HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8189 of 2015

ORDER:

The petitioners are accused Nos.1 & 2 of crime No.548 of 2014 of IV Town Police Station, Visakhapatnam, registered for the offence punishable under Section 420 IPC, which is outcome of report of the 2nd respondent of even date.

A perusal of the contents of the FIR shows the defacto complainant by name Sridhar is the Director of Seaworld Maritime Private Limited (for short 'SMPL) and Sailors Maritime Education and Training Institute (for short 'SMETI') with office at Akkayapalem, Visakhapatnam, that they conduct maritime courses approved by New Zealand Maritime School in SMETI and crew manning services in SMPL. During the year 2009, 90 candidates joined in the academy for undergoing the maritime courses and they requested Adarsh Ship Management Private Limited, Chennai (for short 'ASMPL'), accused No.1 represented by its Managing Director by name KVR Srinivas (A.2) for sponsoring the candidates for providing the mandatory 18 months on board training (placement) and accordingly, A.1 has issued sponsorship for 90 candidates vide letters dated 06.07.2009, 02.08.2009 & 25.08.2009 respectively. However, ASMPL demanded to pay Rs.1,50,000/- per candidate to provide placements and it has been agreed to pay the amount as per their demand and an advance amount of Rs.35,70,000/- were transferred to ASMPL by various modes, proofs enclosed and subsequently, 2nd time advance of Rs.30,00,000/- as per their demand for which receipts also given, proof enclosed and on completion of said maritime training, the defacto complainant approached the ASMPL for providing the on board training to the candidates and in spite of repeated reminders, the accused have not providing the placements to the candidates as promised. Even the defacto complainant made efforts to get justice done to the candidates and they turned deaf and not responding and in the meantime pressure mounted on the defacto complainant for providing on board training to the candidates. As the sponsoring company cheated the students and also the defacto complainant by abdicating the responsibility and promised to provide onboard training with great financial difficulty the defacto complainant arranged placements from own sources and also returned amounts to so many candidates, thereby sought for taking criminal action against the ASMPL and its Managing Director KVR Srinivas.

The contentions in the grounds of quash petition pursuant to the above report registered as crime by the police supra are that it is nothing but false implication and it is purely a civil dispute and civil suit O.S.No.447 of 2012 already filed is pending on the file of V Additional District Judge, Visakhapatnam, that was filed by the 2nd respondent herein as plaintiff against the petitioners herein and another Director for recovery of Rs.24,00,000/- and there is no offence made out against the petitioners and there is no truth or tenable in the allegations of the report and there is no whisper in the suit O.S.No.447 of 2012 regarding the so called allegations of cheating if at all there is any truth for the alleged cheating is of the year 2009 & 2012 before the date of filing of suit and it shows the amounts were allegedly advanced and these are the money transactions including from the plaint averments and the alleged advancing of totally nearly Rs.66 lakhs not even reflected in the suit and under the guise of criminal prosecution, the 2nd respondent/plaintiff wants to recover the said civil suit dues without trial of the suit and the criminal prosecution cannot be used as a weapon to wreak vengeance and thereby liable to be quashed.

A perusal of the plaint copy in O.S.No.447 of 2012 filed along with the quash petition by the accused persons that is filed by the SMPL represented by 2nd respondent KVS Sridhar as plaintiff against these 2 petitioners/accused and one Smt. Usha show from Para III Clauses (a) to (g) that the plaintiff a maritime consultant running in the name of SMPL imparts pre sea training to the eligible candidates, having its corporate office at Akkayapalem main road, Visakhapatnam, and the 1st defendant company with head office at Chennai established by defendant Nos.2 & 3 husband and wife as its directors as a family undertaking practically and the said defendant Nos.2 & 3 are brothers and sister in law of plaintiff KVS Sridhar and the defendants on behalf of the 1st defendant requested the plaintiff to advance Rs.11,20,000/- for purchase of property for their business requirements and the plaintiff advanced the amount by cheque bearing No.505602 dated 31.12.2009 drawn on Indian Overseas Bank and the same was transferred to the account of the 1st defendant company at Punjab National Bank through RTGS on 31.12.2009 and on account of close relationship between them having deposed utmost faith in them and plaintiff did not insist upon any document to the said loan transaction. Though defendants duly received the amount and promised to pay in short time, they failed to do the same in spite of several demands and thereby, constrained to file the suit for recovery of the amount with interest.

The date of plaint shows the calculation of interest till date of suit mentioned as 15.10.2012 to say the date of plaint filed was on or before 15.10.2012 and even from the police report the so called 2nd payment was Rs.30,00,000/- dated 07.03.2012 and the 1st advance of Rs.35,70,000/- dated 31.08.2009 and these are not reflected. Had there been any offence of cheating pursuant to receiving of amount and not giving of training immediately after receiving of amount apart from the plaint shall mention the factum at least there can be immediate giving of police report instead of waiting till 07.11.2014 as the very report shows the 2nd payment was dated 07.03.2012 and on completion of maritime training they approached the accused for providing on board training and in spite of repeated reminders they have not provided placements as promised by turning deaf ear and for the pressure mounted from the candidates arranged placements and for some persons returned money is the sum and substance, no dates even mentioned of the said occurrence is just before giving of the report dated 07.11.2014 and even out of the said amounts 2 amounts mentioned as Rs.10,00,000/- each one amount mentioned as deposited to the account of KVR Srinivas-A.2 and another amount by cash and another amount of Rs.9,90,000/- by cash given to Srinivas and the other amounts paid are sent through bank cheques, all are below either Rs.1,00,000/- but for amount of Rs.1,82,500/- and another amount of Rs.1,10,000/-, Rs.1,30,000/- and Rs.11,20,000/- respectively.

Having regard to the above, it requires investigation. Thereby without expressing anything, the Criminal Petition is disposed of while permitting investigation, however by directing the police not to arrest the petitioners pending investigation.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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