THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition Nos.10838 of 2017 & 3807 of 2018

COMMON ORDER:

Crl.P.No.10838 of 2017 is filed by A1 to A4 and Crl.P.No.3807 of 2018 is filed by A5 to quash the proceedings against them in Crime No.1095 of 2017 of Madhapur PS registered for the offences under Sections 403, 406, 384, 420, 464, 506 r/w 120B IPC and Sections 447 and 448 of Companies Act, 2013.

2 a) The complaint allegations in brief are that the accused and complainants are the Shareholders and Directors of M/s.Lot Mobiles Private Limited. A1 is the Chairman and Managing Director. A1 is also the Chairman and Managing Director of Big C Private Limited wherein complainant No.1/R2 was the Director. A1 informed the complainants/R2 and R3 that he was incorporating Lot Mobiles Private Limited and asked them to join as shareholders inducing them that mobile retail marketing industry is one of the fastest growing business in the corporate sector and he will protect the interest of the shareholders and operate the Company in a transparent manner and provide access to the shareholders to verify the business transactions and believing the words of A1 they have invested huge amounts in Lot Mobiles Private Limited and A1 allotted equity share holding of 21.6% to R2 and his wife—K.Aishwarya and 6% to R3.

b) The further case of complainants is that in view of their vast experience in the mobile industry, they spent most of their time in the growth and development of Lot Mobile Private Limited which was looked after by A1 and A2. However, A1 and A2 colluded together and hatched a plan to usurp the equity share holding of minority shareholders by adopting illegal means. As a part of the plan, A1 asked the complainants to visit Big C office at Madhapur on 22.10.2017 at 7 PM and when they went there, A1, A2 and A5 were present and A1 informed the complainants that they were no longer required for the Company, but the complainants insisted to continue their shareholding and declined to sell their shares. On 23.10.2017 Mr.Kailash called the complainants to Big C office and asked them to exit the Company but they did not agree. Then, A1 without any advance notice and information, illegally removed ERP access of Lot Mobiles and changed the passwords of computer system to deny information of the Company to the complainants. Further, A1 informed all the employees of the Company that the complainants were out of the Company and therefore, the employees shall not interact with them. He also removed their names from the mobile group entices like whatsapp etc. Apart from that he also earned some of the Directors and committed fraud by withdrawing the amounts. The particulars of the withdrawals are tabulated in the complaint by the complainants. The total amount misappropriate by all the accused comes to Rs.8,97,40,000/-. All these acts were done by the accused to obtain wrongful gain to them and wrongful loss to the complainants.

Hence, the complaint.

3) Heard both sides.

4) Denying the complaint allegations, it is argued that a false complaint was lodged by the complainants due to differences with the accused and none of the offences mentioned in the FIR are legally maintainable. It is further argued the FIR allegations may at best attract Sections 403, 506 IPC and 447 and 448 of Companies Act which are non-cognizable offences and therefore, the police ought not to have registered FIR without the order of the Magistrate under Section 155 Cr.P.C.

5) A perusal of FIR shows that it was registered for the offences under Sections 403, 406, 384, 420, 464, 506 r/w 120B IPC and Sections 447 and 448 of Companies Act, 2013 of which, some of the offences like 384, 406, 420 and 464 IPC are cognizable offences.

6) It is trite rule of law under Section 155(4) Cr.P.C. where a case relates to two or more offences of which atleast one is cognizable, the case shall be deemed to be cognizable offence notwithstanding the other offences are non-cognizable offences. In that view, the argument of the petitioners that the case is a non-cognizable one and police cannot register and investigate the same does not hold water. Consequently, the decision in ***Rohtas v. State of Haryana and another***[1] cited by petitioners will not advance their cause. The investigation is in nascent stage and it is only after conclusion of the investigation it will be known what are the exact offences that are applicable to the acts of the accused. The FIR reveals *prima facie* accusation against the petitioners/accused. Therefore, stifling of investigation at the budding stage is not appropriate. Therefore, investigation may lead to its logical conclusion.

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[1] (1979) 4 SCC 229

7) Accordingly, both the Criminal Petitions are dismissed directing the investigating agency to complete the investigation expeditiously.

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

U. DURGA PRASAD RAO, J

Date: 10.09.2018
Murthy