

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7826 of 2018

ORDER:

The petitioners are accused Nos.1 & 2 in CC.No.1220 of 2018 on the file of learned VI Metropolitan Magistrate, Cyberabad, Ranga Reddy District at Medchal. The defacto complainant is the 2nd respondent i.e., M/s. Vignan Developers a partnership firm represented by Sri Laxman BB. The crime No.558 of 2016 was registered by Jeedimetla PS for the offences punishable under Sections 408, 420 & 506 r/w 34 IPC, which is outcome of the private complaint of the 2nd respondent entity referred to police under Section 156(3) Cr.P.C. by the learned VI Metropolitan Magistrate, Medchal. The police after investigation filed final report of the dispute is purely civil in nature. The IO also intimated to the complainant the referred report. It is subsequent to that, a private complaint is filed instead of protest against the referred report. In the private complaint dated 21.03.2017 of the complainant entity against the 2 accused it is stated earlier filing of private complaint that was referred to police for investigation on 28.08.2016 and the police registered crime No.558 of 2016 on 03.09.2016 and after investigation which is at the influence of the accused filed final referred report as civil nature. From Paras 5 & 6 of the said private complaint mentioned as protest at Para 8 speaks respondent Nos.1 & 2 committed criminal breach of trust and cheating

and criminal intimidation by making a loan agreement with deposit of 3 cheques for Rs.27 lakhs on 03.09.2014 and pursuant to MOU dated 02.09.2014 and accused forcibly extracted the 3 undated cheques for said amount without reason when A.1 actually invested Rs.7 lakhs and odd in the construction of independent house undertaken by the complainant entity at Vignan Enclave, Cheeryal Village, Keesara Mandal, Ranga Reddy District, which was the actual amount due to A.1 by the year ending 2012 for which complainant voluntarily agreed to pay Rs.15,90,000/- with interest by 31.03.2015 provided accused persons return the 3 undated cheques for the amount of Rs.27 lakhs and other connected documents in their custody. Despite above fact, accused filed CC.No.572 of 2015 for the offence under Section 138 of the NI Act renumbered as CC.No.420 of 2016 before the learned III Special Magistrate, Kukatpally, Miyapur and the case ended in conviction by judgment dated 13.02.2017. The said conviction judgment is baseless and it is subject matter of Crl.A.No.270 of 2017 on the file of learned V Additional Sessions Judge, Miyapur, where in Crl.M.P.No.169 of 2017 sentence with direction to pay compensation was suspended on 07.03.2017 pending disposal of appeal. Accused filed civil suit OS.No.1566 of 2014 pending on the file of learned VII Additional District Judge, LB Nagar, for recovery of Rs.28,62,000/- which is pending trial hence to

take cognizance for the offences against the accused by considering the protest.

2. The learned Magistrate recorded the sworn statement of Laxman BB as PW.1 and one R.Penta Reddy as PW.2 and passed the cognizance order dated 06.06.2018 [CrIMP.No.511 of 2017 (SR.1091/2017) dated 21.03.2017] which reads that complainant present, perused the complaint, evidence of complainant and other witnesses and all the documents appended to the complaint shows prima facie case against A.1 and A.2 for the offences punishable under Sections 408, 420 & 506 r/w 34 IPC in ordering summons to be issued to A.1 and A.2 on payment of process.

3. The sworn statements of PW.1 & PW.2 supra read that PW.1-Laxman BB stated he purchased Ac.1.09 guntas in S.Nos.130 to 135 at Cheeryal Village, Keesara Mandal, in 2007 which is attached to 5 acres of land of P.Laxman Yadav and said P.Laxman Yadav entrusted his land for development to PW.1. One Nagaraju introduced A.1 and A.2 of whom A1-M.Venkateswarlu who is son of A.2-M.Koteswar Rao. A1 started the work as mason and after sometime requested the PW.1 of willing to invest amount for developing the land and invested Rs.7.5 lakhs during one year by mentioned in the note book and signed and at that time PW.1 agreed that after one year of investment he will return the amount of Rs.10 lakhs to A.1. Said amount was invested for construction of plot No.14 & 15. Anjaneyulu brother of A.1 purchased

independent house in plot No.14 for Rs.18.5 lakhs with LIC loan by registered sale deed No.5817/2012 dated 22.09.2012 and PW.1 requested A.1 as got Rs.18.5 lakhs from his brother to take Rs.10 lakhs from PW.1 as agreed at that time of his investment. A.1 requested instead of return back the amount to invest the same in another plot. Due to disputes between original owners and PW.1, development work of another plot was stopped on 21.06.2013. A1 called PW.1 to his house at Kukatpally on 02.09.2014 and A.1 and A.2 took PW.1 to the house of one Kantha Rao a BJP leader and they demanded for payment of Rs.27 lakhs immediately and he stated if not paid as per their demand they will kidnap and they threatened him with dire consequences and obtained MOU from PW.1 on 02.09.2014 by affixed revenue stamps and obtained signatures on the MOU mentioned for Rs.10 lakhs by corrected to Rs.14 lakhs and forcibly taken 3 cheques for Rs.27 lakhs. A1 obtained had loan agreement from PW.1 on 03.09.2014 forcibly in which 3 cheques mentioned which were obtained in MOU dated 02.09.2014 and used the cheques and filed false case against PW.1 by A.1 and A.2 including one in CC.No.572 of 2015 (renumbered as CC.No.420 of 2016) that was ended in conviction with default sentence and Crl.A.No.270 of 2017 filed pending, it is therefrom A.1 and A.2 cheated with criminal intimidation on the life of PW.1. PW.2-R.Penta Reddy says P.Laxman Yadav owner of Ac.5.16 guntas in S.Nos.130 to 135 part near to the

land of Ac.1.09 gts supra with PW.1 and knows PW.1 since 2007 and in 2011 A1 working as mason and PW.1 came to the office of PW.2 and A.1 requested PW.1 for the investment in the construction and invested Rs.7.5 lakhs in purchase of the material like sand, steel and concrete and after 6 months Anjaneyulu brother of A.1 purchased independent house on loan basis from PW.1 and PW.1 stated to receive Rs.7.5 lakhs with interest total Rs.10 lakhs, however A.1 stated to PW.1 of to keep the said amount to invest and in 2013 disputes between PW.1 and A.1 arisen as owner of the said land P.Laxman Yadav cause stopped the construction. In 2014 September, PW.1 came to him and stated A.1 and A.2 forcibly taken him away to one Kantha Rao at Kukatpally and obtained MOU stating given hand loan of Rs.27 lakhs and 3 postdated cheques for the same. By suppressing MOU, A.1 and A.2 filed criminal case and civil case against PW.1.

4. Coming to the original private complaint registered as FIR dated 02.08.2016 which reads the selfsame story of PW.1 statement on protest petition supra and the police final report which is a root cause for the protest petition referring as civil nature reads in nutshell besides above fact that complainant issued legal notice dated 23.09.2014 to the accused which is subsequent to the MOU/hand loan agreement dated 02.09.2014, mentioning he has taken only Rs.10 lakhs as hand loan from A.1 on 25.01.2013 and agreed to pay with interest of Rs.15,90,000/- by 31.03.2015 provided accused

returns the 3 undated cheques for Rs.10 lakhs + Rs.13 lakhs + Rs.4 lakhs in total Rs.27 lakhs. The accused filed a civil suit for its recovery with interest for Rs.28,62,000/- besides filed cheque dishonour case in CC.No.572 of 2015 against the complainant. Laxman BB is only managing partner of M/s. Vignan Developers entity in dealing with real estate business. It is stated as outcome of money disputes between the complainant and the accused and civil suit for recovery also pending besides cheque dishonour case ended in conviction. The private complaint dated 02.08.2016 referred to police for investigation in registration of crime and referred report dated 15.10.2016. The cheque dishonour case filed was CC.No.572 of 2015. It is from the cheques presented dishonoured respectively of dated 25.09.2014 for Rs.10 lakhs, 15.10.2014 for Rs.13 lakhs and 30.10.2014 for Rs.4 lakhs and the civil suit filed was OS.No.1566 of 2014 complaint filed in December 2014 itself, written statement of the defendants including Laxman BB was dated 18.02.2015 itself whereas private complaint only on 02.08.2016. At cost of repetition, for the suit MOU dated 02.09.2014 and the 3 cheques covered by the MOU amount was mentioned as basis. Having knowledge of all these facts and even allegedly obtained the MOU by force and the 3 cheques undated for Rs.27 lakhs by force way back in 1st week of September 2014 and stated same to PW.2 immediately by complaining there is no meaning for the complainant to wait for nearly 2 years if at all there is any

basis even in the private complaint dated 02.08.2016 with enclosures, there is no mention of giving of any police report much less immediately after 03.09.2014 and even legal notice dated 23.09.2014 and reply dated 01.10.2014 which are prior to his filing of the suit in December 2014. Further the cheque bouncing case was ended in conviction and subject matter of appeal admittedly. The private complaint filed even earlier to the conviction judgment of the said cheque bouncing case of CC.No.572 of 2015, the complaint filed for the cheque bouncing case was in December 2014 itself along with civil suit for recovery simultaneously preceded by legal notice and reply. Suffice to say the silence on the part of the complainant in not setting the law in motion if at all the MOU and the cheques in question forcibly obtained in first week of September 2014 from notice and reply exchanged in the same month or in 1st week of October 2014 even having full knowledge of the affairs is itself a strong ground to saying having not chosen to the legal recourse available and with variations to the notice and reply averments came belatedly in adding criminal flavour to the civil lis. The reply notice dated 01.10.2014 is crystal clear regarding the MOU dated 02.09.2014 for the amount due of Rs.27 lakhs on the 3 cheques in question issued in demanding to pay said amount else to take legal recourse at least that reply indicates the cause if at all the complainant entity to set the criminal law in motion and slept over with silence till the private complaint

dated 02.08.2016. Apart from it more particularly from the said defence in the cheque bouncing case besides pending in the civil suit for recovery from the written statement contest is the dispute pre-dominantly civil in nature to quash though mere pendency of civil lis is not a ground to quash the criminal proceedings. It is crystal clear from the expression of the Apex Court in **Paramjeet Batra Vs. State of Uttarakhand**¹, a complaint disclosing civil transaction with criminal texture when dispute essentially civil in nature continuation of criminal proceedings would be an abuse of process and liable to be quashed, there also for the alleged offence of cheating and criminal misappropriation and forgery for the purpose of cheating, all the transactions covered by hotel business monetary relations. Apart from it the protest must confine to how the police erred in the final report of the earlier crime outcome of private complaint and not as a fresh private complaint and the learned Magistrate did not even consider the same and not even assigned any little reason even in taking cognizance for the offence against the accused on the protest and even ignored the scope of protest and the difference between protest against final report when compared to a private complaint at the beginning.

5. Having regard to the above, the order of taking cognizance also unsustainable per se in following the private complaint procedure by taking as if a fresh complaint that too

¹ 2013 (11) SCC 673

without assigning reasons and non-application of mind at least to the protest petition averments with reference to the sworn statement of Pws.1 & 2 for PW.2 is not even in picture in the private complaint referred to police in registration of the crime dated 02.08.2016 for not sighted at least as a witness, but for besides Laxman BB one Mallesh and Ramakrishna whereas PW.2 is one R.Penta Reddy. For all these reasons the cognizance order of the learned Magistrate is basically unsustainable for the civil dispute added with criminal flavour no way survives of the dispute predominantly civil in nature, the proceedings are liable to be quashed.

6. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings against the accused CC.No.1220 of 2018 on the file of learned VI Metropolitan Magistrate, Cyberabad, Ranga Reddy District at Medchal, accused are acquitted and the bail bonds of the accused if any shall stand cancelled.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.12.2018
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