HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5043 of 2016

ORDER:

The petitioner K.Surender Reddy is the 1st accused among 3 accused in CC.No.1092 of 2014 on the file of III Metropolitan Magistrate at LB Nagar which is outcome of crime No.563 of 2014 dated 04.08.2014 for the offences punishable under Sections 420, 506 r/w 34 IPC registered by Cyberabad PS from the private complaint of the 2nd respondent-defacto complainant by name K.Nagaraju referred by learned Magistrate under Section 156(3) Cr.P.C. in registration of the crime which reads that in 2008 accused persons 1 to 3 approached the complainant to join as venture partner saying lack of funds with them and thereby they all decided to purchase lands at Goplaram Kalan Village of Medak and entered into MOU dated 16.08.2008 in the presence of Govardhan Reddy-LW.2, Anil Kumar-LW.3, for the land agreements and plot registration and office management pertains to that venture, that they invested amounts and later A1 and A2 retired from the venture and merged their share to A3, on 16.02.2009 another MOU entered between A1 to A3 and complainant. On 30.09.2010 complainant and A3 Someshwar Raju entered into agreement/undertaking for completion of the pending works from the agreement of 2014, that A1 to A3 passed resolution dated 10.05.2014 stating the complainant representing in the firm as venture partner and he is not partner of the firm and thereafter they have executed sale deeds in favour of Elitem Ramesh and Dappu Jayamma on 16.06.2014 and 30.06.2014 without knowledge of complainant and complainant went to office on 16.07.2014 on which they gave adamant reply and threatened with dire consequences including the threats over phone with dire consequences by A1 on 19.07.2014. The police after investigation filed charge sheet by citing 6 witnesses including LW.4 to 6-IOs and LW.1-defacto complainant and LW.2 & 3 witnesses referred supra of the agreement dated 16.08.2008. The learned Magistrate therefrom taken cognizance against the 3 accused for the offences punishable under Sections 420 & 506 IPC r/w 34 IPC, same is impugnment herein.

2. The sum and substance of the police final report while referring to the FIR supra speaks that A1 is Managing Partner and A.2 and A.3 partners of Suryodaya Venture & Constructions a registered partnership firm No.850/2014 of Hyderabad, they approached due to lack of funds the complainant to join him as venture partner and to utilize his vast experience in the real estate activities and he agreed for the venture of Gopularam known as Brundavanam Venture but not in main partnership firm that subsequently they decided to purchase land at Gopalaram Kalan Village and entered the MOU dated 16.08.2008 in the presence of LWs.2 & 3 with one of the conditions therein of A1 to A3 agreed of land agreements, plot registration and office management pertaining to the venture to be entrusted to the complainant and on the same day accused and complainant entered buy back guarantee agreements also and the investment and percentage of shares between them in that venture are for A1-10% share with capital investment of Rs.5,00,000/-, A2-K.Ramachandra Reddy 10% with equal capital investment and A.3-S.Someshwar Raju and another 40% with Rs.20,00,000/- capital investments and

complainant-Nagaraju 40% with equal capital investment of Rs.20,00,000/- and they purchased different extents of land of 5 acres on 28.08.2008 by sale agreement No.2979/2008, 4 acres on 03.10.2008 by sale deed No.3393/2008, Ac.2-23 guntas by sale deed No.3929/2008, Ac.0-26 guntas on 27.02.2009 by sale deed No.550/2009, Ac.0-18 guntas on 09.09.2010 by sale deed No.559/2010 which all relate to Ac.12-27 guntas registered in the name of the complainant as venture partner and subsequently on 14.02.2009 A1 and A2 retired from the venture because of differences between them and same was accepted to take the shares of the retiring partner by complainant and A3 and later another MOU dated 16.02.2009 entered between A.1 to A.3 with complainant, A.1 and A.2 merged their shares to the share of A3 and later A3's share became 60% and complainant-40% and transactions between the complainant and A3 went peacefully with lot of pending works due by A3, that on 30.09.2010 A3 entered another MOU with complainant for pending works as venture partner including buy back guarantee agreement and sold balance plots of A3 share and not completed pending works so far. Further averred after merging of shares supra without knowledge and consent of complainant, A1 to A3 passed resolution on 10.05.2014 stating complainant is representing in the entity firm as venture partner and partner of the firm, but complainant is working as Marketing Manager and also resolved that complainant is removed from the firm and not having any right to sell the plots and land in above venture though the complainant is venture partner in Brundavanam Venture of Gopalaram, but not partner of the firm and A1 to A3 entered agreement contrary to the terms and conditions of the agreement/MOUs dated 16.08.2008, 16.02.2009 & 30.09.2010 without any right to enter agreements or execute sale deeds to third parties for all lands of said venture registered in the name of complainant as a venture partner and the sales executed by A1 to A3 without knowledge of the complainant on 16.06.2014 & 30.06.2014 in favour of E.Ramesh and D.Jayamma without right and without cancellation of earlier 3 MOUs supra and without any right in them and without settlement of complainant's investment in the venture which acts of them attracting the offence under Section 420 IPC of cheating besides other offences and accused 1 to 3 gave adamant replies when questioned with dire consequences and the investigation revealed the same in charging the accused for the offences punishable under Sections 420 & 506 r/w 34 IPC.

3. The contentions in the quash petition vis-à-vis oral submissions of the impugnment of registration of the crime and police final report and cognizance order of the learned Magistrate are that even taken on face value of the entire allegations supra no case is made out against the petitioner for the alleged offence for the learned Magistrate to take cognizance and petitioner earlier filed Crl.P.No.3229 of 2016 to quash CC.No.1092 of 2014 and for want of material that petition was dismissed with liberty to file fresh petition and there is no proper witness evidence enclosed to the complaint for proving the offence against the petitioner and the police Uppal mechanically registered the crime and made table investigation in filing the charge sheet on the pressure of the defacto complainant and the continuation of proceedings is abuse of process. It is also the submission vis-à-vis the contention of the

2nd respondent-complainant earlier filed against the petitioner and another report registered as crime No.125/2014 of Munipalli PS, Medak District for the offences punishable under Sections 420, 427, 468 & 506 IPC and the police final report by referring as false and questioning the FIR itself petitioner and another filed quash petition No.1025/2015 that was closed on the ground of very crime referred as false. The 2nd respondent-complainant filed cheque bouncing in CC.No.82/2011 against V.Rajaiah and in the course of his cross examination deposed that he has taken amount from his friend in cash and did not close name of friend and the quash petitioner is not partner or sleeping partner of Suryodaya Ventures & Constructions but for Surender Reddy, Ramachandra Reddy and Someshwar Raju and denied the suggestion of he is sleeping partner in the firm and suppressing the fact of 2nd respondent not at all a partner to the above firm filed false case with intent to extract money from the petitioner and thereby the proceedings are liable to be quashed.

4. Whereas it is the submission of the learned counsel for the 2nd respondent-complainant that the learned Magistrate rightly taken cognizance from the material on record and there are no grounds to quash the cognizance order of the learned Magistrate which is not even prejudice herein, leave about from the police final report to take cognizance no reasons required and there are no grounds to quash the proceedings and thereby sought for dismissal of the petition. Learned Public Prosecutor also supported the same.

5. Heard and perused the material on record.

6. The private complaint was not filed before the Court much less the FIR or charge sheet speaks date of private complaint but for when received by police with endorsement of Magistrate under Section 156(3) Cr.P.C. in registration of the crime on 04.08.2014 and filing of the charge sheet on 11.11.2014 for the cognizance order of the learned Magistrate subsequent to that for the offences punishable under Sections 420 & 506 r/w 34 IPC. Without need of repetition of facts borne by record from the FIR and charge sheet referred supra the complainant according to him not even partner in Suryodaya Ventures and Constructions registered firm No.850/2008. What complainant claims was accused 1 to 3 approached him to invest in the business to get 40% share besides 40% share by A3 and 10% each by A1 and A2 to develop the Brundavanam Venture at Gopalaram Village. It is even mentioned of A1 and A2 retired from that partnership and also from the venture business. It is not his case of there is any cheating before their retirement from that partnership firm and that venture. Coming to the 1st MOU with accused 1 to 3 and complainant dated 16.08.2008 in this regard at the cost of repetition there is no cheating and even subsequently according to the complainant the lands are purchased in his name for above Ac.12-27 guntas till 2010 and 1st transaction of sale in end of August 2008 subsequent to 1st MOU dated 16.08.2008 and the last transaction on 09.09.2010 and in between there is 2nd MOU dated 16.02.2009 and the 3rd one 30.09.2010 and the 2nd MOU dated 14/16.02.2009 retirement of A1 and A2 from the venture due to internal differences and what stated further is A1 and A2 at their post retirement supra entered another MOU dated 16.02.2009 with

complainant by merging their shares with A3 in the firm. What all stated is there was agreement/MOU 3rd one dated 30.09.2010 with A3 by complainant for pending works till then there is no any cheating even admittedly.

7. What is further investigation reveals from what the complainant alleges so also the so called 2 witnesses if any to the agreement dated 16.08.2008 alone and not for the later ones, leave it even taken if any, the main allegation from page No.3 of the charge sheet is subsequently without knowledge of complainant which is nearly 4 years later to these MOUs supra that too on 10.05.2014 A1 to A3 passed a resolution stating the complainant is only working as Marketing Manager of the firm and not partner and he was removed from that post from the firm by mentioning he has no right to sell any plots and land in said venture. It is the case of the complainant that he is not a partner of the firm at all but for only to Brundavanam Venture. Once such is the case, there is no offence of cheating right from the inception of entering into MOUs dated 16.08.2008, 16.02.2009 if any by accused 1 to 3 with complainant. Thus, there is no offence of cheating that attracts for the police filed charge sheet or for the learned Magistrate to take cognizance. Even coming to the alleged offence of Section 506 IPC concerned, there is nothing to show there was any fear in the mind of the complainant on the alleged threat by any of the accused on 16.07.2014 when he went to their office and questioned about they executed sale deeds to one Ramesh and Jayamma in June 2014 what was stated is they have given adamant replies and threatened with dire consequences. It is not even his case that he got any fear in his mind of harm from

accused and approached the police much less even later to the so called A1's telephonic threat on 19.07.2014 thereby it clearly shows it is engineered to create a cause by adding criminal flavour to the pre-dominantly dispute of civil in nature in relation to the said Brundavanam Venture.

8. Having regard to the above, the proceedings are liable to be quashed to sub serve the ends of justice.

9. Accordingly and in the result, this Criminal Petition is allowed by quashing the proceedings in CC.No.1092 of 2014 against the accused No.1/petitioner.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.03.2019
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