HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.7313 & 7318 of 2015

COMMON ORDER:

The 2 quash petitioners are A.1 and A.2 respectively of crime No.63 of 2015 of Central Crime Station, Detective Department, Hyderabad, registered for the offences punishable under Sections 420, 406 & 506 r/w 34 IPC based on the report of the 2nd respondent-defacto complainant addressed to the Deputy Commissioner of Police, West Zone, Hyderabad, that was registered originally as crime No.776 of 2014 dated 16.07.2014 by Banjara Hills Police Station, Hyderabad, pursuant to the direction of the Commissioner of Police by memo dated 03.03.2015 to the Deputy Commissioner of Police, Detective Department, Central Crime Station, re-registered the crime referred supra and taken up further investigation.

A reading of the very report registered as FIR supra of the defacto complainant reads that M/s. Subramanya Construction Development Company Limited with registered office at Bangalore (for short 'SCDCL') represented by its Managing Director N. Bala Subramanyam approached the defacto complainant in June 2007 and informed that SCDCL is the share holder in M/s. Visual Soft and Bagyanagar Infrastructure Limited (for short 'VBIL') having the registered office at Surya towers, SP Road and said entity VBIL entered into construction agreement dated 28.04.2006 with M/s. Visual Soft Technologies Limited (for short 'VSTL') in respect of land admeasuring Ac.15.61 guntas at Nanakramguda and said VSTL entered into MOU with Government of AP dated 23.03.2004 to cause APIIC to allot said land to VSTL for purpose of IT and

VSTL failed to make payments to VBIL in terms of the original construction agreement dated 24.08.2006 and VSTL meantime merged with Mega Soft Limited and SCDCL entered into development agreement with VBIL whereunder SCDCL to construct and develop 24 lakhs square feet office space and 12 lakhs square feet for car parking in that property and SCDCL share would be 59% of the developed area and the site. It is further say that said SCDCL induced him to invest in its shares an extent of 7 lakhs SFT built up space with portion of site connected by giving hypothetical figures projecting good returns against said site and SCDCL and the defacto complainant entered into bilateral agreement dated 12.11.2007 @ Rs.3,300/- per SFT for built up area completed and for the 7,00,000 SFT of super built up area of warm shell fixed the sum of Rs.231 crores with power, power backup, lifts, façade, finished washrooms, common area landscaping etc., with proportionate undivided interest in the site and car parking. That he paid Rs.53 crores between 06.09.2007 and 08.01.2008 and agreed to pay balance investment pro-rata in proportion to the progress of the construction of built up space commencing from 06.07.2008 and the SCDCL represented by N.Bala Subramanyam and Manjunath Ramamurthy issued a receipt acknowledging the same, but due to oversight the defacto complainant did not verify the receipt issued on the letter head of M/s. Prakruti Infrastructure and Development Limited that was signed only by Manjunath Ramamurthy in the capacity of its director. However after realizing the same, when he questioned he was informed that said Prakruti Infrastructure is a sister concern of SCDCL and will look after into the construction activity in

Hyderabad and however the status of the property as on 12.11.2007 as vacant with no construction activity even the defacto complainant was enquired with N.Bala Subramanyam and Manjunath Ramamurhty, they were informing of work in progress and project would be successful and later started avoiding him since 2012 and not even responding to his calls and having waited for more than 5 years with bonafide intention and take up the project and vexed with their attitude and he went to the Bangalore in March 2014 and met them and demanded in case they are not willing, to refund the amount with interest @ 24% per annum as stipulated under the clause 10 of the agreement for which they threatened with dire consequences and criminally intimidated him and they betrayed his trust and it shows their dishonest intention from the beginning for illegal gain and deprived his rights having utilized the funds for personal needs and gains and refusing to return the amount with criminal intention and he came to note that Bala Subramanyam is a habitual offender and cheated few Indian and Multinational companies in abroad and banks like Canara Bank which auctioned his property and there are criminal complaints lodged against him in Hyderabad, Bangalore and because of their dishonest and notorious acts he was cheated and suffered loss of Rs.53 crores, hence to take action.

The grounds urged in the quash petitions of Bala Subramanyam and Manjunath Ramamurthy, the respective 2 petitioners A.1 and A.2 respectively are that the dispute is purely a civil nature and the allegations are false and even according to the complainant an offence under Section 506 IPC of alleged criminal intimidation taken place at Bangalore and nothing at Hyderabad but for the crime allegedly at Hyderabad and Clause (10) of the said Investor Agreement speaks if either party commits a default in the due fulfillment of the terms and conditions of this agreement, the other party entitles to specific performance of the agreement. It speaks any dispute to be resolved including from Clause 13 that in the event there is any dispute in agreement or interpretation of any terms, the same shall be referred to arbitration in accordance with the Arbitration & Conciliation Act 1996, comprise of sole arbitrator mutually agreed between them and in default with panel of 3 arbitrators, one each to be appointed by disputing parties and the 3rd one to be appointed by the 2 arbitrators and he shall be the Chairman of the panel of arbitrators and the venue of arbitration at Bangalore and the proceedings shall be in English and the decision of arbitrators shall be final. As per clause 3 & 4 of the agreement, the investee shall provide such assistance requested by investor by raising finance to meet the obligations of the investment in clause (2) and in the event of investor fails to pay investment specified in clause (2) parties shall mutually discuss the matter to arrive at the manner in which same shall be resolved provided however in the event of investors paid an amount of Rs.50 crores the minimum or more towards investment but failed to pay balance as the per time lines of per clause (2) the investee shall transfer such portion of the schedule property as is proportionate by computing @ Rs.3,300/- per SFT of the built up space on completion of construction and the investor acknowledged and across that it is aware that investee is yet to acquire the ownership/title to the investee's share as per the recitals of the agreement and agrees that the obligation of the parties contained in the subject to transfer of investee's share to the investee or to the nominees of the investee and in no event is liable for failure to investor, investee share is not transferred. The defacto complainant having aware of the petitioners' company is yet to acquire ownership as specified in the investment agreement and agreed that investee shall be liable for failure to transfer the property to defacto complainant, the amount invested by the defacto complainant in the petitioners company till the relevant date to be returned and it is pure contractual and civil nature as per the investment agreement terms with civil remedies available. In fact W.P.No.1762 of 2007 filed with a prayer to cancel the said land allotment which is subject matter of investor agreement and the same is pending and the defacto complainant is aware of the same and having the civil claim barred by limitation he converted the civil dispute into criminal and wants to recover the amount under the guise of criminal prosecution and thereby sought for quashing of the proceedings.

The investor agreement dated 12.11.2007 executed at Hyderabad is between SCDCL with registered office at Bangalore as 1st party known as investee and Mr. Avanindra Kumar, defacto complainant of Secunderabad as investor the other party. The said Naga Balasubramanyam is the Managing Director of the SCDCL. The amount paid by the complainant of Rs.53 crores is undisputedly pursuant to the development agreement and the development agreement entered is with the entity SCDCL represented by its Managing Partner N.Balasubramanyam even from the complaint averments of the receipt passed for the said amount is from Prakruti Infrastructure and Development Company

Limited signed by Manjunath Ramamurthy as its Director. In fact there was a settlement agreement between SCDCL represented by its M.D., N. Balasubramanyam referred as K.N.Balasubramanyam as first party and Prakruthi Infrastructure & Development Company Limited also represented by Managing Director K.N.Balasubramanyam as 2nd party and said Avanindra Kumar, defacto complainant as 3rd party and one Danam Nagender as 4th party referred to the said investor agreement dated 12.11.2007 and the conditions therein by saying the 1st party and 2nd party supra in furtherance of the mediation of 4th party further informed the 3rd party that they are willing to transfer with absolute rights interest however subject to outcome of above mentioned writ petition pending before the High Court in W.P.No.1762 of 2007 apart from that they agreed the 1st and 2nd party shall pay Rs.25 crores to the 3rd party subject to other terms and conditions and there states the 1st and 2nd party to pay said Rs.25 crores in full and final settlement to the 3rd party apart from transfer of subject property covered by W.P.No.22765 of 2009 as per Clause (7) below under that an amount of Rs.5 crores vide cheque No.091148 dated 18.05.2017 drawn on Corporation Bank, Bangalore in favour of 3rd party by 2nd party, another Rs.5 crores cheque No.091149 of even date drawn on the Corporation Bank in favour of 3rd party by 2nd party on behalf of 1st party, similarly 2 other cheques each for Rs.5 crores each cheque Nos.091150 and 091151 dated 18.07.2017 drawn on the same bank in favour of 3rd party by 2nd party on behalf of 1st party and another Rs.5 crores cheque No.091157 dated 18.08.2017 drawn on the same Bank in favour of 3rd party by 2nd party on behalf of 1st party. The 1st and 2nd party agreed and promised to transfer the entire extent of Ac.1.57 guntas of S.No.115/1, situated at IT Park, Nanakramguda, together with all rights and interest subject to the outcome of the writ petition and 1st and 2nd party informed that they obtained sanctioned plan to construct commercial block for development of IT/ITE services to an extent of 2,40,000 SFT and they assured and promised to transfer the land with the development rights to the 3rd party or its nominee subject to outcome of pending case and 1st and 2nd party also executed GPA along with MOU in favour of 3rd party to deal with court case of the said property and this settlement is subject to realization of said amounts covered by cheques of Rs.25 crores and transfer of property of Ac.1.57 guntas and 3rd party shall compound the criminal case filed against the 1st party and its directors subject to realization of the amount and not press for hearing of the criminal case Nos.7313 & 7318 of 2015 present one and that in case writ petition is allowed and agreement of sale of land and rectification deed declared as null and void, the 4th party shall transfer an extent equivalent to Rs.23 crores within 3 months from the date of decision of Court and by way of cash transfer through RTGS and 4th party shall not have any claim against said 1st and 2nd party and all the parties shall abide by the terms.

Though this is filed as additional document and though 2nd respondent notice ordered failed to attend from the hearing of the matter, leave about the agreement basically from what is referred supra MOU is with SCDCL and said Naga Balasubramanyam is its Managing Director and the company was not made as accused pursuant to the MOU for not a case of other than the terms of the MOU from development agreement to make for any acts individually liable and thereby without impleading the company the crime proceedings against its managing director and another person of the sister concern no way survive as also held in **Anil Gupta Vs. Star India Private Limited**[1] reiterated by this Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another**[2] and as also held in **N.Srinivasan Vs The State - CBI**[3].

Accordingly and in the result, both the Criminal Petitions are allowed by quashing the proceedings.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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[1] (2014)10 SCC 373
[2] 2016 (1) ALD (Crl.) 177
[3] CrLP.7584 of 2015, dt.18.03.2016.