

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 13702 OF 2014

ORDER :

The Accused No.2 in C.C.No.480 of 2007 on the file of the VI Addl.Chief Metropolitan Magistrate, Hyderabad, registered in Cr.No.9 of 2002 for the offences punishable u/secs.109,420 and 120(B) r/w 34 IPC and 420 IPC, and u/secs.10,16 and 24(1) Emigration Act, 1993, on the complaint of the 2nd respondent herein preferred this Criminal Petition seeking to quash the proceedings in the above Calendar Case alleging in the grounds of the petition that initially the petitioner along with two others were sought to be prosecuted for the offences supra in C.C.No.400 of 2007 on the file of the same court, that due to the absence of the petitioner, the C.C.No.400 of 2007 was split up separating the other two accused and they were tried and acquitted and so far as the petitioner is concerned the C.C.400 of 2007 is pending as A.2. As per the chargesheet the case of the prosecution is that A.1 and A.3 being brothers registered a firm called M/s Sri Voyage Solutions on 31.08.2000 bearing Registration No.1424 of 2000 and A.1 was shown as Managing Director and the petitioner and A.3 as Executive Directors, that the firm was started in shop No.310, third floor, CC complex, Narayanaguda, Hyderabad; that the accused started recruiting people by giving advertisement in Deccan Chronicle daily newspaper and some of the list witnesses approached them and paid Rs.60,000/- and Rs.80,000/- etc., on the promise of providing good job in Malaysia,

but they were provided jobs in united Sanoh Industries with lesser salary and faced great hardship as they were not provided good accommodation and returned to India, that on the complaint of one of the persons (P.W.3 P.Raja Mohan) the Senior Executive Officer, CID registered the same as Crime No.9 of 2002 and after completion of investigation chargesheet was filed, cognizance was taken and trial was conducted by splitting the C.C.as against the petitioner by allowing C.C.No.480 of 2010) due to his non-appearance/showing him as absconding, that the prosecution examined in C.C.No.400 of 2007 supra, 12 witnesses in all and marked Exs.P.1 to P.12, that after completion of the trial the learned Judge considered the material on record and found that the charges are not proved and A.1 and A.3 were acquitted. On consideration of entire material on record the court found that there is no contract between the persons who were sent abroad and the accused that they will be provided a salary of RMS 1500 per month. The accused only promised to arrange Visas and jobs in Malaysia and the accused fulfilled their promises except providing attractive job. Consequently, the offence of cheating under Section 420IPC is not attracted as there is no element of intention of cheating at the inception. It was also found that the prosecution failed to prove the offence for abetment under Section 109 and 120-B IPC as no evidence was produced to prove conspiracy. In so far as the offences u/sec.10,16,24(1) Emigration Act, 1993 are concerned, no evidence was let in though prosecution cited L.Ws.20 and 21. In those

circumstances, the said charges were also not proved. On an overall consideration of the material on record the Court held that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and acquitted the accused.

It is the contention of the petitioner/A.2 of C.C.No.480 of 2010 seeking by quashment that taking into consideration the entire evidence on record supra of C.C.No.400 of 2007 , the case against the petitioner also stands on the same footing and the finding with regard to the offence under Section 420 is not attracted also applies to the A.2, that evidence on record discloses that before boarding the flight they had the employment particulars and the salary and even according to the witnesses they were not able to do the work and adjust and as such they returned to India. The offence of abetment and conspiracy are also not proved as no evidence was forthcoming to satisfy the ingredients of said offences. Similarly the violation of the provisions of Emigration Act, are also not proved and thereby there is no chance to prove said offences as against the petitioner is the contention saying the prosecution against the petitioner/A.2 would be a futile exercise.

Heard the learned counsel for the petitioner/A.2 and the learned Public Prosecutor for the 1st respondent-State and there is no representation for the 2nd respondent and perused the material on record.

A perusal of the said acquittal judgment clearly shows no offence u/sec.420IPC was proved so also for the offence u/secs.10,16 and 24 (1) of the Emigration Act, from the prosecution evidence. Further once the evidence on record discloses that by the time the witnesses boarded the flight they had the employment opportunities and salary particulars and therefrom there is nothing to say any cheating and it is not even a case of the salary particulars were not there to believe the original complaint version concerning the investigation material as it is their evidence during the trial but for to say unable to adjust in the climate there as foreign to them, they returned to India. When such is the case, it is a fit case to quash the proceedings against the petitioner/A.2.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/A.2 in C.C.No.480 of 2007 on the file of the VI Addl.Chief Metropolitan Magistrate, Hyderabad. The petitioner/A.2 is acquitted. His bail bonds shall stand cancelled.

Dr.JUSTICE B.SIVA SANKARA RAO

Date:17.08.2017
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