HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1286 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), requesting to quash the proceedings in FIR No.100 of 2016 of Jagdevpur Police Station, Siddipet District.

2. The petitioners are arraigned as accused Nos.1, 2 and 4 in the aforesaid crime. They alleged to have committed the offences punishable under Sections 120B, 420, 403 and 406 IPC.

3. Respondent No.2 - *de facto* complainant alleged in his complaint filed before the learned Principal Judicial Magistrate of First Class, Gajwel stating that he and his elder brother - Mr. Romano were introduced by the petitioners and two others that they would give partnership in the partnership firm - Sri Prasananjaneya Agro Food Processing at Rajupalem, Degarlamudi village, Martur Mandal of Prakasam District, Andhra Pradesh State and utilized the money for their own use.

i) The *de facto* complainant and his brother, Mr. Romano, got acquaintance with petitioner No.1 at United States of America (USA) and petitioner No.1 impressed upon his elder brother that he has got flourishing business in Cashew Nut and Pulses in Prakasham District, worth Rs.1,50,00,000/- in partnership with accused Nos.3 to 5 and invited Mr. Romano to join as a partner in the said firm by investing Rs.50,00,000/-, and believing the same, Mr. Romano requested the *de facto* complainant to send a sum of Rs.10,00,000/- from his account maintained by the *de facto* complainant to the account of M/s. JL Exports and Imports, for which, accused No.3 is the In-charge. Accordingly, the *de facto* complainant transferred the amounts from time to time and at one point of time, Mr. Romano intended to visit the Unit of Sri Prasannanjaneya Agro Food Processing Products on his stay in India, and on 10.01.2013, the *de facto* complainant and his brother went to the place of partnership firm, where accused Nos.1, 3 and 5 were present and informed them that Mr. Romano would be given 1/4th share, if he invests Rs.50,00,000/- and also impressed that the documentation would be completed after receipt of half of the said amount, and as per the directions of Mr. Romano, the *de facto* complainant sent a sum of Rs.28,00,000/- by 02.04.2013, which includes initial payment of Rs.10,00,000/-, and after the payment was made, accused Nos.1 to 5 were not responding to the phone calls, SMS and e-mails of the *de facto* complainant and his elder brother, Mr. Romano. Though, accused No.1 has responded positively for some time, but evaded later. When the *de facto* complainant and his elder brother visited the aforesaid Unit, they found none in the Unit except a watchman, who informed them that except accused No.3 and his relatives, no-one has interest in the said firm, which took place on 03.04.2014, and when the elder brother of the *de facto* complainant met accused No.1 at Chennai, he expressed his inability to continue in partnership firm and promised to repay the said amount with interest within three months, but failed to keep up the promise and later started giving evasive replies.

ii) During the month of August, 2015, when the *de facto* complainant contacted accused No.3, he informed him that the amount of Rs.10,00,000/- transferred to his account was re-transferred to the account of accused No.1 and promised that he would repay the said amount if accused No.1 fails to pay the amount. Thereafter also, accused evaded to re-pay the amount and, therefore, the *de facto* complainant filed the complaint under Section 156 (3) of the Code and the same was referred to the police concerned.

4. Heard Sri D.S.V.V.G. Nagaraju, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

5. The submission of the learned counsel for the petitioners has been that, no case is made out against the petitioners on the face of the complaint itself; that the *de facto* complainant has no *locus* to maintain the complaint against the petitioners and no material is placed to support the allegations.

i) It is also his submission that the *de facto* complainant is not the agent of his elder brother to maintain the complaint, and if at all the *de facto* complainant feels that he is cheated and parted with the money, he has to take action against his brother, but not against the petitioners.

ii) The learned counsel also would submit that the brother of the *de facto* complainant - Mr. Romano was jobless in USA on occasions as he was working in the I.T. Industry as there would be intermittent breaks for a longer or short period. In USA, petitioner No.1 owned a retail store in a Mall, to which, Mr. Romano used to make regular visits and came into contact and, thereafter, he started borrowing money for his daily needs.

iii) According to the petitioners, they left USA in 2007 and settled at Chennai, and Mr. Romano was in touch with them and settled and he was earning good income, petitioner No.1 requested him to clear off the hand loan taken by him in USA, and in that connection, Mr. Romano directed his brother, who is respondent No.2 herein, to send amounts as per his instructions and, accordingly, the amounts were transferred and the hand loan transaction between Mr. Romano and petitioner No.1 got closed.

iv) It is stated in the petition that the petitioners were not concerned with Sri Prasannanjaneya Agro Food Processing Products, and the partners of the said firm were in discussion with the existing partners to initiate the process to settle the mortgage loan and dues of the firm. Certain other averments are mentioned in the petition, which are unnecessary to refer to herein.

6. The questions as to whether the *de facto* complainant has no *locus* and whether the amounts, which were transferred, relate to the alleged dues said to have contracted by Mr. Romano as hand loans at USA prior to 2007 are all require to be considered during investigation as the transfer of money is not in dispute, when the Investigating Officer collects evidences. But, just basing on the defence taken by the petitioners herein, it cannot be said that the complaint is wholly without any material, *prima facie,* to prove the complicity of the petitioners in the commission of the offences alleged against them.

Therefore, the Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

February 27, 2017.
Mgr