HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.11954 of 2018

ORDER :

The petitioner is A.2 among two accused. A.1 shown in abscondance. The petitioner/A.2 is no other than the brother of A.1. The *de facto* complainant is the 2nd respondent. The petitioner/A.2 is Manager of Kotak Mahindra Bank. The *de facto* complainant is shown as resident of Yellareddyguda, Hyderabad, a software engineer. Crime No.167 of 2010 was registered on 15.07.2010 by the CCS (WCOT.II) Police Station, Hyderabad, for the offences punishable under Sections 420, 406, 468 and 471 IPC from the report of the 2nd respondent-*de facto* complainant and the police after investigation by examining besides the *de facto* complainant and his wife, the so-called victims as LWs.1 and 2, and the Manager of Axis Bank, Green Lands, Begumpet Road, Hyderabad and Senior Manager of HDFC Bank Limited, Balanagar Branch as LWs.3 and 4, for LWs.5 to 8 are the Investigating Officers, who registered the crime as Crime No.280 of 2010 of S.R. Nagar Police Station and later the CCS, DD, Hyderabad, re-registered as Crime No.167 of 2010 and the other Investigating Officer of CCS, DD, Hyderabad, who investigated and filed the charge sheet. It is therefrom the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, Nampally, has taken cognizance against both the accused for the offences supra. It is impugning the same, the present quash petition is filed.

2. The sum and substance of the accusation in the report of the *de facto* complainant in registration of the Crime on 12.03.2010 shows that

one Vishwa Prasad Dontikurthy/A.1 of Lemarthi Village, Visakhapatnam District, is related to the *de facto* complainant/K. Ghana Syam. The *de facto* complainant's father-in-law/V.Ramana Murthy is a retired Secretariat employee staying at Vanasthalipuram. A.1 came in contact with the *de facto* complainant in 2006, having came to Hyderabad in search of job, later stated got job in Microsoft and shown a I.D. card by saying soon after training he would be abroad and his marriage was fixed to a girl working in IBM and after few weeks he stated the marriage postponed and his tour abroad was deferred and he stayed in the house of the *de facto* complainant for a few months during 2006 and 2007 moved to Flat No.206 of Sireesha Apartments, Yellareddyguda, Engineers Colony. There A.1, misrepresented of he knew many realtors in Vizag and doing real estate business and asked money stating would fetch good returns on the real estate investments and made believe the *de facto* complainant in cause advancing Rs.32 lakhs time to time during 2006 to 2008 and A.1 deposited some of the said amount in the account of the petitioner/A.2/Mr.Dharma Raju and when he was requesting him to show the details of real estate and documents of property purchased since 2007, he was postponing and dodging. Later, A.1 issued cheques for Rs.1,00,000/- and Rs.4,00,000/- respectively of HDFC Bank, that were returned dishonoured and one more cheque for Rs.2.5 lakhs issued by Dharma Raju/petitioner/A.2, brother of A.1, was dishonoured for not tallying the signatures and thereby alleged as cheated. It is stated on *de facto* complainant's persuasion, A.1 mislead him with a different story stating he purchased some properties in the name of in-laws in Lemarthi village and by using some amount he purchased property and shown a forged Encumbrance Certificate and forged plot documents said to have been issued by Government authorities and introduced some persons as potential buyers and on enquiry about A.1, he came to light of connivance of A.2, he took the *de facto* complainant's hard earned money and what he borrowed from relatives and diverted for self with false pretences as if big entrepreneur, rich person and employee of Microsoft later Yahoo and cheated and deceived by using forged document.

3. As per the *de facto* complainant during his statement in addition to what is mentioned in the F.I.R., A.1 and A.2 mis-represented to invest money in real estate in Vizag, their native place, by A.1 forced and pretended of knew many real estate agents to buy plots for him and *de facto* complainant and having made believe to get good returns to invest and lured him of purchasing properties in and around Lemarthy Village and promised that there will be no risk in the investments and his money will be safe, from which he invested Rs.32 lakhs during September 2006 to July 2009 by mentioning the amounts paid some in cash and some from Citi Bank during 2007 and some from Axis Bank during 2006 and 2008 and some paid through Demand Drafts or cheques and A.1 after receiving the amounts as 67 items in all on different dates till 2009, transferred some amounts to the account of A.2 and at the instance of A.1, the *de facto* complainant deposited two or three amounts to the

relatives i.e., Mahesh, Surya Prakash and Sarala Devi and shown fake and false plot allotment certificates 18 in number in favour of *de facto* complainant's mother-in-law and father-in-law and he deceived including by pretending one Sujatha, a Microsoft Company employee, and one Venkateswara Rao, M.R.O., Parawada, Vizag, and the fake ID cards of working initially in Microsoft in later in Yahoo and A.2 is also hand in glove with A.1 and the cheques issued by A.1 for Rs.1,00,000/- and Rs.4,00,000/- returned dishonoured and one cheque issued by A.2 for Rs.2.5 lakhs No.568450 of ICICI Bank also dishonoured for signature different. LW.2 is wife of LW.1/*de facto* complainant , LW.3-Sangamitra, Assistant Manager, Axis Bank, regarding cheques dishonour and amounts remitted to A.1 account reveal from the account of LWs.1 and 2 and LW.4-Sudhakar Reddy, Senior Manager, HDFC, showing of A/c.No.07001020000297 belongs to A.2 M. Dharma Raju, LW.5-Joint Sub Registrar, Sarbavaram, regarding verification of records of the Encumbrance Certificate. So far as the petitioner/A.2 concerned, from the investigation only one cheque issued for Rs.2.5 lakhs from the account of A.2 that was dishonoured as signature not tallying and that that account belongs to A.2. There is nothing to show any of the amount directly remitted by the *de facto* complainant and his wife to the account of A.2. There is nothing to show A.2 lured in any of the transactions, but for if at all in the transactions and cheating by A.1, A.2 is also privy. There is nothing to show A.2 forged any document or using as genuine a forged document to attract Sections 468 and 471 IPC. There is nothing to show any amount entrusted to A.2 by the *de facto* complainant or any property or dominion over property to attract criminal breach of trust, but for what all amounts entrusted to A.1 amounts pretence to do real estate by purchase property in the name of the *de facto* complainant's family members and in-laws. It is hardly believable of there is a criminal conspiracy from any amount remitted by A.1 from his account to A.2, for A.2 happened to be his brother or for any cheque from the account of A.2 issued by A.1 that was returned dishonoured as signature not tallied. Even for the argument sake there is any undertaking for what is due by A.1 for any portion to liquidate by A.2 that itself no way constitutes the offence of cheating against A.2/petitioner.

4. Having regard to the above, but for the main case against A.1, there is no sustainable case against A.2/petitioner for the transactions between the *de facto* complainant and A.1. Further a perusal of the material filed with the quash petition shows A.2 from his account remitted the amounts on 26.09.2011 to *de facto* complainant Rs.60,000/- and again on 01.10.2011 under two cheques Rs.85,000/- each, which are covered by the neft and cheques. Thus, the proceedings against the petitioner/A.2 no way survives to continue, but for to enforce for any civil liability of undertaking to pay.

5. Accordingly, the criminal petition is allowed quashing the proceedings against the petitioner/A.2 in C.C.No.208 of 2018 on the file

of the XII Additional Chief Metropolitan Magistrate, Nampally. The bail bonds of the petitioner/A.2, if any, shall stand closed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dated :15-12-2018

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