HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.2753 of 2018

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/accused seeks to quash the proceedings in Crime No.272/2017 of Pendlimarri PS, YSR Kadapa District, registered against him for the offences under Sections 418 and 420 IPC.

2) U. Bharath Raj, Special Power of Attorney holder for M/s.Pacific Mining Products Pvt. Ltd is the complainant. The brief allegations of the complaint are that he is the permanent agent of accused for carrying out mining activities in the mining lease area situated in S.No.874/P of Tummalur village fields, Pendlimarri Mandal, Kadapa District, on behalf of M/s. Pacific Mining Products Pvt. Ltd, Delhi, being appointed as its Special Power of Attorney dated 07.07.2017 by the accused as a Director of the aforesaid company.

a) Initially Mining Lease was granted for iron ore over an extent of Ac.148.741 hectares in Sy.No.874/P for 20 years in favour of S.V.Siva Reddy, through G.O.Ms.No.55 dt.13.03.2006 under a mining lease deed executed by Assistant Director of Mines and Geology (ADMG), Kadapa, in his proceedings No.2154/M3/03 dated 14.12.2007 which will in be in force upto 13.12.2027. The said S.V.Siva Reddy, due to some financial problems, transferred the lease in favour of M/s. Pacific Mining Products Pvt. Ltd, represented by Dr. Sudesh Kumar Jain, Director, who is accused herein for

Rs.25,00,000/- by executing FORM-O on 16.05.2012 for the unexpired period of the lease. The further details in the complaint are that accused has not taken any steps to carryout mining activities as he was engaged with other works at Delhi. Initially, he appointed one Mr. Gurukaran Singh as his GPA to discharge the functions relating to Mining Lease and its operations. However, since the said GPA expressed his inability to conduct the mining operations, the accused approached the complainant as he is having experience in the mining field and after discussions in the presence of witnesses namely Dandiga Venu Gopal and Phanithi Tirupalaiah, the complainant agreed to act as his permanent agent and accordingly, the accused executed Special Power of Attorney dt.07.07.2017 in his favour to carryout the mining activities by investing the required funds for developing the mine and extracting the mineral and for purchasing required machineries and to meet the essential expenditure to get certificates from concerned authorities. Apart from the same, the accused has received huge amounts from complainant towards consideration for earlier mining activities and for amounts spent to get the transfer of present mining lease in his favour on a condition that after extracting mineral and selling the same, the complainant and accused shall share the profits in equal ratio. Though the said condition was admitted by both parties before the witnesses, same is not incorporated in Special Power of Attorney as it is contrary to the provisions of Mining Act.

b) Pursuant to the Special Power of Attorney, the complainant paid Rs.75,00,000/- to M/s. Yubaraj Dynasty Real Estate Pvt. Ltd., to discharge the dues of the accused towards purchase of the Machinery at his instance. Further the complainant paid Rs.5,00,000/- to P.V.Narayana Rao, consulting mining Geologist & RQP, Hyderabad on 25.11.2017 towards his fee for reviewing the mining plant and he also incurred an expenditure of Rs.5,00,000/- towards fee to the Professional Expert. He also incurred other miscellaneous expenditure for obtaining required licences and in all he spent about Rs.1 Crore, believing the promise made by the accused that he would get 50% share in profits.

c) While-so, though the complainant was appointed as permanent Agent till expiry of lease period, the accused unilaterally cancelled the SPA by way of letter dated 21.11.2017 addressed to ADMG, Kadapa, in violation of the terms and thus cheated the complainant and caused huge financial loss to the complainant with a dishonest intention to have an unlawful gain by appointing somebody else in his place. Basing on the dishonest inducement of the accused that he would pay 50% share in profits, the complainant invested monies and sustained loss. Hence the complaint.

3) Heard both sides.

4) Vehemently opposing the complaint allegations, learned counsel for petitioner would argue that admittedly the complainant was appointed as Special Power of Attorney and the same was signed by the petitioner as the Director of the Company. Similarly, the cancellation of SPA was also

signed by the petitioner as the Director of the Company. The complainant suppressed the material facts. The complainant, as a Director of M/s. Pioneer Tor Steel Mills Pvt. Ltd, entered into MOU dated 07.07.2017 and also a share purchase agreement dated 07.07.2017 agreeing to purchase 100% shares of the petitioner's company. Under the said MOU, it was agreed that the complainant being the Director of M/s. Pioneer Tor Steel Mills Pvt. Ltd, will purchase the entire shareholding of petitioner's company along with Mining Lease obtained by the Company for a full and final consideration of Rs.8,25,00,000/-. However, the complainant paid only Rs.20,00,000/- on the date of MOU agreeing to pay Rs.1,80,00,000/- within 10 days and balance of Rs.6,25,00,000/- within 6 months. As the complainant failed to fulfil his obligation inspite of several reminders, the petitioner had left with no other choice except cancelling Special Power of Attorney issued in his favour. Suppressing these facts, a false complaint was filed. Even assuming the complaint allegations are true, they would invite only a civil dispute between two companies. In fact, the complainant has already filed a civil suit—O.S.No.9/2018 on the file of Judge, Family Court-VI Additional District Judge, Kadapa, against the petitioner/accused seeking a relief of setting aside the cancellation of SPA and an injunction not to interfere with the mining activities and therefore, there is no room to launch criminal proceedings against the petitioner.

a) Nextly, learned counsel argued that the complainant arrayed only the petitioner, who is a Director of the company as accused without showing the company as an accused. Hence the criminal proceedings are not maintainable.

b) Finally he argued that the complainant filed a private complaint, which was forwarded to the police and in the private complaint, he has not filed the sworn affidavit and on that ground also the FIR is not legally maintainable. He thus prayed to allow the petition and quash the proceedings.

5) Per contra, opposing the petition learned counsel for 2nd respondent/ complainant would argue that the accused is no doubt, one of the Directors of M/s. Pacific Mining Products Pvt. Ltd, holding 40% of the stocks. The other two shareholders are M/s. Reliance e-commerce Ltd and M/s. Simba Technology Pvt. Ltd, holding 35% and 25% respectively. The remaining two shareholders in a Board of Directors meeting, authorised the accused to act on their behalf and accordingly he entered into a MOU dt.07.07.2017 with the complainant to sell the 100% equity shares to the complainant, which is a separate issue. That apart, the accused being authorised by other Directors, appointed the complainant as their Power of Attorney under a SPA dt.07.07.2017. The complainant was appointed as permanent SPA for the remaining period of the lease upto 13.12.2027. As such, neither the accused nor M/s. Pacific Mining Products Pvt. Ltd., has any legal right to unilaterally cancel the SPA. However, the accused cheated the complainant and cancelled the SPA by sending letter to ADMG, Kadapa, dt.21.11.2017. Further, while granting SPA on complainant, the accused induced him with

false promise that he would be paid 50% of the profits realised from excavation and selling of the ore. On that promise, the complainant spent about Rs.1 Crore for Mining activities. Ultimately, the accused withdrew the SPA only with an intention to cause wrongful loss to the complainant. Hence, he is liable for criminal prosecution apart from incurring civil liability. He thus prayed to dismiss the petition.

6) The point for determination is:

"Whether the compliant allegations reveal only civil liability and thereby continuation of criminal proceedings amounts to abuse of process of court?"

7) **POINT**: The admitted facts in this case are that mining lease was initially granted in an extent of Ac.148.74 hectares in S.No.874/P of Tummalur village, Pendlimarri Mandal, to one S.V.Siva Reddy. Due to financial constraints, he transferred the said mining lease in favour of M/s. Pacific Mining Products Pvt. Ltd, rep. by the accused herein for Rs.25,00,000/- under FORM-O dt.16.05.2012 for the unexpired period of lease upto 13.12.2027. The accused at first appointed one Mr. Guru Karan Singh as his GPA to monitor the mining operations but the said GPA withdrew due to his other commitments. Thereafter, the accused engaged the complainant as its SPA vide document dated 07.07.2017 to "**permanently represent the accused**" in respect of the mining lease granted by the Government and to do all acts necessary and incidental for the effective exploration and enjoyment of the mining lease in the name of

accused and to discharge all the powers, functions, rights, duties and obligations which the accused have in respect of mining lease of ore. The accused however, cancelled the aforesaid SPA by way of a letter dated 21.11.2017 addressed to the Assistant Director of Mines and Geology, Kadapa. These are all admitted facts.

Be that it may, the complaint allegations are that:

i) The accused induced the complainant to work as his SPA on the promise that after extraction of mineral and selling of the same, the profits would be shared equally between the accused and complainant (50:50).

ii) On the instructions of accused, the complainant paid Rs.75,00,000/- to M/s. Yubraj Dynasty Pvt. Ltd, towards dues payable by the accused for purchase of the Machinery; paid Rs.5,00,000/- to one P.V. Narayana Rao, Consulting Mining Geologist, towards fees; and paid another Rs.5,00,000/- towards fees to professional expert and in all incurred the total expenditure of Rs.1 Crore. All the aforesaid expenditure was incurred by the complainant on the promise that he would be given 50% of profits from the mining income. The accused betrayed him and cheated.

8) With these admitted facts and other allegations, it has now to be seen whether the criminal proceedings are maintainable or whether the transaction between the parties would reflect only civil dispute. It is

pertinent to note at this juncture that as per accused, both parties entered into an MOU dt.07.07.2017 agreeing to sell the 100% equity shares of M/s. Pacific Mining Products Pvt. Ltd to M/s. Pioneer Tor Steels Pvt. Ltd, of the complainant for Rs.8,25,00,000/- but the complainant paid only Rs.20,00,000/- and failed to pay the balance amount within the stipulated time and therefore, the accused was constrained to cancel the SPA.

9) Thus the above factual scenario would show the fulcrum of the offence alleged is the cheating under section 420 IPC. In order to sustain an offence under Section 420 IPC, the complainant must be able to establish that the accused had a deceptive intention to cheat the victim since inception. In ***V.Y. Jose v. State of Gujarat***[1], the Apex Court expounded on the offence of cheating, thus:

> *"14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:*
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> *i) deception of a person either by making a false or misleading representation or by other action or omission;*
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> *(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*
>
> *For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on*

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[1] (2009) 3 SCC 78

> *the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."*

10) When the case on hand is scrutinised in the light of above expression, the act of cancellation of Special Power of Attorney cannot be regarded as cheating for the reason that though in the SPA it was mentioned that the complainant should work permanently as SPA during the unexpired period of the lease, nothing more is mentioned that the complainant shall be given 50% share in the profits after excavation and selling of the ore. Similarly nothing is mentioned that the complainant shall incur expenditure. Therefore, going by the SPA dt.07.07.2018, it cannot be concluded that the accused induced the complainant to act as his SPA on the promise of giving 50% profits and also instructed him to incur expenditure. It is the case of complainant that on the oral promise of the accused, he performed all those acts. If that is his case, the remedy lies elsewhere on proof of said oral contract. Therefore, mere cancellation of SPA is not a determinative factor that the accused had deceptive intention to cheat the complainant since inception. The allegations and counter allegations would only project sheer civil dispute between the parties. Therefore, continuation of criminal proceedings, in my considered view, would amount to abuse of process of the Court.

11) In the result, this Criminal Petition is allowed and the proceedings against the petitioner in Crime No.272/2017 of Pendlimarri PS, YSR Kadapa District are quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 25.06.2018
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