

Criminal Petition No.7074 of 2015

ORDER:

The three petitioners viz: 1) M/ S Greenmint India Agritech Pvt. Ltd., Rep. by its Managing Director, Phalguna Thrinadha Murali Dora Bhuthanadhu, (for short, 'the Entity') 2) Phalguna Thrinadha Murali Dora Bhuthanadhu, Managing Director and 3) Venkata Satyanarayana Dora Bhuthanadhu Naga Sekhara, Executive Director of the Entity are A.1 to A.3 respectively in C.C.No.1797 of 2014 on the file of the XI Metropolitan Magistrate at Secunderabad, Telangana State, outcome of a private complaint dt.11.11.2014 of 2nd respondent- M/ S Sigma Agrocure Products Pvt. Ltd., (for short 'R.2-Company') represented by its Managing Director-Kurangi Venkata Ramana, taken cognizance by the learned XI Addl.Chief Metropolitan Magistrate at Secunderabad, for the offences punishable u/ sec.406, 418, 420, 468 and 506 r/ w 34 of IPC vide docket orders, dt.15.12.2014 in SR No.6112 of 2014 after recording sworn statement of the complainant referred as Managing Director of the Entity saying there is a prima facie accusation from the sworn statement of witnesses and from perusal of the complaint with reference to the documents for the offences against the A.1 to A.3 in ordering to issue summons which is the subject matter of impugment herein.

2. The contents of the private complaint and the sworn statement of the complainant-R.2 Company, are that the A.2 and A.3 representing the A.1 approached the R.2 Company in the first week of October 2013 stating that they are manufacturing natural bio-products(Q-Accumulator and Naturo Amino Acids) and since they are new to the field to market the products on their own, requested to become their marketing partner to distribute and sell their product by name 'Q' and also offered to manufacture and supply Sigma Mask and Sigma Mission on job work basis and stated that they filed W.P.No.12840 of 2010 on the file of the High Court, Hyderabad and the said writ petition was disposed of as infructuous on 09.06.2010 giving liberty that it shall be open to the petitioner(the A.1 herein) to submit sample of 5kgs of each product dealt with by them, together with the corresponding literature throwing light upon the manufacturing process as well as

the contents thereof, to the respondent of the writ petition-(the Commissioner and Director of Agriculture), within four (4) weeks from the date of submission of the samples and the literature, the respondent(the complainant herein) shall get the same analyzed in a suitable laboratory and intimate the result of the analysis to the writ petitioner and in case, it reveals that the products dealt with by the writ petitioner, answer the description of the products mentioned in Schedule-III to the Control Order, the writ petitioner shall be entitled to deal with the products, only after obtaining license under the Control Order. On the other hand, if the result is found otherwise, the writ petitioner shall not be subjected to the regime under the Control Order of the Act, and if the respondent fails to intimate the result of the analysis within four (4) weeks from the date of submission of the samples and the literature, it shall be open to the writ petitioner to deal with the products, notwithstanding the impugned letter and the memo, as long as the products are not insecticides or chemicals. Further the accused supplied photostat copy of the order from their say of they complied with the terms and conditions imposed by the High Court supra and on believing them from their persuasion entered into sale-cum-purchase between the manufacture and marketing partner on 06.10.2013 at complainant's office at P&T colony, Karkhana, Secunderabad, and clause-11 of said agreement speaks that *"The PRINCIPAL shall be solely responsible for the quality of the said product anytime during its shelf life. Each and every batch/lot of the product so supplied may be inspected in order to adhere to the quality norms. The MARKETING PARTNER shall have the right to inspect and check the quality specifications of the said product so received by getting it analyzed/tested at any government or private laboratory. The marketing partner shall have full right to reject the entire consignment/lot so received in case there is any deviation from the prescribed quality specification as mentioned in the COA (Certificate of Analysis). In such case the PRINCIPAL agrees to replenish the stocks with fresh lot"* and after entering the said agreement, the A.2 approached the complainant to issue 4 blank cheques, two in the name of complainant's company and the other 2 in the name of proprietary concern towards security purpose by promising that said cheques will not be misused for

wrongful purpose and believing said representation, complainant issued the cheques under covering letters dt.07-10-2013 mentioning that the same were being issued only towards security and thereafter, the accused went on supplying the products from 07-10-2013 till 02-01-2014, meanwhile, the complainant made some payments in a sum of Rs.4 00,000/- on 02-11-2013 and on 29-11-2013 through online. From the date of entering into an agreement with the accused, the complainant was requesting repeatedly to furnish documentary proof regarding their sample submission and lab report as per the order of the High Court supra but they gave evasive replies and in the meanwhile, the complainant received complaints from its dealers and farmers from last week of October, 2013 regarding deficiency and ineffectiveness and complete non-performance of products supplied by the accused due to sedimentation etc., Though the complainant informed the accused about the situation, they promised to improvise the product and went on to dump their substandard products on the complainant i.e., till first week of January 2014 and the complainant having suspected their bona fides, declined to receive any further material and requested them to take back their products and sent E-mail on 04-02-2014 and on 12-02-2014 issued stop payment letters to its bankers. On the same day, the complainant got issued legal notice referring to clause No.11 of the agreement dated 06-10-2013 and also referring to the illegal acts and tactics adopted by the accused by not providing the Certificate of Analysis etc. Meanwhile the accused developed friendship with brother of the complainant and when the complainant enquired with the Commercial Taxes Department official website, it revealed that the A.1 company's VAT registration is in the name of one Ratnakar Reddy and the CST Commodity is mentioned as Fertilizers, Bone meal, Pesticides, Insecticides, Fungicides, Herbicides, Weedicides and others and that the business activity is mentioned as retailer and nowhere mentioned that the accused are manufacturing and dealing in micro nutrients that they misled the government departments also. The accused, having received the notice, came forward with false and frivolous allegations and have dishonestly, without any lawful authority, fraudulently fabricated the cheques that have been obtained by them from the complainant by misrepresentation and deception and have initiated

proceedings with a view to intimidate and extort money from the complainant. The disputed products supplied by the accused were dispatched by the complainant through Kranthi Road Transport Pvt. Ltd., to their registered address indicated in the agreement dt.06-10-2013 but the accused, deliberately and with mala-fide intention, evaded and refused to take delivery of the products, thereby compelling the transporter to issue notices to the complainant either take back the consignment or else they will be forced to destroy the same. With no other alternative, the complainant filed OP No.1784/ 2014 on the file of Hon'ble Addl. Chief Judge, City Civil Court, Hyderabad which is pending adjudication. Meanwhile, the accused with unlawful object, filed CC No.262/ 2014 on the file of II Special Magistrate Court, Erramanzil, Hyderabad which is pending trial, the accused again filed C.C.No.363 of 2014 before the Magistrate, Erramanjil for cheque bouncing case not only misrepresented and violated the orders of the High Court but also committed Contempt of Court besides defrauding and cheating the complainant with their false representations and threatening to injure his reputation in the market and cause huge loss and further threatened the staff of the complainant with dire consequences, if the complainant fails to withdraw the Arbitration OP and also pay the amount as demanded by the accused. Hence to take cognizance.

3. The quash petition contentions against the cognizance order are that with mala fide intention and ulterior motives to wreck vengeance just reiterating the operative portion of the order of the W.P.No.12840 of 2010, though not a party and clause-11 of purchase agreement dt.06.10.2013, there is no nexus to connect these petitioners to the offences, the Court below ought not to have taken cognizance without specific allegations against all the accused persons and for the dishonour of the cheque in C.C.No.262 of 2014 maintained against the complainant herein as accused and it is only as a counterblast, the present private complaint is filed later with false story. If the trial Court is allowed to proceed with the case, there is every possibility of conflict of decisions by the other Courts where

C.C.No.262 of 2014 and 202 of 2014 are pending and thereby the proceedings are liable to be quashed.

4. Heard the learned counsel for the petitioners and also the counsel for the respondents 2 and 3 and also the learned Public Prosecutor for the 1st respondent-State and perused the material on record.

5. So far as the allegation of giving of the so called blank cheque as a security and its misuse is concerned, once the cheques given in blank in the absence of either showing filling of the blank cheques and filing of a case u/ sec.138 of the Negotiable Instruments Act(for short, 'the NI Act') Act after statutory notice with or without reply no way constitutes any offence of cheating or forgery or fabrication to attract any of the offences and inchoate instruments or blank instruments can be construed as authorization to fill once given u/ sec.120 of the NI Act read with 118(a) to (f) of the NI Act, when the cheque routed from the account of the accused with signature therein. The recent expression of the Apex Court in *Bir Singh Vs. Mukhesh kumar* in CrI.A.Nos.230 and 231 of 2019 dt.06.02.2019 particularly at paras-36 to 41 reiterates the same including to draw the presumption u/ sec.139 of the NI Act.

6. Now coming to the contention of luring the complainant by the accused in entering into the so called agreement dt.06.10.2013, the private complaint as referred supra was 11.11.2014 and the agreement was dt.06.10.2013 about one year one month later to it, leave apart in between there were supplies till 02.01.2014 and there were also payments by the complainant to the accused through online on 02.11.2013 and 29.11.2013. What all stated is even copy of the order in W.P.No.12840 of 2010 dt.09.06.2010 given at the time entering into the agreement saying the contentions therein complied with. There it was clearly mentioned that within the 4 weeks to submit samples, if not supplied there is no bar to continue the proceedings and coming to the substandard stock and complaint from fertilizers etc., there is no any notice even given by the complainant against the accused much less by any farmer in this regard and so far as the return of the stock and refusal to receive and taken back concerned, it is a matter of civil dispute to enforce the terms of the agreement if any and the

dispute is predominantly civil in nature and no offence made out to constitute any of the penal provisions referred supra from which the private complaint filed and cognizance taken by the learned Magistrate much less either for the offences u/ sec.468,420, 418 or 406 or 506 IPC but for to say any civil remedies are left open and these observations will no way come in the way in its deciding.

7. Having regard to the above and in the result, the Criminal Petition is allowed quashing the proceedings against the petitioners in C.C.No.1797 of 2014 on the file of the XI Metropolitan Magistrate at Secunderabad, and they are acquitted. Their bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:18.03.2019
vvr

Dr. B.SIVA SANKARA RAO J,

