

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.3234 of 2017

JUDGMENT:

Aggrieved over the order dated 6.12.2017 in Criminal M.P.No.2283 of 2017 in C.C. No.318 of 2012 on the file of VI-Additional Chief Metropolitan Magistrate, Hyderabad, the petitioners-accused Nos.2 to 5 filed the present Criminal Revision Case under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.')

2. The aforesaid Criminal M.P. No.2283 of 2017 was filed under Section 239 of Cr.P.C. requesting to discharge them. The said application was resisted by filing an elaborate counter by the State.

3. The learned VI-Additional Chief Metropolitan Magistrate, Hyderabad, having perused the material available on record, observing that the documents filed along with charge-sheet and confession of prime accused and others would reflect involvement of the petitioners-accused Nos.3 and 4, being employees of the complainant company, having joined A-2 company, conspired with accused Nos.1 and 5, committed the offences alleged against them and unless a full-fledged trial takes place innocence of the petitioners-accused Nos.3 to 5 cannot be decided and thereby dismissed the application.

4. Heard V.H.V.R.R. Swamy, learned counsel for the petitioners-accused Nos.3 to 5. His submission is that the Court below did not properly assess the material on record and the

impugned order is very cryptic and, in fact, accused No.1 when filed similar application in Criminal M.P.No.1110 of 2014, the very same learned Magistrate's Court recorded certain findings and allowed the petition and even the learned Magistrate has not read the order passed by the I-Additional Metropolitan Sessions Judge in Criminal Revision Petition No.281 of 2014, dated 15.5.2016. It is, according to him, merely because the accused No.1 and other accused shifted the job from the *de facto* complainant's company and working elsewhere. The present complaint was filed with all false allegations and even when verified, the allegations in the complaint did not make out a *prima facie* case to proceed with the prosecution, and, therefore, sought to allow the present Criminal Revision Case.

5. The orders passed by the learned VI-Additional Chief Metropolitan Magistrate, dated 15.5.2014, in Criminal M.P. No.1110 of 2014, whereunder the request of accused No.1 for his discharge was acceded to, but the very same order was reversed by the I-Additional Metropolitan Sessions Judge, Hyderabad, by his order dated 12.5.2016 in Criminal Revision Petition No.281 of 2014.

6. Both the orders have been perused. It is to be stated that the learned Magistrate, who discharged the accused No.1, in his order dated 15.5.2014, went wrong in just relying on the terms of employment and thereby concluding that the *lis* is of civil nature. That was the reason, the learned I-Additional Metropolitan Sessions Judge reversed it. It is not known whether the accused No.1 carried the matter further and if so the fate of the proceedings.

7. Now, turning to the present request made by the revision petitioners-accused Nos.3 to 5 and the submissions made by the learned counsel for the petitioners, it cannot be said that the order is very cryptic, and is without application of mind. The order would clearly reflect that the learned Magistrate has gone through the statements filed under Section 161 of Cr.P.C. and other material including the confessional statements, lest there would not have been any observation by him that the confessional statement of prime accused shows the involvement of the petitioners. Even independently looking at the averments in the charge-sheet the mere fact that a civil suit is filed is not a ground to arrive at that the dispute is purely of civil nature.

8. Without making an in-depth enquiry, and as no roving enquiry is required at this stage, the very fact that the petitioners 1 and 2 at the instigation of Mr. Pavan Kumar Tirumareddy (A-2) worked for the benefit of M/s. Bobbys Support Solutions while working in the complainant's company and drawing salary from the complainant company and, thus, deceived the complainant company that they were working for its benefit, but, on the contrary, caused wrongful loss to the complainant's company in the form of their salaries. So far as requirement of Section 415 of I.P.C. is concerned, the prosecution intends to apply illustration (h) of Section 415 of I.P.C. This apart, whether the dishonest intention attributed to the petitioners was right from the inception or at the beginning can only

be inferred from the facts and circumstances and the material on record, when a full-fledged trial takes place.

9. So far as the offences punishable under the provisions of Information Technology Act are concerned, the e-mails require a thorough analysis, which cannot be done at the threshold and can only be analysed and finding thereon in the context of the offences alleged under the I.T. Act can be recorded after a full-fledged trial takes place.

10. Further, order passed by the learned I-Additional Metropolitan Sessions Judge, Hyderabad, in relation to accused No.1 in Criminal Revision Petition No.281 of 2014, would reflect that the core issue is that software programme, namely, G.P. Core Application developed in the course of business by the complainant company can store all the details of the company's customers viz., orders, vendors and financial information related to the business of the complainant company was alleged to have been divulged including confidential details of the complainant's company to the competitive companies with the help of the petitioners herein with a *mala fide* intention and ulterior motive to deceive the complainant's company. The order of the learned I-Additional Metropolitan Sessions Judge, Hyderabad, in relation to accused No.1's discharge petition would make it clear that the said divulgence has been attributed to the other accused by showing the respective role they played. In such an event, certainly, it cannot be said that the order passed by the learned I-Additional

Metropolitan Sessions Judge, Hyderabad, which is under challenge, is tainted with legal infirmity, warranting interference.

11. There is no merit in the Criminal Revision Case and is, therefore, dismissed.

As a sequel there to miscellaneous petitions, if any, pending in the present Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

December 18, 2017.

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