

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11603 of 2018

ORDER :

The petitioners are A.1-Takashi Terabayashi, A.2-Roy Kurien Vice President-Sales, India Yamaha Motor Private Limited (for short, 'the IYM') and A.3-Mohan Raj, South Zonal Head, the IYM, in Cr.No.180 of 2018, dt.09.07.2018 of Nalgonda II Town Police Station registered for the offences punishable u/ sec. 418, 420, 425, 427, 120-B of IPC and u/ sec.156(3) Cr.P.C. it is based on the private complaint of the defacto-complainant in C.F.No.314 of 2017 dt.27.09.2017 by name M/s Sri Sairam Motors, Anumanpet, Sagar Bye pass road, Miryalaguda Nalgonda district, represented by Meka Sreepal Reddy, its Proprietor, that was referred to police for registration of crime and investigation by the learned Spl.Judl.Magistrate of First Class(for Prohibition & Excise offences) at Nalgonda. The present petition is impugment of the said crime registered pending under investigation.

2. The sum and substance of the accusation in the private complaint for registration of the FIR reads that he is having dealership of A.1 to A.3 in Anumanpet, Sagar Bypass Road, Miryalaguda, Nalgonda District since 2009 for sales of vehicles of IYM. The A.1 to A.3 are the manufacturers of Bi-wheelers and other products like various parts of bi-wheelers and they are marketed through various dealers throughout India. In order to increase their business in Telangana State, they approached the complainant and requested to accept their offer to act as their dealer in Nalgonda and Miryalaguda Town for which the Complainant accepted. In this commitment, A.1 to A.3 issued letter of intent on 14-07-2009 to the Complainant to open show room in Miryalaguda town in the name and style of M/S Sri Sai Ram Motors, Hyderabad Road, Miryalaguda to run after complying formalities and the complainant running the same. The

Complainant further submits that he made heavy constructions, show room, office, servicing plants etc., and appointed several workers, Engineers, Servicemen etc., and made tremendous progress in expanding business of the A.1 to A.3. Even in the first two years, hundreds of vehicles were marketed by the complainant. On seeing the progress, the A.1 to A.3 also offered him to take dealership in the name and style of M/S Sri Sai Ram Motors, Raghavendra colony, Hyderabad Road, Nalgonda Town also. Trusting the A.1 to A.3, the complainant accepted the same and he was appointed as a Sub-Dealer in Nalgonda Town by the A.1 to A.3 through the letter of intent for branch on 22.10.2011. Later they also granted Yamaha Bike Station (for short, 'the YBS') Sales Project in 2011 to complainant in Nalgonda Town. In compliance with that, the complainant invested huge amounts to set up heavy office and the same are still continuing in Nalgonda branch till today but after that the A.1 to A.3 did not dispatch any bike product and did not communicate anything to the complainant from which he is suffered heavy loss having invested huge amounts for Nalgonda town branch as Sub Dealer. After completing all instalments by fulfilling the conditions and is about to start the business by opening show room at Nalgonda town when approached the accused who promised to wait for two days but for reasons better known the opening function is postponed time to time and suddenly the complainant saw an Ad in Sakshi Daily Newspaper dt.29.10.2017 that the dealer of is Radhika Automobiles, Nalgonda which is against law and from this unilateral action make the complainant to suffer without dispatching of bikes from 2014 August, made the complainant to send detailed note the A.1 to A.3 on 13.06.2017 requesting payment of Rs.1,69,27,412/- due to the complainant by the accused 1 to 3 incurred by spending from the promise of A.1 to A.3. the complainant's agency was terminated by the A.1 to A.3 surprisingly on 04.03.2017 from which wherein supplying two wears spare parts in Miryalaguda still the bike servicing is

being done for customers on A.1 to A.3, the accused are raising false allegations and to make defamatory statements right from their letter dt.21.05.2017 and the act of termination of dealership by the accused is against law, practice and principles, without opportunity calling for explanation and without basis. The accused persons 1 to 3 seems to think of appointing arbitrator of their choice, thereby liable for prosecution for the offences supra.

3. The contentions in the quash petition while repeating the facts covered by the complaint paras-1 to 5 with reference to Annexures-1 to 4, from para-6 to 22 with 31 grounds are that the leaned Magistrate's referral order for the police to investigate u/sec.156(3) CrPC on the private complaint of the complainant when no cognizable offence made out is unsustainable. the dispute is purely civil in nature, the FIR is liable to be quashed, the complaint allegations if at all from the dealings with the company to which the petitioners are employees, liable to be quashed leave about the FIR allegations covered by the private complainant no way disclose any offence even against the IYM that the dealership agreement, dt.07.09.2011 provides any dispute to be dealt with by arbitration to resolve particularly from para-32 clauses 1 to 3 of the agreement, what the complainant could not have been added falsely criminal flavour to the civil lis prone to arbitration for adjudication at best, pursuant to the agreement having been done in 2009 by the IYM as its dealer from his poor performance failed to adhere to the terms and committed breach and did not place any order for supply of orders and spare parts since August, 2014 which made the IYM to terminate the dealership of the complainant in the year 2017, for which the complainant cannot attribute any fraudulent or dishonest intention to deceive including from the letters of intent and dealership agreement respectively of the year 2009 and 2011, the termination notice, dt. 04.03.2017 and letter dt.21.05.2017 to confirm the

ledger balance lying with the IYM to remit Rs.2,49,542/- due and payable to the complainant for which he failed to give confirmation and had it been remitted for which no criminal liability can be fastened and thereby the continuation of proceedings is nothing but abuse of process and to subserve the ends of justice, the FIR is liable to be quashed for no intention of cheating or mischief or criminal conspiracy to commit any of the offence made out as judicial process would not be an instrument of oppression and the learned Magistrate should have been found out whether there is any responsibility and duty against the accused persons-officials of the Company to charge them even referring to the police for investigation by registration of crime as if there is a cognizable offence and the criminal proceedings cannot be allowed to be initiated by converting civil dispute with criminal flavour.

4. The track record shows notices by personal service ordered sent by the petitioners/accused by registered post returned as unclaimed is sufficient service besides receipt sent by DTDC courier filed showing 2nd respondent/complainant failed to attend is taken as heard and heard the learned Public Prosecutor for the 1st respondent-state and the learned counsel for the petitioners supra who reiterated the above contentions in the course of hearing and the learned Public Prosecutor opposing the same saying the crime requires investigation and there are no grounds to quash the proceedings and sought for dismissal and also perused the material on record.

5. In the private complaint, the A.1 shown was the IYM represented by its Managing Director Takashi Terabayashi, Corporate office, Industrial area Noida-Dabri Road, Surajpur, Ghaziabad nagar, Uttar Pradesh. A.2 is the IYM represented by Sales Vice President Roy Kurien, TVH Beliciaa Towers, Tower-I, MRC Nagar, Chennai and A.3 is the IYM represented by South Zonal

Head Mohan Raj, TVH Beliciaa Towers, Towre-1, MRC Nagar, Chennai. In the quash petition, it is individually arrayed as if they are individually accusationed. It is represented by the officers who are accusationed and entity is also the accused thereby they are representing the entity in different capacities as the 3 accused persons. It is not the case in the quash petition that they are not holding said positions representing the entity. It is not even a case that the entity was not arrayed as accused and thereby there could be no vicarious liability without impleading the entity, to array them personally for not arrayed personally but the entity arrayed by them in various capacities as referred supra and at the cost of repetition. Thereby one of the contentions that they were only officers and if at all the entity is liable and could not have been impleaded is not tenable.

6. Coming to the merits as to any of the offences made out against the entity and the officers representing the entity arrayed as A.1 to A.3 in their representing the entity in such capacities in seeking to quash from the very complaint which was referred to police for investigation by learned Magistrate among 19 documents of the complaint signed on 27.09.2017 Doc.15 is the office copy of the police complaint given to the Station House Officer, Nalgonda Town Police Station DSP and SP respectively with proof of sending by postal receipt covered by document No.16 and one of the guidelines of the Apex Court in Priyanka Srivastava Vs. State of Uttar Pradesh¹ complied with the referral order of the learned Magistrate u/ sec. 156(3) CrPC referring to the complaint to police for investigation by docket order, dt.30.04.2018 reads *“Complainant absent. Heard the complainant counsel. On perusal of the complaint, it is found that complainant has filed report before the SHO and SP and no action has been taken. On verifying of documents, it reveals prima facie case. Hence, the complaint is referred to concerned police under Sec.156(3) Cr.P.C. for investigation and report by*

¹ (2015) 6 SCC 287

03.06.2018.” Once it applied its mind and reflects, though the order is very short, about hearing and perusal of the complaint and the documents which shows there is nothing to find fault the order of the learned Magistrate that the same is not outcome of non-application of mind even though the merits in complaint are not discussed. The law is fairly settled in Constitution Bench expression that mere omission to give reasons is no way fatal to quash the order of cognizance taken, if otherwise it is sustainable from perusal of the material on record and showing the order is outcome of non-application of mind, as laid down by this Court in N.Srinivasan Vs The State - CBI² at paras-51&52, referring to the three Judge Bench expression in Sunil Bharti Mittal Vs The State-CBI³ and Four Judge Bench expression in Sarath Mathew Vs IOCVD⁴. Thus it is only to be seen whether the referral order is outcome of application of mind to the facts or simply referred saying as if heard and perused and makes out a prima facie case though not makes out any such case. It is not even a case of no affidavit filed by the complainant along with the private complaint as per the guidelines of Priyanka Srivatsava supra.

7. Thus coming to the merits and to make out any prima facie accusation of cognizable offence against the entity represented by the respective quash petitioners as accused in registration of the crime and for its investigation pending, the complaint para-7 speaks the dealership agreement was of the order 2009 covered by letter of intent issued on 14.07.2009 to the complainant to open show room in Miryalaguda town in the name and style of M/s Sri Sai Ram Motors Proprietary concerned of the complainant M.Sripal Reddy. There is nothing to say in the complaint as to from the inception of entering into the dealership agreement with the IYM and its officers, they acted with dishonest intention to deceive the

² CrLP.7584 of 2015, dt.18.03.2016.

³ (2015) 4 SCC 609

⁴ (2014) 2 SCC 62

complainant which is pre-requisite to attract the offence of cheating either u/ sec.418 or 420 IPC. The complainant in para-7 of the complaint averred that the complainant is running a show room in Miryalaguda since 2009 successfully by complying with the required formalities to the letter of intent of the dealership agreement. So far as the subsequent acts and events till filing of the complaint dt.27.09.2017 concerned, the para-8 of the complaint clearly spelt out that from the letter of intent and dealership agreement, the complainant invested huge amounts in construction of the show room for dealership in Miryalaguda for the two wheelers of the IYM and spare parts, also constructed the show room office and servicing centre as part of it with employees and in the first two years hundreds of vehicles were marketed by the complainant that were supplied by the IYM. To that extent, it is crystal clear of business went smoothly after its commencing for two years. What he stated in para-9 of the complaint that he invested huge amount hoping for Nalgonda Branch dealership since 2011 and from there is progress in the business by him, the accused offered to give Nalgonda town dealership with self-same name and style with trust and he accepted and received letter of intent on 12.02.2011 wherein granted Yamaha Bike Station Sales Project in 2007 to the complainant in Nalgonda Town. The accused did not dispatch any bike for sale so also service and spare parts from which he suffered loss in saying for Nalgonda Branch he invested since October 2011 from the letter of intent and promise of the accused and even the complainant approached the accused, they were postponing to open the branch at Nalgonda and suddenly from the Sakshi Daily newspapers dt.27.03.2017 it disclosed the dealership for Nalgonda town was given to Radhika Automobiles Nalgonda, in an Unilateral way which is sum and substance of the accusation, thus undisputedly the Miryalaguda dealership was terminated in 2017.

8. The agreement for dealership dt.07.09.2011 between the IYM and the complainant proprietary of M/s Sri Sai Ram Motors speaks a dealership is only for Miryalaguda city to locate the showroom at Sagar bypass road Miryalaguda of Nalgonda district. Clause 14 permits and terminations speak agreement comes into effect from date mentioned as 07.09.2011 in the agreement valid only for three years and extension is subject to future terms and conditions by the IYM to the dealer two months prior to the expiry of the above three years period from which it is crystal clear of the dealership agreement is only for three years undisputedly executed by them bilateral contract inter se pursuant to the earlier letter of intent of 2009 for Miryalaguda dealership and there is no any assurance to consider automatically much less to claim as of right much less to complain the termination of Miryalaguda dealership in 2017 after six years from 2009 with no second renewal from the expiry of original period of three years first renewal of three years, tantamounts to any criminal offence of cheating or mischief much less outcome of conspiracy among the officials of the IYM.

9. No doubt, as per the condition No.32, there is a provision for resolution of disputes by Arbitrator however that clause will not absolve from criminal liability otherwise there is any criminal liability. Thus so far as the Miryalaguda area dealership concerned, there is no any criminal offence made out from the business continued from the inception for six years and later not renewed. Mere renewal no way even constitutes breach of contract or mischief much less any offence of cheating or mischief to fasten criminal liability even for the Magistrate to refer the complaint to police for no cognizable offence prima facie made out in this regard so far as termination of Miryalaguda area dealership. Next comes to Nalgonda town so far as dealership promise covered by letter of intent dt.22.10.2011 communicated by the IYM through the officials who are the accused from which he investigated huge amounts according to him they failed to give

dealership where that is a part of deception of cheating by luring the complainant to invest and by causing damage and loss with that mischief from invested made believing their words and same not mere breach of contract to prone to criminal liability. What the complaint from para-8 and 9 supra and further upto 10 of the complaint referred to police in registration of the FIR speaks further is that due to the unilateral arbitrary action of the accused-the IYM having given letter of intent dated 22.10.2011 for Nalgonda area dealership from which he constructed the show room by investing huge amounts including for sales and service counters and service stations, their action is illegal for they not even dispatching any vehicles since August, 2014 even show room made ready at Nalgonda by incurred huge amount. It is his say therefrom on 13.06.2017 requested payment of Rs.1,69,27,412/- as incurred by complainant from said letter of intent and promise for Nalgonda dealership from which he invested and incurred loss.

10. Out of 19 documents shown in the private complaint, Doc.No.3 is the e-mail copy of Nalgonda dealership letter of intent dt.22.11.2011 as the Doc.No.7 is e-mail copy of Nalgonda dealership completion report and Doc.No.9 is copy of letter dt.21.05.2017 sent by the accused to the complainant, Doc.No.13 is legal notice of complainant dt.07.08.2017 and Doc.No.17 so called lease between the Ateeq Ur Rahaman and the complainant dt.23.09.2011 for usage of the property to establish showroom and the same along with some others shown in the quash petition as Annexures P.1 to P.14. Coming to Annexure P.6-dealer sale agreement dt.07.09.2011 which is only for Miryalaguda area showroom and not for Nalgonda area dealership. Coming to Annexure P.7-letter of intent for Nalgonda dealership dt.22.10.2011 which was addressed by Director and Chief Sales Officer J.Nakata for IYM referred as letter of intent saying pursuant to the complainant's letter dated 22.09.2011 for permission to open dealership branch at Raghavendra colony, Nalgonda under main

dealership of Miryalaguda by way of letter of intent in permitting to operate dealership branch at Nalgonda and main dealership of M/s Sri Sai Ram Motors and to make successful completion of action plan before 21.12.2011 and communicate to the satisfaction of the IYM. It is mentioned as this is on non-exclusive basis and after successful completion of action plan, the complainant have to report completion with proof of photographs and certification as per the IYM guidelines for the officials to visit and verify and if terms and conditions not fulfilled, to proceed further. It speaks in case of failure to comply with the action plan by 22.12.2011, the letter of intent automatically be withdrawn without further notice and action by the IYM and in such a situation, the complainant is not liable to claim for any expenses incurred, development and marketing costs, construction and interior costs, infrastructure costs, loss of profit, damages, compensation etc. in any manner whatsoever by the IYM in respect of branch or otherwise. The complainant is also signatory to it undisputedly at every page. Coming to the letter issued by the IYM dt.30.06.2012 permitting to open dealership branch at Raghavendra colony Nalgonda, it speaks as per the action plan supra granting permission allowing to open dealership branch at Raghavendra colony, Nalgonda, subject to the terms of Letter of intent, Dealer Sales Agreement or any subsequent agreement with the company and with conditions that the complainant to operate the dealership branch under the existing dealership code No.128.90, the permission shall not be construed as a permission to start a new dealership and given purely on adhoc basis keeping in mind the correct requirements and complainant's request and the company shall have sole authority to take the decision of closing the Dealership Branch which the complainant shall accept unconditionally and in case, the company decides to set up a new dealership in the same area, the complainant unconditionally close the dealership branch. Once such is the case, it is one of the conditions

indicated to the complainant on 30.06.2012 itself clearly shows it is a non-exclusive basis so that any dealership for Nalgonda may independently be given and even therefrom whatever the dealership given to Radhika Automobiles for Nalgonda no way tantamounts to cheating or mischief or criminal breach of trust and so far as the letter of intent dated 22.10.2011 mutual outcome to continue a sub dealership at Nalgonda in the name and style of main dealership at Miryalaguda and if the Miryalaguda branch continues for Nalgonda branch also to continue irrespective of another dealer Radhika Motors appointed is crystallized from terms of letter of intent dt.22.10.2011 however that itself cannot be a sole ground to fasten criminal liability that too on 04.03.2017 by letter of IYM addressed to the complainant that the very dealership of Miryalaguda with Code No.128.90 was terminated.

11. As discussed supra the Miryalaguda area dealership continued since 2009 and the complainant himself stated did business and shown progress and from which permitted to run with the name and style a branch at Nalgonda area also though not exclusive one and will not prevent the company to give any dealership to others for Nalgonda but that by itself will not terminate Nalgonda branch of complainant so long as main dealership of Miryalaguda continues and it is not the case that main dealership of Miryalaguda continues and for Nalgonda it was terminated with dishonest intention. The very Miryalaguda dealership permitted for Nalgonda branch also covered by main Miryalaguda dealership, automatically terminates and if at all there is any liability, it is only for arbitration or otherwise of civil liability from same is a dispute of civil nature and cannot attract any of the offences of cheating or mischief and thereby the FIR is liable to be quashed without prejudice to available civil recourse to the complainant against the entity and the officials of the IYM.

12. In the result, the Criminal Petition is allowed by quashing the proceedings in Cr.No.180 of 2018, dt.09.07.2018 of Nalgonda II Town Police Station against the petitioners/ A.1 to A.3. They are acquitted and their bail bonds shall stand closed. Consequently, miscellaneous petitions, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:15.12.2018

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