and threatened that they would come to Guntur with A1 and A2 and if he failed to pay the amount they would kidnap him. Apart from that there is nothing to say any criminal conspiracy with A1 and A2 for A3 and A4. So far as A4 is concerned, even if the alleged amounts due are not paid, it is purely a civil transaction including from any exchange of notices. In fact, the alleged phone call incident from A3 and A4 to the complainant was on 09.02.2008 and the private complaint filed against A1 to A4 by the complainant herein was on 19.02.2008 about nine or ten days after the incident even to believe. In so far as A3 is concerned, it clearly reveals that there are some money transactions between A3 and the complainant including as to the commission due with rival claims and whether there is any criminal breach of misappropriation or breach of trust or cheating of the complainant by A3 is a matter for discussion, which is however, not there so far as A4 is concerned. So far as the offences under Section 506 and 120-B IPC against A3 and A4 are concerned, there is nothing practically. So far as the offence under Section 336 IPC even concerned, act endangering the life or personal safety of others if it is rashly or negligently done it is punishable. There is no such act pointed out specifically much less happened within the jurisdiction of the learned Magistrate against the complainant. Thereby the quash petition in so far as A4 is concerned is to be allowed quashing the proceedings against A4 and in so far as A3 is concerned to be allowed in part by quashing the cognizance for the offences under Sections 336, 506, 120-B r/w 34 IPC but retaining for the offences under Sections 409 and 420 IPC with the learned trial Magistrate on the basis of cognizance to conduct pre-charge enquiry if there is any material to frame charge therefrom to decide on own merits.

Accordingly, and in the result, the Crl.P.No.3053 of 2010 is allowed and the crime proceedings against A4 are quashed and

Crl.P.No.3852 of 2010 is allowed in part by quashing the cognizance for the offences under Sections 336, 506, 120-B r/w 34 IPC, but retaining for the offences under Sections 409 and 420 IPC with the learned trial Magistrate on the basis of cognizance to conduct pre-charge enquiry if there is any material to frame charge therefrom to decide on own merits.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

10th October, 2017
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