

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4413 of 2018

ORDER:

The petitioners are A1 & A2 in C.C.No.91 of 2018 on the file of the learned VI Metropolitan Magistrate at Bheemunipatnam, which is outcome of the private complaint of respondent No.2 dated 08.05.2017 for the offences punishable under Sections 420, 419 r/w 34 IPC. When the learned Magistrate referred to police for investigation under Section 156(3) Cr.P.C. on 01.12.2017, the Station House Officer, Bheemunipatnam registered the crime for the offences supra. The police after investigation filed charge sheet and the learned Magistrate has taken cognizance for the offences supra against the accused.

2. Same is now impugned by the petitioners-accused in seeking to quash the proceedings mainly on the grounds that the dispute is relating to a money transaction, predominantly civil in nature, there is no any offence of cheating made out from the face value of the prosecution case taken as a whole from the statements of LWs 1 to 11 in filing charge sheet and for taking cognizance and further the guidelines of the Apex Court in **Priyanka Srivastava v. State of Uttar Pradesh**¹ and thereby the referring of private complaint to police by the Magistrate no way sustains, so also the registration of the crime, investigation final report and the cognizance order and hence, to quash the proceedings by allowing the petition. The learned

¹ (2015) 6 SCC 287

counsel for the petitioners reiterated the above contentions by reading every statement of eleven witnesses and the F.I.R. and the charge sheet besides the quash petition averments in support of above contentions.

3. Whereas the learned counsel for the *de facto* complainant as well as the learned Public Prosecutor representing the State for the respondents submit that there are no any violations of the guidelines of the Apex Court in **Priyanka Srivastava** (supra 1) in referring the private complaint to police and registration of the crime and from investigation filed charge sheet which disclose *prima facie* accusation attracting the offences against both the accused and the learned Magistrate has rightly taken cognizance and for this Court while sitting against, there is nothing to interfere and sought for dismissal of the quash petition.

4. Heard both sides and perused the material on record and the expressions placed reliance.

5. With the private complaint seven witnesses cited and four documents filed which include document No.2 acknowledgment of receipt of the report from the *de facto* complainant by the Station House Officer, Bheemunipatnam. Paragraph No.5 of the private complaint also speaks that the report was given to Bheemunipatnam police on 30.04.2017 and they issued a receipt to that effect, but they did not conduct proper enquiry and advised to approach the Court of

law and for no alternative filed the private complaint. It is crystallises that prior to filing of the private complaint the police report was given and the police acknowledged the same by passing a receipt which is covered by the document No.2 supra. The referral order of the learned Magistrate under Section 156(3) Cr.P.C. not filed to go through as to whether there is any affidavit filed or not, which are the guidelines in **Priyanka Srivastava** (supra 1) to follow primarily.

6. Coming to other merits, the averments in Paragraph Nos.2, 3 & 4 of the private complaint clearly spell out that the accused lured the *de facto* complainant under the guise of giving a lease of canteen in the premises where the Padmavathi Teacher Training College was under construction to invest and part with amounts. It is further stated that subsequently as the *de facto* complainant realised of the deception of the accused and demanded from them they are not prepared to give the canteen for his running either to give the premises on lease to run the canteen as promised in his investing or to return the amount they paid. It was only Rs.1.50 lacs by NEFT on 17.02.2017 paid and despite repeated demands postponing with no mind to pay and the same is revealed from the messages they sent and the phone conversations which are even recorded by him covered by document No.4 C.D. submitted with the private complaint.

7. The material filed also shows the complainant issued notice to the accused persons on 01.03.2017 to the above effect and the accused

persons received the notice admittedly and as part of the quash petition they filed the notice copy which also speaks from Paragraph Nos.4 & 5 of the notice in two pages about the averments of their deception from the inception in luring to part with the amounts to cheat, that is also made out from the statement of LW1 among twelve witnesses cited in the charge sheet from the police investigation including LW12-S.I. of Police, who registered the crime, investigated and filed the charge sheet and LW11-Cashier, State Bank of India, Bheemunipatnam, who corroborated the statement of LW1 with reference to the amounts parted with and what was paid. The contention of accused is that said amounts are not pertaining to the transaction. However, once the charge sheet shows from the statement of LW1 with details as co-related from the statement of the Bank Cashier-LW11 from the investigation and what LW1 detailed of it is because of the accused lured to give on long lease the canteen of college he invested the amounts off and on that was corroborated by the statements of other witnesses in detail already read over by the learned counsel for the petitioners covered by Page No.24 onwards of the material papers with English translation to it on material aspects.

8. The other contention of accused-petitioners so far as A1-Prasad Rao is concerned is that there is no specific averment against him, but for if at all lured by A2-Gayatri. The contention is not correct for the reason what the statement of LW1 read over by the learned counsel for the petitioners, which is part of the material paper Page No.24 and

translation at Page No.25 in the first six lines itself shows the accused both were giving promises and it is with their pretence they lured him to invest the amounts by believing them. Thus, from the material on record, this Court cannot find fault with the cognizance order of the Magistrate from the police final report in the form of charge sheet as made out the offence punishable under Section 420 IPC against both the accused supra.

9. What the learned counsel contends further is as if the police filed the referred report, however, the learned Magistrate taken cognizance on private complaint. It is not correct from perusal of the material papers Page Nos.7 to 17 as only the private complaint filed was referred to police for investigation under Section 156(3) Cr.P.C. and from which the police registered the crime making out a cognizable offence and after investigation filed the charge sheet with statements of witnesses LWs 1 to 11, which statements already read over by the learned counsel for the petitioners referred supra and it is the final report in the form of charge sheet filed by saying the accused are charge sheeted and the learned Magistrate there from taken cognizance.

10. Now, the other contention is the guidelines of the Apex Court in **Priyanka Srivastava** (supra 1) are not properly followed by the learned Magistrate in referring the private complaint of *de facto* complainant dated 08.05.2017 to the police under Section 156(3) Cr.P.C. The police report given and copy filed. The other guideline

no doubt speaks the affidavit is required to be filed with private complaint even to refer to police for investigation. It is not even mentioned in the grounds that no such affidavit filed as contemplated, but for in Paragraph No.10 saying the guidelines were not followed. What is stated is an affidavit of the complainant is also required, but in the present case such procedure was absent. The Apex Court clearly says affidavit is required. What the learned counsel in Paragraph No.10 of the grounds says such procedure was absent. At the cost of repetition though the counsel for accused contends as if in the grounds mentioned, it was not mentioned of the affidavit not filed. In fact, the affidavit filed or not can be reflected in the Magistrate's reference order to police under Section 156(3) Cr.P.C. that order is not filed to say it was not referred. Thereby, it cannot be said that no such affidavit is filed. The learned counsel for petitioners contends that mere giving of written report to police and filing of copy not suffice, it also requires sending to Superintendent of Police copy of report by registered post and proof of it also to be filed. No doubt, the expression of the Apex Court in Paragraph Nos.30 & 31 of **Priyanka Srivastava** (supra 1) speaks about giving of police report as contemplated by Section 154(1) & 154(3) Cr.P.C. required to be spelt out in the private complaint even to refer to the police for investigation under Section 156 Cr.P.C. For more clarity Section 154 Cr.P.C. is required to be considered. Section 154 Cr.P.C. is with the title "Information in cognizable cases". Section 154(1) Cr.P.C. says every information relating to the commission of a cognizable offence,

if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Same is explained by the Apex Court in **Lalita Kumari v. Government of U.P.**² as to making of entry in General Diary in this regard. That is also referred in **Priyanka Srivastava** (supra 1). What sub-section (2) of Section 154 Cr.P.C. speaks is a copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant. What sub-section (3) of Section 154 Cr.P.C. reads is any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. Thus, from the combined reading of Section 154(1) and 154(3) Cr.P.C. used in the expression, it clearly indicates that if at all there is a refusal to receive the written

² 2014 (2) SCC 1

information or record the oral information, a written report by registered post to be sent to the Superintendent of Police. The very sub-section (3) of Section 154 Cr.P.C. is clear of once the Station House Officer either recorded the oral statement or received the written report, the question of compliance of Section 154(3) Cr.P.C. of sending the copy of the same to the Superintendent of Police does not arise. The contention that as per **Priyanka Srivastava** (supra 1) despite the police report given and acknowledged by receipt and same filed as document No.2 with reference to Paragraph No.5 of the private complaint as a compliance of Section 154(1) Cr.P.C. separately not sent by registered post written report to the Superintendent of Police as a compliance of Section 154(3) Cr.P.C. is mandatory and thereby it is fatal to the referring to police for investigation of the private complaint by the Magistrate is untenable from the very reading of Section 154 Cr.P.C. and the expression in **Priyanka Srivastava** (supra 1). Coming to the other contention raised by elaborate argument by reading the statements of LWs supra in saying specific instances of what amount on what date paid not mentioned other than stated in the Bank statement by LW11 referred as corroborating into LW1 in the charge sheet concerned, the accused admittedly received the registered notice sent by the complainant which is with no reply. It is not a case there from of the amount received is in dispute. The other contention is being several amounts stated paid no way connected to the alleged offence of cheating including for supply of flowers or some other things to A1 for any

pooja. In fact, whatever cash or kind the assistance rendered is outcome of luring to give the canteen on lease with the say from the inception with deception is the statement of LW1 at the cost of repetition. Thereby, it is within the sweep of the very definition of Section 415 IPC making out a case of cheating to take cognizance for the offence of cheating.

11. Having regard to the above, there is nothing to quash the proceedings in C.C.No.91 of 2018 on the file of the learned VI Metropolitan Magistrate, Bheemunipatnam. Accordingly and in the result, this Criminal Petition is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

29.11.2018
MVA

Dr. B. SIVA SANKARA RAO, J

