HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11622 of 2018

ORDER:

The petitioner is the sole accused in crime No.15 of 2018 of Saifabad Police Station, Hyderabad, registered on the report of the 1st respondent entity on 08.01.2018 for the offences punishable under Sections 406 & 420 IPC. It is the said crime seeking to quash the present petition is filed.

2. The sum and substance of the accusation in registering the crime is that the accused allegedly committed white collar offence of cheating and breach of trust from the facts of the complainant entity entered into agreement with accused proprietary concern for providing letter of credit of Rs.13.50 crores on commission and service charges of 8% payable in 2 installments that is 2% as commitment amount on the agreement dated 15.02.2017 and balance 6% within one week from the time of letter of credit accepted by beneficiary at Singapore which is the object of contract to facilitate M/s. KPR Agro Chem Limited to import sulphur from Singapore and the letter of credit was required to be issued in favour of M/s. Swiss Singapore Private Limited having accounts with DBS by M/s. Synergy Solutions Holdings Private Limited through Standard Chartered Bank or Bank of Baroda with whom the issuer has supposedly had credit limits. The accused firm i.e., Adroit Financial Services thereby undertaken to act as advisor-cum-facilitator to obtain letter of credit of Rs.13.50 crores for 180

days on commission of 8% of the value of the letter of credit in saying 2% = Rs.27,00,000/- received by accused as upfront money in entering agreement for providing L.C. on 15.02.2017 and accused also entered another agreement of non-circumvention, non-disclosure and working agreement dated 14.02.2017. Having undertaken to provide the LC within 13 days therefrom he was required to pay back 2% commission received in case of failure for which he issued the cheque No.316432 by wrong mention of 316431 having failed to arrange letter of credit within 30 days time by 15.03.2017 was dodging. As a result the complainant company lost invaluable contract of Rs.14 crores and was required to pay substantial amount as damages to beneficiary company besides loss of prestige and honour. It is averred accused failed to perform his part of the contract within one month time and for the refund of the 2% commission received issued the cheque, the same when presented returned dishonoured as stop payment from the bank endorsement dated 02.05.2017 for which accused addressed letter dated 31.05.2017 enclosing cheque 316444 asking to present the cheque after 12.06.2017 and when presented on 29.08.2017 returned as instrument is outdated on 30.08.2017 and accused issued another cheque 349749 dated 20.09.2017 when presented on 14.12.2017 returned as drawers signature differs. It is thereby accused allegedly cheated the complainant in charging Rs.27,00,000/- as 2% upfront commission taken on 15.02.2017 from the defaults committed and not only that by promised to arrange cash credit failed to do, hence to take action for the offences.

3. The contentions in the quash petition are that the agreement entered to provide letter of credit value of Rs.13.50 crores is subject to terms referred supra to facilitate by M/s. KPR Agro Chemical Private Limited to import sulphur from Singapore and LC to be issued in favour of M/s. Swiss Singapore Private Limited having account with DBS Singapore by M/s. Synergy Solutions Holdings Private Limited through Standard Chartered Bank or Bank of Baroda from the very case of complainant where the petitioner/accused undertaken to act as advisor-cum-facilitator to obtain the LC within 30 days from the agreement dated 15.02.2017 and even for the upfront amount cheque issued. In fact all the allegations are a false story with untrue by false implication. The petitioner was introduced to defacto complainant by one Bhauddin Qammar, member of Human Rights Commission acquainted with petitioner in business in October 2016 and there was at least 10 meetings till January 2017 with various proposals and assignments and there were phone conversations and mails with Mandeer Thaur, Director, Hyderabad and Switzerland Director Sridhar Dasari. Expression of interest was issued by his firm for monetization of letter of credit. The complainant entity wanted LC for Rs.13.50 crores in favour of Singapore Company to import sulphur for M/s. KPR Agro Chem Limited. The assignment was undertaken normally a margin of 10% LC

value and 100% value on LC security be given. The petitioner entered the agreement with complainant on 15.02.2017 to process the LC and swift message to be made ready and 2% cost was advanced as per the agreement therefrom. There was a non-conditional clean LC issued which will expose risk of claim and loss for Rs.13.50 crores if repayment was not honoured and accused processed the LC from IOB, Hong Kong to DBS Bank forming Swiss Singapore overseas Enterprises Private Limited and it was completed on 13.03.2017 within 30 days of MOU and accused addressed letter dated 17.02.2017 with expression of risk mentioned as M/s. KPR Agro and defacto complainant had Rs.132 crores of outstanding for LC and Rs.72 crores for trade payable and he insisted for security and guarantee from M/s. KPR Agro as their credit rating was poor and he was informed that Rs.40 lakhs transferred to defacto complainant between 10.02.2017 to 15.02.2017 for LC and also Rs.100 lakhs and above for financing services to complainant by KPR Agro. In the process of time, the accused approached management of KPR directly and secured time as they were undergoing stress with their bankers i.e., Andhra Bank as informed by AGM at Kakinada. On 07.03.2017 a mail was sent to complainant where risk of security was exposed and alternate financial products discussed. The petitioner addressed email, messages to Chief Operating Officer of KPR Agro including on 27.03.2017 with all the issues and risk of complainant was creating and to complete the documentation to avoid risk. On 11.04.2017 also he addressed another letter to complete the documentation and also visited Kakinada and cautioned money laundering risk. On 17.04.2017 accused met Directors of the complainant at Hotel Mercure, Hyderabad and said that 2% cannot be refunded as it can only be adjusted for other services as security as per clause (d) and clause (6) of the agreement. The so called cheque issued was from the force exercised by the complainant and all communications given are to adjust the amounts against performance of the agreement or any other assignment that was avoided by complainant and KPR Agro. The cheque given as security cannot be misused. The complainant and KPR Agro did not cooperate for giving proper assistance by complainant for which the accused cannot be find fault and he did not commit any criminal breach of trust or cheating.

4. Even though notice served on the 1st respondent, failed to attend, hence taken as heard and heard learned counsel for the petitioner and learned Public Prosecutor representing the 2nd respondent-State and perused the entire material on record.

5. From the above, even taken on face value of the entire report registered as crime supra there is no any offence of criminal breach of trust under Section 406 IPC for no any entrustment. It is a contractual deal for arranging letter of credit and not even a case of no effort made, but if at all not successful and whatever the amount of 2% paid as upfront amount whether refundable or not is an issue pursuant to the contractual terms. Even taken it can be refunded and cheque

issued was dishonoured, so far as the alleged offence of cheating is not for cheque issued was returned dishonoured and in giving cheque with dishonest intention but entering the very agreement to arrange LC, on 14/15.02.2017. There is nothing to say any dishonest intention from the inception to attract the offence of cheating but for breach of contract at best that too when the efforts made for arrangement of LC process it cannot be said dishonest intention is from the inception of the arrangement/agreement dated 15.02.2017 to arrange LC. Once such is the case, there is no any offence of cheating but for any civil liability and for breach of contract.

6. Accordingly and in the result, this Criminal petition is allowed and the proceedings against the accused are hereby quashed in crime No.15 of 2018 of Saifabad Police Station, Hyderabad, accused is 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: 20.12.2018
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