

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.274 OF 2017

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioners-A.1 and A.2 seeking to quash the proceedings against them in C.C. No.3191 of 2016 on the file of the XI Additional Chief Metropolitan Magistrate at Secunderabad, for the offences under Sections 120B, 415, 420 and 503 I.P.C.

2. Heard the learned counsel for the petitioners-A.1 and A.2, the learned Additional Public Prosecutor appearing for the 1st respondent-State and the learned counsel for the 2nd respondent-*de facto* complainant, apart from perusing the material available on record.

3. Learned counsel for the petitioners-A.1 and A.2 would submit that the allegations do not constitute the offences under Sections 120B, 415, 420 and 503 I.P.C.; respondent No.2-*de facto* complainant alleged that the petitioners-A.1 and A.2 form a partnership firm on 26.11.2015 to undertake business of hotels, banquets, catering and managing and running the same under the name and style of 'Hotel Vaibhav, Hyderabad' and the partnership firm had come into existence with effect from 26.11.2015; as per clause 17 of the partnership deed, if any dispute arise among the parties in respect of the conduct of the business of the partnership, it shall be resolved by arbitration and the decision of the Arbitrator would be final; the dispute between the parties is civil in nature; the *de facto* complainant-respondent No.2 filed a false report with the police and the police filed a charge sheet; the *de facto* complainant has to file a civil suit; and ultimately, prayed to quash the proceedings.

4. On the other hand, learned Additional Public Prosecutor opposed the relief sought by the petitioners.

5. The learned counsel for respondent No.2-*de facto* complainant would submit that there are malafides; the petitioners-A.1 and A.2 have cheated the *de facto* complainant-respondent No.2; there are no grounds to quash the proceedings; and ultimately, prayed to dismiss the application.

6. As per the record placed before this Court, the *de facto* complainant-respondent No.2 invested money in the partnership business with the petitioners-A.1 and A.2 and the deed of partnership was executed between them on 26.11.2015 and the hotel was inaugurated on 24.02.2016. The *de facto* complainant-respondent No.2 invested Rs.93,37,821/- on different dates for the subject partnership business. The purpose of the partnership is to start a hotel business under the name and style of 'Hotel Vaibhav'. The *de facto* complainant-respondent No.2 was not allowed to participate in the business, he was cheated by the petitioners. The petitioners conspired with the other accused in this case in order to commit fraud on the *de facto* complainant-respondent No.2. There are allegations that petitioners-A.1 and A.2 admitted partners, without consent of the *de facto* complainant-respondent No.2. As per the clause 12 of the partnership deed, no partner without the written consent of the other partners shall enter into. There are allegations against the petitioners-A.1 and A.2 that they threatened the *de facto* complainant to murder him and they conspired with the other accused in this case and defrauded and cheated the *de facto* complainant. There are allegations of changing the name of the business totally discarding the *de facto* complainant against the terms and conditions of the partnership deed entered into between them. The *de facto* complainant-respondent No.2

has also made specific allegations that the hotel building was constructed in violation of the sanctioned plan. There is possibility of getting it demolished. Knowing fully well the same, the petitioners-A.1 and A.2 induced the *de facto* complainant-respondent No.2 to invest huge amount. There is malfunctioning and deception from the beginning in the instant case. Under these circumstances, the petitioners are not entitled for the relief as prayed for. The continuation of the proceedings against the petitioners-A.1 and A.2 in C.C. No.3191 of 2016 is not an abuse of process of law. The petition is devoid of merits and it is liable to be dismissed.

7. Accordingly, this Criminal Petition is dismissed. Miscellaneous petitions, if any pending in this Criminal Petition, shall also stand dismissed.

Date: 07-03-2018

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Dr. SHAMEEM AKTHER, J

