

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6529 of 2016

ORDER:

The petitioner by name Shirshir Dwivedi (Vice President(Projects) of FIITJEE Foundation for Education and Training(for short, 'FIITJEE Foundation'), is A.3 among 4 accused in C.C.No.410 of 2015 on the file of the learned XIV Addl.Chief Metropolitan Magistrate, Nampally which is outcome of Cr.No.408 of 2010, dt.22.05.2012 of Police Station, Panjagutta registered for the offences punishable u/ sec.406 and 420 IPC from the private complaint, dt.11.04.2012 in Sr.No.2815 of 2012 of the 2nd respondent by name Edem Prasanth Kumar, Accounts Executive, Teekays Interior solutions Pvt. Ltd, Secunderabad against four accused viz: M/s FIITJEE Foundation represented by Rajeev Gupta(Manager-Projects) one Rajesh Sharma Executive Director Finance of M/s FIITJEE Foundation(A.1), Shishir Dwivedi(A.2), Vice President(Project) of M/s FIITJEE Foundation(A.3) and the Principal M/s FIITJEE Foundation respectively.

2. The learned Magistrate forwarded the complaint to police for investigation and it was on 22.05.2012 having received from the learned Magistrate u/ sec.156(3)CrPC the crime supra was registered and after investigation by citing 6 witnesses including 4 Investigating Officers L.Ws. 3 to 6 besides the complainant as L.W.1 and one Bhasker Sarathy, Senior Manager Client Service of Entity as L.W.2 filed chargesheet and the learned Magistrate taken cognizance for the same against the accused saying the A.2 to A.4 in abscondence leave about A.3-the petitioner obtained anticipatory bail in CrI.M.P.No.3346 of 2013, dt.16.09.2013 and later enlarged on bail.

3. The contents of the private complaint in registration of the crime supra are that the alleged offences taken place from 08.06.2010 onwards till April, 2012 at Yellareddygudem, Hyderabad, that the complainant company engaged in the business of interior projects including interior fit out, civil works, air conditioning, electrical works etc. with two decades marked reputation. The accused proposed to furnish interiors at their office, Yellareddygudem and consequently there was an agreement between the complainant and the accused on 08.06.2010,

09.06.2010 and 12.07.2011 with terms and conditions to commence and complete the interior work at accused premises D.No.8-3-897/ 5/ 1, Yellareddygudem for a total consideration of the contract of Rs.2,59,15,912/- and the complainant completed the work by mobilizing the material employing a huge work force however the work could not progress as planned as several site clearances and working drawings were not available during the execution. Right from the beginning the accused asked the complainant to carry out several major additional works which are not part of the original tender agreement, by promise to regularize and by releasing separate Non-Tender Items Order(NT order) immediately however the accused kept dodging the release of this NT Order with one pretext or other and as a result work was getting further delayed and the complainant could not raise the bills in time for works executed and even some bills raised and processed for payment but the accused released only part payments and tax amount also not paid in any of the interim bills and after a prolonged follow up for release of NT order including advance and release of payments of interim bills, the NT orders were released but the payments were made only in part, the bills were raised by the complainant after completion of 85% of the works and the same was also certified for making payment by the accused but not paid in spite of repeated requests and the complainant was constrained to stop further work as payment due from the accused is huge and while so, the accused issued notice on 09.08.2011, without making payment of works completed by the complainant, by threatening to engage third party for remaining work and when no alternative, the complainant filed Arbitration and Conciliation O.P.No.1942 of 2011 u/sec.9 of the Act before the learned III Additional Chief Judge, Hyderabad which is while pending, the accused engaged services of M/s J.S.Projects, Hyderabad in the first week of April, 2012 without knowledge and consent of the complainant so as to cause wrongful loss to complainant and with dishonest intention to cheat which the complainant came to know reliably when questioned the accused threatened them with dire consequences and thereby the accused committed the offence and are liable for punishment.

4. The sum and substance of the police final report supra from such investigation is that what is the report contents stated by the L.Ws. 1 and 2 makes out the case and nothing beyond.

5. The contentions in the quash petition in impugning said police final report for the crime and taking cognizance are that it is purely and predominantly a civil dispute in relation to the contract work and the allegations with criminal flavour are untrue and baseless and even as per the complainant, the accused issued notice dt.09.08.2011 to engage some other contractor for non-prosecution of the contract and there is no any breach of trust and cheating to attract to the facts, leave about as per the terms stipulated the work was supposed to be completed by 03.09.2010 by complainant and failed to mobilize men and material to complete as per schedule despite the accused paid adhoc payments to them, there is a failure in completion of the work by timely execution causing loss and sufferance and inconvenience to the petitioner/ A.3's entity and the inconvenience put up for more than two years from their non-completion of the work and so far as O.P.No.1942 of 2011 filed under Sec.9 of the Arbitration Act is concerned, counter filed by the A.1 and said petition was dismissed for default and later the arbitrator was appointed in terms and conditions of the agreement and the matter pending with the Arbitrator. The complainant already filed identical Cases in Cr.No.125/ 2012 on 07.05.2012 of Police Station Narayanaguda and quash petition CrI.P.No.6021 of 2012 filed was allowed referring to the expression of the Apex Court in V.Y.Jose Vs. State of Gujarat-2009 2 SCC 78 from guidelines of State of Haryana Vs. Bhajanlal-1992 Supp (1) SCC 335 apart from Binod Kumar Vs. State of Bihar-(2014) 10 SCC 663 of civil liability cannot be converted into by adding criminal flavour and thereby the proceedings are liable to be quashed.

6. Notice sent to the 2nd respondent twice to the address furnished in the FIR and chargesheet returned as left filed is sufficient service and taken as heard and heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State and perused the material on record.

7. Even from the very private complaint referred to police for investigation supra it is not a case of no payments made by the accused as it speaks about

payments made and there is a delay for what the complainant says is from getting required permits etc,, by the accused to complete the work even though men and material available. The accused alleged that the complainant is causing inconvenience by not completing the work to the educational institution and students. Once such is the case, the dispute is predominantly civil in nature and there is no any entrustment much less breach of the same much less with any criminal intention to attract the offence u/ sec.406IPC and there is no cheating from the inception to deceive and in CrI.P.No.6021 of 2012 filed by the self-same complainant on behalf of the TI Solutions Private Limited against the petitioners in relation to Cr.No.125 of 2012 of Police Station Narayanaguda with self-same allegations of the FIR registered on a private complaint by referring to the agreements of self-same dates of the work, the proceedings are quashed with observation of the dispute is predominantly civil in nature, leave about bar equally from the factual matrix is concocted supra, the complainant cannot be allowed to add criminal flavour to the civil dispute apart from none of the offences of cheating and breach of trust that attract to the factual matrix. Thereby continuation of the proceedings in the above Calander Case including the cognizance taken by the Magistrate from the police final report for the offences supra is nothing but abuse of process.

8. In the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/ A.3 in C.C.No.410 of 2015 on the file of the XIV Addl.Chief Metropolitan Magistrate, at Nampally, outcome of Cr.No.408 of 2012 of P.S.Panjagutta registered for the offences punishable u/ sec.406 and 420 IPC and the petitioner is acquitted. His bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:18.03.2019
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Dr. B.SIVA SANKARA RAO J,