HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 2972 of 2018

ORDER:

The present Criminal Petition is filed by the petitioners/A1 to A4, under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against them in C.C.No.830 of 2017 on the file of the XVII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

The facts in issue are as under:

The 2nd respondent/complainant (hereinafter referred to as the "2nd respondent Company") filed a private complaint against the petitioners/A1 to A4 before the XVII Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under Section 420, 468, 471 and 120 (B) of I.P.C., which was referred to the police under Section 156 (3) of Cr.P.C. Basing on the said reference, the police, Golconda Police Station, registered a case in Crime No.26 of 2013 and took up investigation. After completion of investigation, the police filed charge sheet, which was taken cognizance as C.C.No.830 of 2017.

The allegations in the charge sheet are that the 2nd respondent/complainant is a company registered under Companies Act having its registered office at D.No.8-1-22/1/J/1, Seven Tombs Road, Tolichowki, Hyderabad. The 1st petitioner/A1 company is running the business of Telecom other Works, situated at Flat No.504, Trendset Towers, Road No.2, Banjara Hills, Hyderabad. The

2nd petitioner/A2 is the Chairman and Managing Director, the 3rd petitioner/A3 is the Full Time Director and the 4th petitioner/A4 is the General Manager (Corporate Planning) of the 1st petitioner/A1 company. The 2nd respondent company and the 1st petitioner/A1 company were working in Andhra Pradesh for the projects of M/s. Wireless-TT Info Services Limited. The 2nd respondent company has taken contract from the 1st petitioner/A1 company, for the Civil and Electrical works of Mobile Towers Construction of TATA Company (VIOM) for Rs.70.00 lakhs and some other orders for installation and commissioning of Telecom Equipments in the year 2008 and against the above work orders, the 2nd respondent company has completed the work of Rs.70,67,160/- at different places in Andhra Pradesh for the 1st petitioner/A1 company and raised invoices and also received partial payment of Rs.56,59,557/- from the 1st petitioner/A1 company, which was agreed and accepted by the 1st petitioner/A1 company and the 2nd respondent company. The 1st petitioner/A1 has not paid the balance amount of Rs.14,07,603/- and as such the 2nd respondent company had issued final letter No.OSPS/50/12 dated 29.06.2012 to the Managing Director of the 1st petitioner/A1 company to release the long due payment, failing which legal proceedings will be initiated. In reply to the said letter, the 1st petitioner/A1 sent a letter, dated 12.07.2012 signed by the 4th petitioner/A4 confirming the due payment of Rs.7,28,985-20 to the 2nd respondent company but showing a deduction of Rs.17,64,358/- by A.5 and mentioning Rs.10,47,350.80 recoverable from the 2nd respondent company. The 2nd respondent company rejected the claim saying that it is incorrect, not acceptable and the same is an afterthought only to avoid the balance due payment pending from long time and once again requested the 2nd petitioner/A2 to release the long due payment through letter No.OSPS/63/2012, dated 02.08.2012. In reply to the said letter, the 4th petitioner/A4 sent a letter, dated 01.09.2012, insisting the 2nd respondent company to pay Rs.10,47,350/- by attaching supporting document i.e., letter dated 31.08.2012 signed by A.5. After going through the letter, dated 31.08.2012, signed by A.5, account statement and documents submitted during investigation by the petitioners/A1 to A4, along with letter, dated 14.02.2012, of the 1st petitioner/A1 company and letter, dated 26.02.2013 of A.5, it has been found incorrect and does not match each other and the discrepancy as follows:

Sl. No.	Bill No.	Deduction document as per A1 to A5 letter dt. 31.08.2012 given to OSPS	Documents submitted by BS Trans Comm Ltd. By A1 to A4 on 14.02.2013 to the I.O.	Documents submitted by Viom Networks Limited on 26.02.2013 to the I.O.	Payment passed as per A1 to A5 to the OSPS
1.	C/WTTISL/ 15006486/ P1/003	Rs.10,06,646/-	Rs.5,12,329/-	Rs.6,784,297/-	Rs.2,49,789/-
2.	C/WTTISL/ 15000056/ P1/009	Rs.11,82,816/-	Invoice copy not submitted	Rs.10,18,582/-	Rs.2,49,789/-
3.	C/WTTISL/ 15000056/ P1/008	Rs.5,23,999/-	Rs.3,98,133/-	Rs.5,23,999/-	Rs.5,26,883/-

It is also stated in the charge sheet that after going through the letters of A.5 dated 26.02.2013 and 12.04.2013, it has been found that the 1st petitioner/A1 company has submitted multiple invoices for the same sites at different point of time as follows:

1. Amount claimed for Rs.10,06,646/- for same site in two parts of C/WTTISL/15006486/P1/003 for Rs.6,74,297/- and C/WTTISL/15006486/Final/003 for Rs.3,32,349/- but VOIM booked only C/WTTISL/15006486/P1/003 and paid Rs.2,49,789/-. The second bill C/WTTISL/15006486/Final/003 is not appearing in their book of account.
2. Amount claimed for Rs.11,82,816/- for same site in two parts of C/WTTISL/15000056/P1/009 for Rs.10,18,582/- and C/WTTISL/15000056/Final/009 for Rs.1,64,234/- but VOIM booked only C/WTTISL/15000056/P1/009 and paid Rs.2,49,789/-. The second bill C/WTTISL/15000056/Final/009 is not appearing in their book of account.

During investigation, the petitioners/A1 to A4 and A.5 have failed to provide any clarification nor documentary evidence how Rs.17,64,358/- has been deducted from the entire transaction for the works related to the 2nd respondent Company. As per the letter, dated 27.07.2012 submitted by the 4th petitioner/A4, it has been found and accepted that the 1st petitioner/A1 company has to pay an amount of Rs.7,28,985/- to the 2nd respondent company. It is contention of the petitioners/A1 to A4 that due to non-completion of punch points and defective works by the 2nd respondent company, A.5 has not paid the entire work order amount to the 1st petitioner/A1 company, but to that effect the petitioners/A1 to A4 nor A.5 has not provided any authentic documents or proof of deduction, whereas the 2nd respondent company has provided the punch points certificate issued by the 1st petitioner/A1 company to the 2nd respondent company regarding all the works completed and customers clearance received vide mail dated 22.12.2008. Non submission of proof of the documentary evidence related to deduction of Rs.17,64,358/- for works related to the 2nd respondent company, appears no deduction has taken place at first place itself. The petitioners/A1 to A4, by avoiding payment of due amount and to cause wrongful loss to the 2nd respondent company, have created fake deduction document/statement with the support of A.5 and started demanding Rs.10,47,350/- from the 2nd respondent company instead of paying the balance due amount.

A counter came to be filed by the 2nd respondent company stating that the petitioners/A1 to A4 with a dishonest intention had extracted work from the 2nd respondent company and shown in their statement duly signed that the amount is payable, thereafter denied payments for the works done and in furtherance of their conspiracy, petitioners/A1 to A4 have brought into existence a forged/fabricated document in the name of A.5. It is also stated that the petitioners/A1 to A4 after extracting work from the 2nd respondent company, did not make due payments for the work done thereby committed the offence of cheating. It is also stated that the above said facts clearly manifest that the petitioners/A1 to A4 had conspired together and cheated the 2nd respondent company with forged and fabricated documents, as such they are liable to be charge sheeted and tried for the offences. It is also submitted that the petitioners/A1 to A4 once again with a *mala fide* intention had brought into existence documents at page Nos.51 to 58, which are not part of the impugned charge sheet, as such no credence could be given to them, furthermore, the petitioners/A1 to A4 have failed to mention the source of those unauthenticated documents. It is also stated that all the allegations that the Investigating Officer (LW6) forwarding a letter to the legal advisor and obtaining legal advice and basing on the legal advice had referred the case as civil in nature and issue proceedings accordingly to submit final report before the Court are absolutely false and are hereby denied and do not form part of the record. It is also stated that the veracity and authenticity of those documents raises serious suspicion for the reason that according to document at page No.55 on 01.04.2016 the Office of the Inspector of Police, P.S.Golconda, had requested the Legal Advisor of the Commissioner of Police for his opinion in the case which was swiftly said to have been received by them and on the very next day i.e., on 02.04.2016 as per document at page No.58 the said Legal Advisor of the Commissioner of Police, said to have given his opinion stating that it is a fit case for closure and quite strangely based on the legal opinion, dated 02.04.2016, the Inspector of Police, Golconda Police Station, said to have requested the Assistant

Commissioner of Police, Asif Nagar Division, to accord permission to refer the case as mistake of fact on 13.03.2016. Further, all these discrepancies arises a serious doubt about the veracity and genuineness of these documents. Furthermore, it is well settled principle of law that the Investigating Officer had to apply his mind independently without being influenced and as per charge sheet the Investigating Officer had applied his mind independently, conducted investigation, collected evidence and based on the said evidence, he had filed the charge sheet against the petitioners/A1 to A4. It is also stated that the 2nd Investigating Officer (L.W.7) said to have filed charge sheet by suppressing the material documents with the influence of the 2nd respondent company is absolute false. As per the charge sheet, after going through the documents submitted by the 1st petitioner/A1 company and the documents submitted by the VIOM Networks Limited during the course of investigation, it came to light that the statement of accounts and documents submitted by them are incorrect and does not match with each other and they have not given clarifications with regard to the discrepancies which were pointed out in the charge sheet, as such it was concluded that there were no deductions taken place at the first instance and the petitioners/A1 to A4 and A.5 created fake deduction documents and started demanding Rs.10,47,350/- from the 2nd respondent company instead of paying the balance due amounts. It is also stated that the petitioners/A1 to A4 had denied the due payments to the 2nd respondent company based on false and fabricated documents, which amounts to criminal offence of cheating and forgery and the Investigating officer after conducting investigation based on the evidence collected had laid charge sheet against the petitioners/A1 to A4 and A.5.

Heard learned Counsel for the petitioners/A1 to A4, learned Additional Public Prosecutor for the 1st respondent/State and learned Counsel appearing for the 2nd respondent Company.

Learned Counsel for the petitioners/A1 to A4 would submit that the 2nd respondent company filed the complaint only to harass the petitioners/A1 to A4. It is also stated that after registration of the crime, the petitioners/A1 to A4 filed Criminal Petition No.4515 of 2013 under Section 482 of Cr.P.C. to quash the proceedings in the above crime. By an order, dated 19.06.2013, this Court permitted the police to investigate the case and also directed the police not to arrest the petitioners during pendency of the investigation. During the course of investigation, the Investigating Officer (LW.6) issued notices under Section 41-A of Cr.P.C. to the petitioners/A1 to A4 and collected the relevant documents and also sought information from A.5, who confirmed that the alleged letter, dated 31.08.2012 was issued by him and also confirmed that they issued the declaration, dated 29.09.2012, without verifying from their head office. The investigating officer, after thorough investigation and verification established that the deduction letter, dated 31.08.2012 which was issued by A.5, is genuine. No forgery/fabrication and cheating have occurred as per the evidence collected. The police have no role to play in this case. The allegations made by the 2nd respondent company and dispute between the parties are purely commercial and civil in nature. He further submitted that basing on the legal advice, dated 02.04.2016, the Investigating Officer addressed a letter to the Assistant Commissioner of Police, Asif Nagar Division, Hyderabad City, to accord permission to refer the case as "Mistake of Fact" and issue proceedings. Subsequently, the Sub-Inspector of Police, prepared final report in the month of April, 2016, but the same was not filed before the Court for the reasons best known to the police and they decided not to file final report before the said Court.

It is also submitted that the petitioners/A1 to A4 received summons in the month of February, 2018 from the XVII Additional Chief Metropolitan Magistrate, Hyderabad, to appear before the Court in C.C.No.830 of 2017 on 29.03.2018. Thereafter, the petitioners/A1 to A4 obtained the certified copy of the charge sheet in the above C.C. It is further submitted that the petitioners/A1 to A4 came to know that the earlier final report was not filed by the Investigating Officer (LW.6) and subsequently, the 2nd Investigating Officer (LW.7) filed the charge sheet by suppressing the material documents with the influence of the 2nd respondent company, by adding A.5, though there was no complaint against him and no information came to light after April, 2016. It is further submitted that the Police did not conduct any further investigation after April, 2015. It is also submitted that originally in the year 2008, A.5 entrusted the work of installation and commissioning of telecom equipment to the 1st petitioner/A1 company under various work orders, who in turn awarded the subject works to the 2nd respondent company on sub-contract basis for a value of Rs.70,67,160/- vide different work orders. After completion of works, the 2nd respondent company received an amount of Rs.56,59,557/- from the 1st petitioner/A1 company. But, A.5 did not pay the entire work orders amount to the 1st petitioner/A1 company due to non-completion of punch points and defective works and deducted an amount of Rs.17,64,358/- from the bills submitted by the 1st petitioner/A1 company. In spite of having knowledge of the above said deductions, the 2nd respondent company claimed the balance work orders amount of Rs.14,07,603/- from the 1st petitioner/A1, even though the works turned out by them were defective and not up to the standards mentioned in the work orders. It is also submitted that the contracts were awarded by the 1st petitioner/A1 company to the 2nd respondent company on back to back basis and the 1st petitioner/A1 was to receive only 8% margin. It is also submitted that the 2nd respondent company alleged that the certificate issued by A.5 to the 1st petitioner/A1 is false and was not issued by A.5 and to support their contention, the 2nd respondent company obtained a certificate from the branch office of A.5 and on the basis of the above certificate, the 2nd respondent company filed a criminal complaint against the petitioners/A1 to A4 alleging the offences of cheating and forgery etc. It is also submitted that the entire case is based on the letter dated 31.08.2012 stating that the same was forged one, but Anoop Singhal, DGM (Finance and Accounts) of A.5 company has confirmed to the police that the said letter was indeed issued by them. As such, there is no forgery of any kind. Keeping the same in view, the Legal Advisor, had given his advice on 02.04.2016, stating that the accused have not forged the letter and it is a fit case to be closed on the ground of mistake of fact. But the police after four and half years of registration of crime, filed the charge sheet on 10.05.2017 without any substance and with the influence of the 2nd respondent company. It is also submitted that the petitioners, who are not only innocent but acted in the best business interest of their company and in line with the established practices and if the charge sheet is not quashed forthwith, great loss and harassment will be caused to them. It is also submitted that there is no material available on record to make out even a *prima facie* case against the petitioners/A1 to A4 and the ingredients of Sections 420, 468, 471 and 120 (B) of I.P.C. are not attracted against the petitioners/A1 to A4, as such continuation of criminal proceedings is abuse of process of law and are liable to be quashed. He relied on the judgment of this Court in Criminal Petition No.6114 of 2014 and judgments of the Apex Court in ***Inder Mohan Goswami and another v. State of Uttaranchal and others***[1] and ***Suneet Gupta v. Anil Triloknath Sharma and others***[2].

Reiterating the contents made in the counter, learned Counsel for the 2nd respondent company would submit that the petitioners/ A1 to A4 denied the due payments basing on false and fabricated documents, which amounts to criminal offence of cheating and forgery and after conducting thorough investigation and basing on the evidence collected, the Investigation Officer laid charge sheet, which *prima facie* discloses the offence committed by the petitioners/A1 to A4. He relied on the judgment of the Apex Court in ***Arun Bhandari v. State of Uttar Pradesh and others***[3].

All the contentions raised by the learned Counsel for the petitioners/A1 to A4 relate to disputed questions of fact. The Court has also been called upon to adjudge the testimonial worth of the prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned Counsel for the petitioners/A1 to A4. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

The law regarding sufficiency of material which may justify the summoning of the accused and also the Court's decisions to

---

[1] (2007) 12 SCC 1
[2] (2008) 11 SCC 670
[3] (2013) 2 SCC 801

proceed against them in a given case is well settled. The Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required.

Through catena of decisions given by the Hon'ble Apex Court, this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. The cases of *Chandra Deo Singh v. Prokash Chandra Bose*[4]; *Vadilal Panchal v. Dattatreya Dulaji Ghadigaonker*[5] *and Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi*[6] may be usefully referred to in this regard.

The cases where the allegations made against the accused or the evidence collected by the investigating officer do not constitute any offence or where the allegations are absurd or extremely improbable or impossible to believe or where the prosecution is legally barred or where the criminal proceeding is malicious and *mala fide*, instituted with an ulterior motive of grudge and vengeance alone may be fit cases for the High Court in which the criminal proceedings may be quashed. The Hon'ble Apex Court in ***State of Haryana v. Bhajan Lal***[7] has recognized certain categories in which

---

[4] AIR 1963 SC 1430
[5] AIR 1960 SC 1113
[6] (1976) 3 SCC 736
[7] (1992) SCC (Cr.) 426

Section 482 Cr.P.C. or Article 226 of the Constitution of India may be successfully invoked.

In view of the settled principles of the above case laws, this Court has adverted to the entire case record. The submissions made by the learned counsel for the petitioners/A1 to A4 call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial Court and while doing so, even the submissions made on points of law can also be more appropriately gone into by the trial Court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins.

It shall suffice to observe that the perusal of the F.I.R. and the material collected by the investigating officer on the basis of which charge sheet has been submitted makes out a *prima facie* case against the petitioners/A1 to A4 at this stage and there appears to be sufficient ground for proceeding against them. I do not find any justification to quash the charge sheet or the proceedings initiated against the petitioners/A1 to A4 as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing. Hence, the prayer for quashing the proceedings in C.C.No.830 of 2017 on the file of the XVII Additional Chief Metropolitan Magistrate, Hyderabad, is refused.

Accordingly the Criminal Petition is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand dismissed.

JUSTICE G.SRI DEVI

27.12.2019
gkv/Gsn