THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3082 OF 2018

ORDER:

The petitioners are Accused 1 & 2, by names B.Shekar, Managing Director and Mrs.B.Pushpaveni, W/o.B.Shekar, Director of M/s.DRS Network Solutions Pvt. Ltd., which is outcome of private complaint of the 1st respondent – M/s.Stanpower Technologies, represented by its partner – Timothy Prakash, filed before the learned III Metropolitan Magistrate, L.B.Nagar, Ranga Reddy District, that was referred to police under Section 156(3) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), from which the Uppal Police Station, Rachakonda District, registered Crime No.888 of 2017 and the present quash petition is in impugning the said crime registered and pending against them from the private complaint.

2. Heard the learned counsel for the petitioners and the *de facto* complainant – 1st respondent and the learned Public Prosecutor representing the 2nd respondent State and perused the material on record.

3. The contentions in the quash petition *vis-à-vis* the oral submissions of the learned counsel for the petitioners in impugning the said FIR registered for the offences punishable udner Sections 406, 420 & 506 of Indian Penal Code (for short, 'IPC') with reference to the private complaint averments supra are that the allegations are factually incorrect and entire story is created for the purpose of false implication with oblique motive. The company M/s.DRS Network Solutions Pvt. Ltd., to which the petitioners are Managing Director and Director respectively, is in existence since 1998 in the business of Computer Networking and IP Surveillance and allied aspects and

Government of A.P., Police Department, invited tenders for election of Surveillance cameras for "Krishna Pushkarlu" in August, 2016, and called for tender notifying supply and installation of around 1500 Surveillance Closed Circuit Cameras and the 1st petitioner as Managing Director of the company participated in the tender and became highest bidder and received purchase order for supply and installation of only 396 cameras and later *de facto* complainant – 1st respondent approached the 1st petitioner entity for purchasing cameras from them and as per the Proforma Invoice/Quotation for supply of 430 CCTV Cameras and 4 LED Monitors for Rs.1,63,50,758/- to be paid after supply of material by payment of advance of Rs.84,00,000/-, given ten (10) promissory notes and ten (10) cheques as security for balance. The *de facto* complainant was postponing delivery of cameras and as "Krishna Pushkaralu" were nearing, the 1st petitioner entity was forced to arrange for supply of cameras from other sources at highest rates and the 1st respondent supplied only 200 cameras just before start of "Krishna Pushkaralu" and did not supply balance. The 1st respondent deposited three cheques out of the ten cheques without even informing the company of the 1st petitioner and the cheques given not for any legally enforceable debt, but only as security. The 1st respondent agreed to supply balance material and settle the accounts only on condition that the company of the 1st petitioner should deposit Rs.10,00,000/- to the credit of Y.L.Prasad, a business associate and relative of 1st respondent's Managing Partner and the 1st respondent could not supply the material and could only supply material worth Rs.90,00,000/- and the company of the 1st petitioner in all paid Rs.1,01,00,000/- and there from even the 1st respondent enriched about Rs.11,00,000/- and committed criminal breach of trust by presenting the three cheques out of ten cheques given as security by filling. In fact the 1st petitioner's entity demanded for supply of balance material or refund of excess amount paid and return the blank cheques and pronotes obtained as security and with the 1st respondent. The 1st petitioner contacting the 1st respondent through mails to settle the account by supply of balance material or refund of excess amount and return of promissory notes and cheques. However, the 1st respondent did not turn up and misused with *mala fide* intention the three cheques. The company of the 1st petitioner got issued legal notice, dated 28.04.2017, to the 1st respondent to repay the excess amount of Rs.10,00,000/-. The 1st respondent not taken delivery of those notices sent by Speed Post and anticipating legal action from the 1st petitioner's company, the 1st respondent approached by filing the private complaint invoking criminal jurisdiction of converting the civil dispute and there is no any element of cheating and no any offence of breach of trust or cheating, much less criminal intimidation and the crime registered based on a private complaint is liable to be quashed.

4. It is the submission of the 1st respondent complainant that there is a *prima facie* accusation in registration of the crime and there is nothing to quash the proceedings and thereby sought for dismissal of the petition.

5. From perusal of the material on record with reference to the hearing supra, coming to the private complaint, dated 15.09.2017, with nine documents listed, no where shows before private complaint giving of any police report and there is nothing showing any filing of affidavit, which are pre-requisite as per the guidelines of the Apex Court in **Priyanka Srivastava and another v. State of U.P. and**

others[1]. The private complaint averments, particularly at Paragraph 2 end portion of pages 3 & 4 speaks that accused 1 & 2 approached the complainant in submitting their tender for Video Surveillance to the "Krishna Pushkaralu" to be held in August, 2016, and became successful bidder for 1/4th of network, which is about Rs.4,50,00,000/- and negotiated the price of the required equipment for Rs.1,73,68,508/- *vide* Invoice P104/7/16, dated 26.07.2016, under which accused agreed to pay total cost of equipment that to be imported and the complainant agreed to deliver within 4 to 6 weeks from date of payment received, but accused paid only Rs.63,00,000/- on 01.08.2016 and in that view of the fact that "Krishna Pushkaralu" slotting on 12.08.2016, delivered 250 cameras and rest of cameras and other equipment arrived the complainant and he informed the accused to pay balance, for that to take. Accused, contrary to the agreed terms, failed to make payment of balance in spite of complainant reported all required equipment by investing huge amount from what accused made the complainant to believe in making arrangements to pay balance and having received the total required equipment for "Krishna Pushkaralu" failed to make payment even after completion of the event including for the demands and on 17.11.2016, accused induced the complainant to deliver them remaining cameras and other equipment by issuing ten promissory notes of Rs.10,00,000/- each with interest @ 1.5% per month with false assurance of and having taken the equipment, failed to pay. On 14.02.2017, A-1 requested complainant firm partner – Timothy Prakash to help to facilitate payment of their amount from Government of A.P., for which complainant agreed to try with officials and later on 16.02.2017, A-1 met Timothy Prakash with Venkat

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[1] (2015) 6 SCC 287

Reddy (A-3), Manager of Bank of India, Madhapur, where accused company was having accounts and they promised the complainant of the amounts are deposited into account of accused by Government could be withdrawn the total balance amount of Rs.1,10,58,508/- by their convincing by giving ten cheques bearing Nos.1847842 & 184793 of Rs.10,00,000/- each drawn on Syndicate Bank, Jubilee Hills Branch, from the account of A-1 and A-1 gave ten promissory notes of Rs.10,00,000/- each supra by agreed to pay interest @ 1.5% per month against supply of the equipment and as no information received either from A-3 or A-1, Timothy Prakash of complainant entity contacted A-3 – Manager of the Bank, who informed of, transferred the amount of Rs.10,68,509/- due to the complainant firm, as he received request for the same from accused, but no such transfer made and when contacted A-1 and A-2, A-1 gave false assurance of cheque with banker next day and tried to avoid even to the contacts and A-1 to A-3 failed to respond by lame excuses, A-1 and A-2 are postponing the demands of complainant and A-1 and A-2 requested complainant to deposit the three cheques out of the ten cheques and when presented, dishonoured on 12.04.2017 and when approached A-1 and A-2 on 06.09.2017, they threatened saying their daughter is a Deputy Superintendent of Police in Telangana State and complainant would do nothing and thereby they committed criminal breach of trust and cheating by inducing the complainant firm to deliver the equipment imported by the complainant firm and failed to make balance of Rs.1,10,68,508/- despite demands and A-3 failed to inform about deposit of the money, thereby also made responsible. In fact so far as A-3 concerned, he is not party before this quash petition, but for A-1 and A-2. So far as A-2, wife of A-1, as Director and Managing Director of the entity M/s.DRS Network Solutions Pvt.

Ltd. concerned, there is no any specific role attributed of her, but for against A-1. The prosecution in registration of the crime against A-2 thereby no way sustainable in the absence of showing she is responsible for day-to-day affairs, as the entire transaction dealt by A-1 even from the private complaint averments and no specific allegation of what role played by A-2 and merely because she happened to be a Director of M/s.DRS Network Solutions Pvt. Ltd., to which her husband A-1 is the Managing Director, she cannot be made liable, leave about the company M/s.DRS Network Solutions Pvt. Ltd. must be a co-accused. All the more, once it is not shown about compliance of the guidelines of the Apex Court in **Priyanka Srivastava's Case (1 Supra),** for the learned Magistrate to refer the private complaint to Police, same no way sustains. Thereby the Criminal Petition so far as against A-2 is allowed and so far as against A-1 disposed of giving liberty, if at all there is no compliance with the requirements of the expression of the Apex Court in **Priyanka Srivastava's Case (1 Supra),** for A-1, the 1st petitioner, to approach the trial Magistrate by filing petition by virtue of this Court to revert the clock back of the private complaint prior to its reference to police for investigation and registration of crime and it is only after compliance with the requirement, if at all already any cheque bouncing case filed in relation to the said three cheques out of the ten cheques in question, a separate prosecution again for the offence under Section 420 IPC no way survive to sustain as per the Full Bench expression of the A.P. High Court in **OTPS Marketing Private Ltd v. State of A.P.,** unless private complaint filed both the offences under Section 138 of the Negotiable Instruments Act, 1881, and Section 420 IPC together.

6. Accordingly and in the result, the Criminal Petition is allowed in part by quashing the proceedings so far as A-2 concerned and disposed of with the observations giving liberty to the 1st petitioner – A-1 to move the trial Court by filing application pursuant to the above directions for the trial Court, if necessary, to revert the clock back to the private complaint stage before referring to Police for investigation and require the compliance of the guidelines of the Apex Court in **Priyanka Srivastava's Case (1 supra),** if not complied with, if at all to refer or to take up enquiry on the private complaint, otherwise by following the procedure under Sections 200 to 204 read with 190 Cr.P.C. and on own merits.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 21st January, 2019

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123

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3082 OF 2018

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