

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.75 of 2019

ORDER :

1. In continuation of the docket order dated 04.04.2019, which reads as follows:

“Heard both sides.

*Post on 08.04.2019 under the caption ‘for judgment’ for any submission by the learned counsel for respondent Nos.1 & 2 so called prospective accused for their limited say if at all how the order is sustainable and nothing beyond within the scope of Section 401(2) Cr.P.C. as laid down by the Apex Court in **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel & Others (2012 (10) SCC 517).**”*

2. Heard further arguments of both sides i.e. the counsel for the revision petitioner/complainant in C.F.R.No.1249/2018, order of the learned Judicial Magistrate of First Class, Kalwakurthy, in the private complaint case maintained against the respondents 1 & 2 as proposed accused and also the arguments of the proposed accused/respondents to the revision as contemplated by Section 401(2) Cr.P.C. of right of hearing to the limited extent i.e. as reproduced from the scope of law by the constitutional bench expression of the Apex Court in **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel & Others (2012 (10) SCC 517)** and also heard the learned Public Prosecutor representing the 3rd respondent/State and perused the two expressions placed reliance by the counsel for respondents/prospective accused 1 & 2 viz., **CDJ 2018 SC 1126** in **Anand Kumar Mohatta & Another Vs. State (Govt. of NCT of Delhi) Department of Home & Another** in a

quash petition under Section 482 taken cognizance on the police final report under Section 173 Cr.P.C. when impugned for the offences punishable under Sections 405, 406 and 420 IPC, the Apex Court ultimately found fault with the High Court and allowed the quash petition particularly with observation at para 24 of it is a transaction in relation to security deposit of Rs.One Crore alleged misappropriation is dispute purely a civil in nature by referring to the other expressions in this regard, including **Saga Suri Indian Oil Corporation Vs.NEPC India Ltd. and others (2006(6) SCC 736)** among others and the other expression is **CDJ 1998 SC 891 in Nageshwar Prasad Singh Alias Sinha Vs.Narayan Singh & Another** which is also a quash petition against the cognizance for the offences punishable under Sections 415 and 420 IPC in relation to contract for sale observed dispute is civil in nature arising out of pure breach of contract with no criminal intention.

3. There is no quarrel on the propositions which the Court is accepting. However, that is not the scope of the *lis* covered by the present revision.

4. In fact, once a private complaint is filed with certain allegations that too the very impugned order of the learned Magistrate dated 26.12.2018, particularly at para 5 speaks that *“the complainant had entered agreement of sale with A1 and A2 on dt.21.05.2018 pertaining to agricultural land to an extent of Ac.2.00 situated at Murthujapalli village of Amangal Mandal.....”*, he was interested to purchase some other agricultural lands. Then the accused induced the complainant to buy the said lands. It itself constitutes the complaint averment of the prospective accused to the complaint got animus to deceive from the inception which

is a pre-requisite that what is laid down in the expressions even satisfied. That is not the end of the matter here. In fact, when a private complaint is filed, options are available with the Magistrate concerned on scrutiny and if the complaint is complied with the legal requirements of Section 200 Cr.P.C., for not a case either under Section 138 of Negotiable Instruments Act or any special law not provided for examination on oath of the complainant but for to proceed on affidavit. Leave about any observation of no third party affidavit even filed to sustain, he can either refer to the police for investigation contemplated by Section 156(3) Cr.P.C. or proceed to take cognizance or to reject as contemplated by Sections 200 to 204 Cr.P.C. by recording the sworn statement of the complainant in the case of a summons case or summary trial with witnesses present and secured if any and in the case of warrant case where witnesses are to be summoned so to summon and to secure for examination. That is the law laid down by settled expressions reiterated including by Apex Court in **Rosy & Another Vs.State of Kerala & Others (2000(1) SCR 107)**.

5. Here, the procedure contemplated by Section 200 to 204 r/w.190 Cr.P.C. not even adopted by the learned Magistrate on the complaint filed after scrutiny by Registry/Office of the learned Magistrate when placed before him if he has not chosen to refer to police for investigation under Section 156(3) Cr.P.C. is supposed to call for the complainant to record his sworn statement so also any witnesses to be summoned or present to be examined further if at all and then if found that there is no sustainable accusation to reject the complaint for not chosen to issue process by giving reasons for such an order as contemplated by Section 203 Cr.P.C. and if at all chosen to issue process by coming to a

conclusion from the order supported by application of mind with reasons for cognizance at least in brief to sustain, to issue process as contemplated by Section 204 Cr.P.C. It is a premature to scan every sentence of the complaint under the guise of scrutiny even to refer or not to police for investigation under Section 156(3) Cr.P.C. The learned Magistrate not even chosen to refer to police for investigation not even chosen to record sworn statement of the complainant, leave about other witnesses if any, went wrong in rejecting the complaint and the order thereby *per se* unsustainable on its face. The expressions placed reliance are from the post cognizance after issuing of summons contemplated by Section 204 Cr.P.C. and after appearance of the accused when challenged before High Court on its sustainability. However as discussed *supra*, the case facts are entirely different. However, as discussed *supra*, there is a complaint averment even considered from the very order para 5 of the learned Magistrate showing deceptive mind from the inception to attract the offence of cheating, thereby the rejection order relates unsustainable. But for the two decisions placed reliance by the counsel for the prospective accused/respondents 1 & 2, there is nothing more to support the order of the lower Court even unsustainable as concluded *supra*.

6. Having regard to the above, the order is set aside. The learned Magistrate is directed by virtue of this order either to proceed under Section 156(3) Cr.P.C. afresh on consideration of the complaint averments if at all there is a cognizable case and chosen so to refer and if not chosen to refer, record the sworn statement of the complainant and witnesses present or secured if any, or to be summoned if any, as per the procedure for the offences is a private warrant case procedure in the

event of proceeding under Sections 200 to 204 r/w.190 Cr.P.C. either to issue process or to reject complaint ultimately as contemplated by Section 204 or Section 203 Cr.P.C. only after recording the sworn statement of the complainant and other witnesses if any.

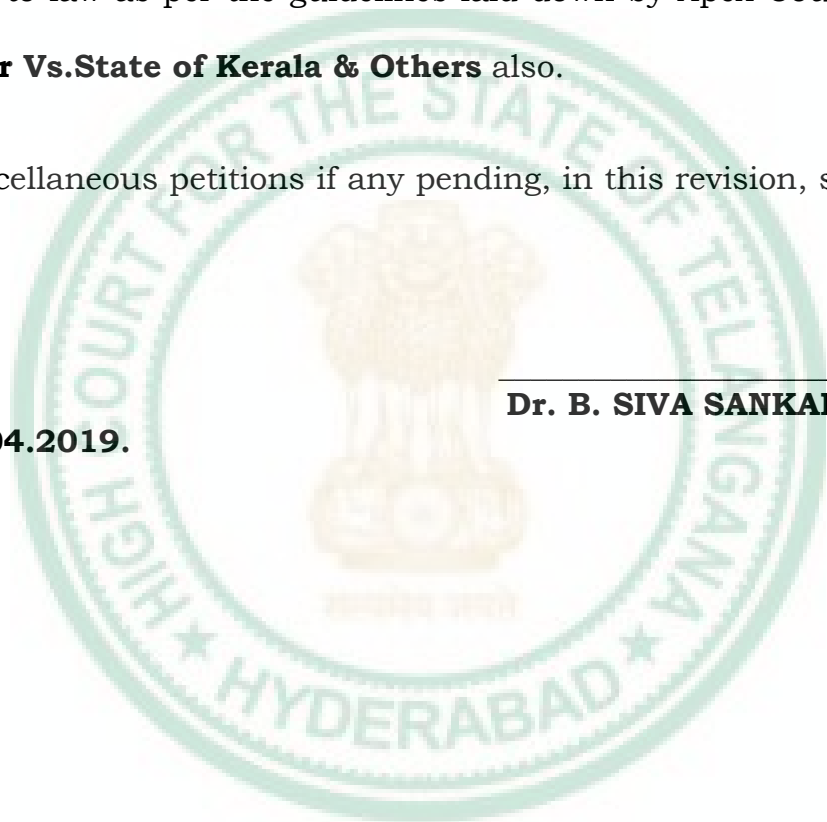
7. With these observations, accordingly, the Criminal Revision Case is allowed setting aside the dismissal order and by restoring the unnumbered complaint to the file of the learned Magistrate to proceed according to law as per the guidelines laid down by Apex Court in **Rosy & Another Vs.State of Kerala & Others** also.

8. Miscellaneous petitions if any pending, in this revision, shall stand closed.

Date:08.04.2019.

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Dr. B. SIVA SANKARA RAO, J



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.R.C.No.75 of 2019



Dated:08.04.2019

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