HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11127 of 2018

ORDER:

The petitioners are accused Nos.2 & 3 and the 2nd respondent is the defacto complainant. It is on his report, the crime No.246 of 2018 was registered by Bhimavaram II Town Police Station, West Godavari District, registered for the offences punishable under Sections 408 & 420 IPC.

2. It is in seeking quashing of said FIR present petition is filed with the contentions that they are innocent and it is false implication and they never committed criminal offence and so far as the present allegation concerned, it is outcome of subject matter of civil dispute in OS.No.65 of 2018 for bare injunction and the allegations are superficial and false and thereby the continuation of the crime is abuse of process and liable to be quashed.

3. The learned counsel for the petitioners reiterated the same in the course of hearing. Notice sent to 2nd respondent by registered post is unclaimed is a sufficient service. Learned Public Prosecutor representing the 1st respondent-State opposed the petition saying there is nothing to quash the FIR and the investigation shall be allowed to go on for the prima facie accusation.

4. Heard and perused the material on record.

5. A perusal of the FIR contents in the report of the defacto complainant dated 14.07.2018 in registration of the

crime reads that the defacto complainant by name K.Josef Kishore managing partner of SJ Sea Foods of Bhimavaram Mandal, and their entity used to purchase prawn in and around Bhimavaram from prawn cultivators and process them and export to the foreign countries also, the office is at Srinivasa Apartments Balusumudi, they are maintaining a current account with Corporation Bank, Bhimavaram. The A.1 was Polisetti Narayana Rao S/o. Narasimha Murthy of Bhimavaram working as accountant in their entity and the defacto complainant imposed trust on said A1 and even entrusted the empty cheques to him to deal with business transaction. Said Narayana Rao as accountant and from the entrustment to him of the cheque book with signatures using by filling the contents in all the cheques of the company account with Corporation Bank and entering into the account book the said transactions and the account will be finalized every year by December end and Narayana Rao drawing salary of Rs.20,000/- per month and having gained confidence from he committed breach of trust and mischief and cheating and started avoiding, attending of transaction and attending the office from 26.09.2018 with a pretense of suffering from ill-health and when annual account of corporation bank verified the cheque bearing No.388652 of the complainant entity with corporation bank was drawn in the name of Perni Ravi Chandra of Sanga Reddy who when presented at Sanga Reddy Corporation Bank through his SB account for cheque shown given to Rs.95,00,000/- same was encashed from the account of the complainant entity and the complainant received the information of the encashment of the cheque on 04.07.2018 though with Perni Ravi Chandra-A.2, the complainant entity has no transaction and that person is also a stranger to them and on suspicion when enquired the company accountant he pretended as if empty signed cheque might have lost and when enquired with the Bank Manager, Corporation Bank, Bhimvaram, the Bank Manager stated that before passing the cheque for the large amount they verified with the accountant Narayanarao who did not life the phone bearing No.9010822888, which is the phone number while opening Corporation Bank current account that belongs to accountant Narayanarao-A.1 and thereby any messages of clearance of cheques etc., transactions will be received to said registered phone number of Narayanarao and Bank used to consult with that number and they suspected thereby said Narayanarao and when verified the accounts the said cheque transaction was not entered into the accounts and when they questioned Narayanarao it is revealed by him and he and A.2 frequently met at Bhimavaram revealed by complainant's company clerk M.Parasuram, hence to take action against Narayanarao and Ravi therefrom for the offence under Sections 408 & 420 IPC the crime registered.

6. So far as A.3-G.Veeraswami concerned in the said report registered as crime supra, there is no whisper against him, but for against A.1 and A.2 respectively. Said report dated 14.07.2018 is prior to the filing of civil suit in OS.No.65 of 2018 dated 31.08.2018 filed by SJ Sea Foods represented by its MD P.Josef Kishore. The 4 defendants are P.Ravi Chandra-A2, P.Narayana Rao-A1, Corporation Bank, Pothireddypally X Road, Sangareddy Branch-D3 and Corporation Bank, Bhimavaram-D4. The prayer in the plaint for permanent injunction restraining the 3rd defendant Corporation Bank, Pothireddypally X Road, Sangareddy to allow defendant Nos.1 & 2 to withdraw cheque bearing No.388602 for Rs.95,00,000/- and to direct the 3rd defendant to transfer the cheque amount of Rs.95 lakhs from 1st defendant SB account to the plaintiff's account by way of recovery of cheque amount.

7. The law is fairly settled that mere pendency of civil matter or subsequent filing, after FIR, any civil suit by itself not a ground to quash the FIR. So far as the offence of cheating concerned, there must be deception from the inception in causing wrongful loss to the complainant or victim and having wrongful gain by accused or confer on other person by accused. The criminal breach of trust from the entrustment committed abuse including misappropriation, having custody of the property or dominion over the property of another.

8. The allegation in the FIR shows A.1 worked under the complainant's entity a partnership firm as accountant and gained confidence in his working as such as employee supra and out of that for facilitating the firm transaction singed blank cheques for issuing, keeping with A.1 by the complainant's managing partner (defacto complainant's managing partner) and there was entrustment thereby. Once that was the entrustment and committed the breach of trust in not properly using, but issuing the cheque to a person with no due in collusion is nothing but criminal breach of trust. In order to misappropriate the amount of the entity by the employee-A.1 through A2 in whose name the alleged cheque was given and encashed for Rs.95 lakhs and in very giving of the cheque to a person with no due taking advantage of the blank singed cheques with A.1 in favour of A.2 and encashing by A.2 also constitutes prima facie offence of cheating for that intentional deception from the inception does not mean the date of joining as employee by A.1 with complainant entity.

9. Having regard to the above, once there is prima facie case in registration of the crime for investigation which is pending and in progress there is nothing to quash the FIR. So far as A.1 and A.2 particularly among the petitioners/A.2 and A.3 concerned, the accusation made out against 1st petitioner/A2, but for no basis to make accusation so far as 2nd petitioner/A3. Needless to say if at all in future from the investigation if there is an allegation to sustain accusation

that is not a bar to include A.3 also as co-accused. As on date of FIR there is no name of A.3.

10. Accordingly and in the result, this Criminal Petition is partly allowed by quashing the proceedings only against 2nd petitioner/A.3 and dismissed against A.2. A.1 is not party before this Court.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.12.2018
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