HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.2534 of 2015

ORDER:

The petitioners are accused Nos.10 and 12 of C.C. No.2424 of 2014 pending on the file of Judicial First Class Magistrate at Nalgonda. The 1st respondent is the defacto complainant. Crime No.397 of 2013 was registered on 08.11.2013 against 12 accused, including the petitioners, which was outcome of a private complaint of the 2nd respondent herein dated 29.10.2013 that was referred to the police, by the learned Magistrate under Section 156 (3) Cr.P.C, from which the police, Nalgonda II Town Police Station, Nalgonda, registered the Crime supra for the offences punishable under Sections 406, 448, 420, 506 r/w 149 IPC.

2) The gist of the contents of the private complaint reads that all the accused, having acquaintance with the complainant since long time, approached him in February, 2010 representing that they are going to start a Finance Business jointly in the name and style of "Ramalingeshwara Finance" by investing Rs.5,00,000/- each and requested him to join in their finance business as one of the share holders/ partners. Trusting them, the complainant handed over Rs.5,00,000/- to them in the third week of February, 2010 towards his share of investment and did not obtain any document or acknowledgment to that effect.

3) The accused having received the said amount from the complainant started finance business in a rented shop located in Pujitha Apartments, Hyderabad Road, Nalgonda Town, in the month of March, 2010. Accused No.1 was acting as Managing Partner and his son—Accused No.9 along with other accused were

looking after the accounts and other affairs of the said finance business. The complainant was only a sleeping partner. The Accused persons, while receiving the amount of Rs.5,00,000/- from the complainant towards his share of investment in the joint business, represented and assured that the profits will be distributed among all the partners after deducting the salary of the Managing Partner and maintenance of finance after six months from the date of establishment and meanwhile, they will get registered the finance business with the competent authority. Having waited for six months, the complainant asked the accused to show the accounts and also distribute his share of profit, but they are postponing on one pretext or the other and failed to conduct partners meeting, thereby suspecting them, at first, in the month of December, 2011 when he enquired with the office of the Registrar of Firms, Nalgonda regarding registration of "Ramalingeshwara Finance", he came to know that the accused neither made an application to get register the finance business nor took Money lending license from the Tahsildar, Nalgonda, and thus they induced and cheated him.

4) The complainant even demanded them to return the amount with interest at 24% per annum, but they did not pay stating that they lent the amounts to various persons and the debtors were not making repayments, therefore, they are unable to pay the amount and in April, 2012, the accused having agreed to return only Rs.5,00,000/- without interest within three months and for which he obliged, but even after said three months, which expired by July, 2012 they failed to keep on their promise and it is, while so, on 24.10.2013 at about 1.40 pm all the accused, in

collusion with each other, illegally trespassed into the house of the complainant and threatened him with dire consequences saying that if the complainant again demands money from them, they will see not only his end but also his family members. By hearing the noise, LWs.2 to 4 of the same locality came there and in their presence also, all the accused abused the complainant in filthy language and tried to attack him, however the complainant and the complainant was rescued by LWs.2 to 4 and sent away the accused from the scene of offence advising them to settle the dispute amicably. Earlier, having given a private complaint, about the alleged incident said to have been taken place on 24.10.2013, but the police did not take any action, as such the complainant filed the private complaint dated 29.10.2013 stating the events that took place after the above incident.

5) The police, having registered the crime, filed a final report after investigation with reference to the investigation material by examining as many as seven witnesses, including the defacto complainant as LW.1, LWs.2 to 4, the persons who rescued the defacto complainant, LW.5—District Registrar and LWs.6 to 8—the Investigating Officers, who registered the case and conducted investigation.

6) In fact, as per the police final report, there are 20 accused, whereas the private complaint refers only 12 accused and the police final report speaks that LW.7—Sub-Inspector, who registered the crime that was referred to police for investigation by the learned Magistrate, examined LWs.1 to 4 and issued notices to accused and also addressed a letter to LW.5—District Registrar, for which he furnished that only one firm registered in the name of

'Ramalingeshwara Finance' at Munugode and the accused did not register their firm at Nalgonda and that the investigation revealed from the statement of LWs.2 and 4—eye witnesses, the complainant has become an accused.

7) The present quash petition is filed by accused Nos.10 and 12, contending that the learned Magistrate has taken cognizance for the offences punishable under Sections 198 and 420 IPC and none of the said offences are applicable herein and, in fact, Accused No.15 filed a complaint in Crime No.440 of 2013 against the remaining accused for the self same offences and police merged the above two crimes and filed the single final report against all the accused and there are no specific allegations against these petitioners to make them liable much less for the said offences from the prosecution is unsustainable and the cognizance taken is liable to be quashed.

8) Heard learned counsel for the petitioners/ accused Nos.10 and 12 and also the learned public prosecutor representing the 2nd respondent—State. Even the notice sent to respondent No.1—de facto complainant, not served and there is no representation on his behalf, hence taken as heard and perused the material on record.

9) Section 198 IPC deals with using as true a certificate known to be false-

> "whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence."

10) Even from the police final report, from examination of LW.5—District Registrar, there is a firm in the name of Ramalingeshwara Finance at Munugode and there is no firm registered at Nalgonda. It is not a case of there is no registered firm with name and style of Ramalingeshwara Finance, thereby applying Section 198 IPC itself is a bleak.

11) Even coming to the offence of cheating, what the defacto complainant stated is that all the accused approached him in February, 2010 representing to start a finance business jointly and requested him to invest and he invested in the said finance business which they started in the name and style of "Ramalingeshwara Finance" saying that they are going to register, believing them, he gave Rs.5,00,000/- in the third week of February, 2010 towards his share and did not obtain any receipt or written acknowledgement. There is nothing shown by him of any terms regarding investment and execution of partnership deed. Even according to him, subsequent therefrom, as they agreed to share the profits, after six months, he demanded and they failed to respond, however, ultimately they promised to return the amount of Rs.5,00,000/- without interest and failed to pay.

12) The police final report, last but one page, speaks from the investigation that the accused started finance business jointly in the name and style of "RAMALINGESHWARA AUTO & GENERAL FINANCE" at Vivekananda Nagar, Nalgonda Town and on 09.12.2011, the Accused Nos.1 to 20 made a Deed of Partnership on a non-judicial stamp paper, as per which. Accused Nos.1, 2 and 18 shall operate the bank accounts and all the accused gave sworn affidavit promising that they will not violate any clauses or

provisions of the Indian Stamp Act, 1989, Indian Registration Act, 1908 and the Transfer of Property Act, 1882 and if there is any violation after 09.12.2011, they consented to face prosecution and a perusal of Xerox copies of monthly meeting registers from 11.04.2010 to 18.03.2012 shows that all the accused were receiving the monthly returns from the firm and they cheated the Government by avoiding to pay taxes and other fee and deceived LWs.1 and 2 saying to pay with more interest.

13) Even from the above, there is no offence of cheating that attracts, but for the lack of dishonest intention from the inception, more particularly, any specific role of the petitioners/ Accused Nos.10 and 12 herein, to say that they are also partners of the said business along with the de facto complainant and other accused from the very police final report material, including what is referred supra shows main liability of the firm represented by its partner among others for maintaining the offence.

14) Hence, the Criminal Petition is allowed quashing the proceedings in C.C. No.2424 of 2014 on the file of the Judicial First Class Magistrate at Nalgonda against the petitioners/ accused Nos.10 and 12 and the bail bonds of the petitioners/ accused Nos.10 and 12, if any, shall stand cancelled.

15) Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:14.09.2017
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