

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.2861 of 2018

ORDER :

The petitioners are A3 & A4 among six accused in C.C. No.50 of 2017 on the file of the learned XXIII Metropolitan Magistrate, Cyberabad, Rajendra Nagar, registered and taken cognizance for the offences punishable under Sections 406, 420 & 120-B IPC.

2. The police after registration of F.I.R. in Crime No.60 of 2016 of Raidurgam Police Station, Cyberabad District, filed the final report that was taken cognizance by the learned Magistrate and pending as such. It was while so A5 & A6 filed the quash petitions in CrI.P.Nos.2858 & 3291 of 2017 and by the common order of another Bench of this Court dated 24.01.2018 those petitions were allowed by quashing the proceedings against A5 & A6. Now, among A1 to A4 the present quash petition is for A3 & A4.

3. Coming to the facts in brief, M/s. Ambience Properties and another concern M/s. Ambience Resorts & Motels Private Limited are the two entities. A1 & A2 are the Directors or Managing Directors of M/s. Ambience Properties, leave about the title of M/s. Ambience Properties from the original owners for Survey Nos. 4 & 6 of Hussain Shah Wali Dargah area. M/s. Ambience Properties, represented by its Directors A1 & A2, purchased part of the property and sold through relatives to A3 to A6. The purchasers in the area known as Whisper Valley formed into an association that is A3. In the arbitration

proceedings in O.P.No.590 of 2011 before the learned Special Sessions Judge, L.B. Nagar, Hyderabad, Section 9 of the Arbitration and Conciliation Act, 1996 was invoked to grant interim injunction against A1 & A2 by the *de facto* complainant. A3 was a party and contested by filing affidavit through its Secretary by name S.Radha Rani that the property for the injunction sought was part of the property of the Walden Club as part of the public utility in the residential area and not the exclusive property of A1 & A3 to grant any injunction. The learned trial Judge accepted the said contention from the affidavit dated 08.09.2011 and dismissed the interim measure application on contest and on merits on 19.09.2014. It is observed that “It is settled legal proposition that space provided for amenities should not be sold”. Subsequently, having so raised the contest by A3 association, represented by its Secretary, in the arbitration interim measure proceedings in O.P.No.590 of 2011 covered by final order accepting the contention dated 19.09.2014; there was a GPA-cum-Agreement of Sale dated 20.07.2015 between A1 & A2 or A3 to A6 that G.P.A. was executed by A2 representing the entity M/s. Ambience Resorts and Motels Private Limited in favour of A3 to A5, represented by A6 for A5. The crux of the complaint in registration of the crime for the offences supra and in the police final report for the offences supra taken cognizance by the learned trial Magistrate is that having filed the affidavit in the interim measure application in the arbitration proceedings by A3-M/s.

Whisper Valley Owners Association in contesting the property as part of Walden Club, the entering of the contract for sale is nothing but breach of trust and cheating by deception in causing damage thereby and there is a conspiracy between A1 to A6 in this regard.

4. Coming to the *locus standi* of the *de facto* complainant in giving the report and registration of the crime and filing the charge sheet and taking cognizance concerned, it is stated and not even in dispute that he contributed in the shares of the entity M/s. Ambience Resorts & Motels Private Limited. Even taken for arguments sake from all the contentions, without going into even the order of the Court quashing the proceedings against A5 & A6, dated 24.01.2018 in Crl.P.Nos.2858 & 3291 of 2017, if at all from the arbitration interim measures the contest order on merits made final, the company M/s. Ambience Resorts & Motels Private Limited, represented by A1 & A2, has no right over the property in question, for which the GPA-cum-Agreement of Sale and subsequent Sale Deeds executed concerned. Even then it is the contention that M/s. Ambience Resorts & Motels Private Limited, represented by A1 & A2, is benefited from parted with huge amount in Crores by A3 to A6. Once such is the case, there is no any element of the ingredients required of cheating under Section 415 IPC for nothing of deception or inducement of the *de facto* complainant nor there is any entrustment by him much less to A3 & A4 herein to attract the offence under Section 406 IPC even for the offence under Section 415 IPC defined punishable under Section

417 or 420 IPC, leave about no any damage or harm or injury either to the mind or body or reputation to attract the offence for, if at all the company is financially benefited from the transaction.

5. Having regard to the above, the cognizance order is unsustainable against A3 & A4, leave about the so-called filing of affidavit in the counter contest by A3 Association, represented by its Secretary, before Arbitration O.P. No.590 of 2011 if unsustainable to the terms of the GPA-cum-Agreement of Sale it makes out any other cause that is left open.

6. With the above observations, this Criminal Petition is allowed and the proceedings in C.C.No.50 of 2017 on the file of the learned XXIII Metropolitan Magistrate, Cyberabad, Rajendra Nagar, against the petitioners-A3 & A4 are hereby quashed.

Miscellaneous petitions pending, if any, shall stand closed.

01.11.2018
MVA

Dr. B. SIVA SANKARA RAO, J