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

CRIMINAL PETITION No.10929 of 2010

ORDER:

The petitioners are the accused 1 to 4 of Cr.No.318 of 2009 of Kachiguda Police Station registered for the offences punishable under Sections 420 and 406 r/w 120-B IPC on 04.12.2009 based on the private complaint of the quash petition second respondent filed before the learned IV Additional Chief Metropolitan Magistrate, Hyderabad dated 03.12.2009 since referred by the learned Magistrate to the police for investigation from which the police received and registered the crime supra.

The averments of said private complaint, in nutshell, that was registered as F.I.R., are that the complainant is running Hemanth Printers business at Kachiguda and he approached the accused 5 and 6 in January, 2007 and they represented that the xerox machine model No.DC-250 manufactured by accused No.2 is of good quality to make the business and accused No.5 is a dealer of the same, that believing their version, when L.W.3 was also present, the complainant paid Rs.2,00,000/- by demand draft drawn on Union Bank of India in February, 2007 in the name of A5 and the xerox machine was delivered under invoice No.649/2007 dated 31.03.2007 where it is mentioned the machine was hypothecated to the accused No.8 and the price was mentioned as Rs.38,02,225/- to his shock though initially A5 and A6 represented the complainant of the machine cost was around Rs.29,00,000/- and for which the complainant when questioned about the particulars they promised to get the same rectified and made the complainant to sign number of documents, copies of which are not even furnished to the complainant apart from taking the title deeds of the house property of the complainant at Rajahmundry by saying that the complainant can make the payment in instalments and took some blank cheques and when questioned with regard to the hypothecation mentioned in the invoice they stated that the same is by oversight and nothing will happen. However, subsequently, on delivery of the machine, the complainant came to know that the cost is only Rs.18,00,000/- in March, 2007 and at present it is selling for Rs.13,00,000/- and at the time of delivery accused Nos.5 and 6 assured the complainant that required toners will be supplied by A2 and thus provide good quality of service and contrary to it A2 increased the rates and started demanding the complainant Rs.18,00,000/- and A5 and A6 started visiting the office of the complainant and when questioned by the complainant A5 has given evasive replies. It was A5 who represented that he will be responsible for the machine and the money is payable to A2. The complainant came to know that A1 to A8 conspired together to cheat the complainant and delivered the machine at a higher price than the actual price and made him to pay exorbitant amount and to sign number of documents and the machine delivered was also kept under hypothecation under A8. The complainant in all paid Rs.16,50,000/-. The machine is not functioning properly and it is of inferior quality. L.Ws.2 and 3 speak about the performance of the machine delivered. As all the accused conspired together and delivered the machine to the complainant and had wrongful gain by causing wrongful loss to the complainant knowingly and illegally and the accused No.1 is in-charge of the activities of the accused No.2 company and the accused Nos.3 and 4 look after the sales in Andhra Pradesh and A6 and A7 also connived with A1 to A5, all are liable for said offences of cheating and breach of trust.

The contentions in the quash petition filed by A1 to A4, in nutshell, are that the second petitioner is the Director of the first petitioner company and the petitioners 3 and 4 are the Branch Heads and Business Executives of the company. From the very complaint, A1 to A4 and A8 are total strangers. There is no basis to say that there is conspiracy between A1 to A8. Even from what the complainant stated of A5 and A6 represented the accused of the condition of the machine and promised to rectify the price and they made the complainant to sign number of documents including blank cheques in saying by oversight in the invoice excess rate is mentioned and going to rectify, however after delivery of the machine complainant's enquiry revealed that the cost of the machine is far less in the market than what was charged. The petitioners-A1 to A4 are concerned, from the above, it is contended that they are innocent and none of the ingredients of the offence of cheating or breach of trust apply to them, that the complainant short circuited the civil/consumer dispute, into criminal prosecution and the same is liable to be quashed for its continuation against them is nothing but abuse of process.

After filing of the quash petition, as per the order dated 07.12.2010, there is an interim stay of arrest of the petitioners-A1 to A4, however, the investigation was ordered to go on and the interim order, by order dated 07.09.2011, was extended. There is nothing to state that it is until further orders or to a specified date but posted to 08.11.2012. Thereafter there is no interim order so far as the arrest of the petitioners is concerned even for no word of until further orders but extended practically only in the mean time.

Leave it as it is, in the course of hearing, the learned counsel for the petitioners-A1 to A4 reiterated the contentions whereas the learned Public Prosecutor contended that there are no grounds to quash the proceedings and the petition is liable to be dismissed for no interim order is even in force after 2011 and sought for dismissal of the petition saying that there is a *prima facie* accusation from the F.I.R. under investigation.

Nothing stated by either side as to the police final report so far filed or not for there is no order interdicting the investigation as it is very clear that investigation was ordered to go on. There is no any fresh material filed by either side as progress of investigation after filing of the quash petition and as to the present stage of investigation.

Heard and perused the material on record. Basically as pointed out by the learned counsel for the petitioners from the contentions raised and oral submissions, what all done mainly was by A5 and A6. In fact, a perusal of the private complaint also shows the allegations about the very machinery is of an inferior quality and toners are supplied for high cost by A2 and there is no service warranty provided. A1 is the company, A2 is the Managing Director, who are responsible but so far as A3 and A4 are concerned, leave about A7 who is not before the Court apart from A8 with some allegations, there is nothing to say how they are responsible and what acts of any of them constitute any offence.

Having regard to the above, without prejudice to the contest, the Criminal Petition is allowed in part by quashing the proceedings so far as A3 and A4 are concerned and by dismissing the same so far as A1 and A2, however, leaving it open all the defences available to the petitioners and with observation that, if at all the investigation is not completed, pending investigation, A1 and A2 shall not be arrested. However, that does not prevent the police for securing their presence for the purpose of investigation and if at all the investigation is completed the remedy available to the petitioners-A1 and A2 is to impugn the cognizance order of the learned Magistrate by filing application for discharge, if any, to decide on merits during hearing on charges.

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

JUSTICE Dr. B.SIVA SANKARA RAO

04th October, 2017
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