

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11830 of 2018

ORDER :

The petitioner-U.Venkateswara Rao is A.1 among 6 accused in C.C.No.355 of 2018 on the file of V Addl.Judl.Magistrate of First Class, Nellore, outcome of a private complaint of the 2nd respondent-complainant-Utukuru Babu, Joint Managing Partner of M/s Shanthi Stage Decorators, Nellore represented by General Power of Attorney Holder, Varigonda Vijaya Shankar, Nellore town, in C.F.No.548 of 2016 dt.10.04.2016, taken cognizance by the learned Magistrate, for the offences punishable u/ sec.406,468,471 and 420IPC. The same is the impugment herein.

2. The contentions in the quash petition are that in the private complainant it is alleged as the complainant and the A.1 are brothers and partners in the business concern from 2008 covered by partnership deed, dt.01.04.2008, huge amounts were invested and material and decorative items were purchased to run business as a leading hirers and decors in Nellore town, the A.1, taking advantage of the relationship out of affection from the complainant, majority of material purchased in his name jointly to cover the misdeeds and ulterior motives and the firm has got huge assets of both immovable and movable. From the profits and earning from the business, the A.1 intended to invest in other business in maintaining Marriage Function Hall. Though the complainant hesitated to run such huge venture when already they are in the business of catering the function halls being the main suppliers in Nellore town, the A.1 obtained a lease on the property for developing the land into commercial function hall and without approval of the concerned authorities erecting temporary constructions for performing public functions and began to take advances from the public against public safety which made the complainant to approach the High Court by Writ Petitions vide W.P.Nos.33002 and 34033 of 2014 where interim order to seal

the function hall was passed on 03.11.2014. A.1 with an evil design corrected the lease deed dt.07.01.2014 as 07.11.2014 and got it registered. The other accused among 1 to 5 are the witnesses to the document. The A.1 removed the entire property of business firm and stealthily shifted to the place of one Varikunta Geethamma of Ongole town who runs function hall in the name of Abhinaya Function Hall. The A.1 due to his illegal activities caused loss to the complainant in the business where invested huge amounts. It is averred that the complainant filed private complaint and the learned Magistrate issued process directly therefrom without even considering the acts as to any offence of cheating or forgery for the purpose of cheating or using a forged document much less any breach of trust is made out or not even on the face value of the allegations taking them as if true. Thereby the cognizance proceedings are liable to be quashed. It is also mentioned that the A.1 filed O.S.No.472 of 2014 on the file of the Junior Civil Judge, Nellore prior to the filing of the private complaint supra against the complainant and his GPA Holder and the suit for permanent injunction decreed in favour of A.1 and by the said adverse result against the complainant, the present false case in the private complaint is set up and the same is thereby liable to be quashed.

3. Heard both sides. The learned counsel for the petitioner who reiterated the same and also heard the learned Public Prosecutor for the 1st respondent-State. Whereas the learned counsel for the 2nd respondent-stated that there is a prima facie case and nothing to interfere with the Calander Case proceedings and the cognizance order of the learned Magistrate.

4. On perusal of the private complaint with reference to cognizance order, it shows on 16.03.2017 sworn statement of the complainant was recorded and posted for further evidence of complainant and on 13.04.2017 sworn statement of P.W.2-K.Ravi Kumar among three witnesses cited in the private complaint, was recorded and it was while coming for consideration

on 21.03.2018, the cognizance order is passed which reads as '*Perused the complaint contents and sworn statements of complainant and K.Rakumar, along with documents in showing a prima facie case against the accused thereby taken cognizance for the offences punishable u/ sec.406, 488, 471, 420 and 120-B IPC in ordering to issue summons to the accused. Call on 30.04.2013*'.

5. The 9 documents referred in the private complaint are viz: unregistered partnership deed between the complainant and the A.1-petitioner herein dt.01.04.2008, notice issued to the A.1,dt.21.11.2014, lease deed, dt.07.01.2014 entered by A.1 with A.5, unregistered partition deed between the complainant and the A.1, dt.10.02.2014, orders dt.03.12.2014 of passed by the High Court in W.P.Nos.33002 and 34033, registered lease deed with corrections, dt.04.12.2014, First Information Report in V town Police Station, Nellore by complainant, rejected BRS application dt.17.03.2016 for construction in the lease property by the Commissioner NMC, Nellore and the GPA dt.30.10.2014 given by the complainant in favour of V.Vijaya Sankar. The learned Magistrate did not even refer any of the above documents and not even refer what are the contents of the sworn statement of the complainant and another witness K.Ramkumar in passing the cognizance order but for merely shown those were perused. No doubt, the order if otherwise sustainable and once shows conclusion arrived even not supplied with the reasons, outcome of application of mind to the material mere non-assigning reasons no way by itself fatal particularly from the 4 Judge Bench expressions of the Apex Court in *Sarath Mathew Vs IOCVD*¹. From the above, now coming to the accusation in the private complaint vis-à-vis statements of L.Ws.1 and 2 concerned, there is a partnership between the complainant and the A.1, the brothers, dt.01.04.2008 without mentioning any description by purchased

¹ (2014) 2 SCC 62

decorative items as leading hirers and decorators in Nellore Town but what is averred is A.1 taken undue advantage of the complainant's affection towards the A.1 being brother in getting the property of the firm in his name which is with huge immovable and movable properties.

6. The other document is from the profits of said decors business, the A.1 stated to invest in other business to maintain Marriage Function Hall, for which the complainant accepted unhesitatingly and for that purpose, A.1 obtained property on lease which is a land to develop commercial function hall therein that lease was taken from A.5-Sri Kasturi Devi Vidyalaya Committee, Nellore represented by its Treasurer J.V.Reddy for 5 years commencing from 01.04.2014 to 31.03.2019 on rent of Rs.22,00,000/- (Rupees twenty two lakhs only) as mentioned in lease deed dt.07.01.2014 and it is further averred that after obtaining lease by A.1 from A.5, the A.1 convinced the complainant to continue the partnership in the leased property also saying the investment is derived from their joint business concern and on the agreed terms and conditions for the 50%sharing expenses and profit and loss from the business in the property, both entered into subsequent unregistered partnership agreement, dt.10.02.2014. What all further stated is in the said partnership deed, it was agreed of no partner can take of own decision without consent of the other in writing on the development of the leasehold property and the A.1 did not account for the amounts received from the customers against supply of material to the functions which is around Rs.1,63,15,000/- (Rupees one crore sixty three lakhs fifteen thousand only). It is stated that the said Kalyana Mantapam is in busy locality and requires clearance for the construction to undertake and the A.1 against public safety started business by erecting temporary constructions and the approached the High Court in Writ Petitions supra and obtained interim order to seal the premises and the A.1's BRS (Building Regularisation Scheme) application filed was stated rejected by the Nellore

Municipality for the construction of function hall. So far as these facts concerned, there is nothing to show any forgery for the purpose of cheating or using as genuine of forged document or any offence of cheating or any criminal breach of trust. It is only at best not properly accounted for the income. What all stated is among 9 documents, Doc.No.2 notice issued to the A.1 but there is no proof of service and there is no mention of any reply given or not. The matter is predominantly civil in nature. Even for the GPA holder of the complainant to file the complaint or to give statement he was not a party to the partnership transactions. It is not the case that the partnership entered is by the GPA of the complainant with the A.1 but in fact by the complainant and the A.1 directly together. The GPA holder cannot speak the case personally known to the principal but for facts personally known to him. Leave it as it is. What of the date in the lease deed of 07.01.2014 altered as 07.11.2014 concerned, the complainant is not a party admittedly to the said lease which was registered on 04.12.2014 only between the A.1 and A.5. It is not even a case that it is a forged document to cheat the complainant. At best the argument developed in the course of hearing the petition by the learned counsel for the complainant is that the document from the date of execution to be registered within four months and later cannot be from the wording of Sections 23 to 25 of the Registration Act. From that there is no any of the offences of forgery or forgery for the purpose of cheating the complainant or any breach of trust and cheating that attracts against any of the accused but for if at all a document which could not have been registered was registered, any grievance by the registration department and nothing but questioned by the A.5, the other party to the document that the A.1 and among A.2 to A.4 even attested or scribed the so called document including for identification before the Sub Registrar cannot be prosecuted for the alleged offences. The A.6 is Sub Registrar who made bona fide registration cannot be found fault. The learned Magistrate not

considering the scope in this regard has no bearing to the offences alleged against the complainant by the accused in taking cognizance on other aspects at best there is only offence of criminal breach of trust if at all not accounted for the amounts of partnership realised by the A.1 in the partnership business in the year 2008 originally entered so far as subsequent partnership dt.10.02.2014 completing construction was closed and not regularised to construct function hall and there was interim order in Writ Petition to seal and not earned any profits. What all the notice issued by the complainant to A.1 was on 21.11.2014 and there is nothing to show right from the original partnership deed, dt.01.04.2008 any criminal breach of trust between the partners much less any worth averment from the inception of entering the partnership deed on 01.04.2008 showing A.1 got intention to deceive and deceived therefrom and as to in what manner.

7. Having regard to the above when the dispute is predominantly of a civil nature and even mere breach of contract will not attract any of the offences as held on similar facts of the partnership hotel business among the partners by the Apex Court in *Paramjeet Batra Vs. State of Uttarakhand*². Hence, the cognizance proceedings of the learned Magistrate are liable to be quashed.

8. In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.355 of 2018 on the file of the V Addl.Judl.Magistrate of First Class, Nellore, against the petitioner/ A.1 and he is acquitted. His bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:19.12.2018
vvr

² (2013) 11 SCC 673