

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.11648 of 2018

ORDER:

The petitioner is the accused in Cr.No. 479 of 2018 of Chilkalguda Police Station, Hyderabad, registered for the offence punishable under Section 420IPC on the report of the 2nd respondent-defacto-complainant. It is impugning said crime proceedings, the quash petition is filed.

2. The report of the defacto-complainant-Mohammed Abdul Mujeeb in registration of the crime reads that he is working in Soudi since 1992 and the accused Mohd.Omar Faisal, who is his relative also now in Soudi, that both are originally residents of Padmarao Nagar viz; defacto-complainant at H.No.6-1-342/ F and the accused at H.No.6-1-342/ G, that the accused cheated him for a sum of Rs.50,000/- for a promise to arrange enrolment for the year 2012-13 for distance education in B.A. and Computer Education Diploma with CMJ University and APTEch Computer Education respectively. The petitioner is harassing him and tried to extract Rs.2lakhs. As the defacto-complainant could not proceed with the proposed education due to bearing of marriage expenses of his son and asked the petitioner/ accused for refund of his amount for which the accused saying that he has already made arrangements to have someone to sit in for him for exams, that later the defacto-complainant received e-mail with copies of university degree and computer certificate and upon his asking about those without writing examination, the petitioner/ accused indicated that those are just sample copies of the originals and when he made attempt to reach university and APTEch Computer Education personnel about the certificates, there was no response. When he confronted the petitioner/ accused about certificates and criminal approach, he behaved rudely and threatened with dire consequences and as the defacto-complainant is having busy work schedule, he did not pay attention to the e-mails of the petitioner/ accused but kept on asking for refund for which the petitioner/ accused continued to threaten with dire consequences and also started filing false cases by romantically linking him with the wife of petitioner/ accused and as a part of it to build up pressure on him, the petitioner/ accused filed a suit for damages of

Rs.11lakhs. It is further submitted that the defacto-complainant came to know that the certificates are not authentic and the petitioner/ accused cheated many and realized that the script in APTEch certificate was written and that matches with the style of signing "line and two dots" underneath it and his attorney is in the process of authenticating the certificates through the specified organizations. On arrival in night of June, 12, 2018 for Eid holidays both of them came to India, to spend Eid holidays where the defacto-complainant again asked the petitioner/ accused for refund for which the accused rudely replied that if the defacto-complainant not pays Rs.2lakhs, he would report to police of the defacto-complainant is in possession of fake certificates and gaining employment benefits and saying so handed over to him the same certificates which were sent to him through e-mail which are fake and also threatened him to kill if he continues to ask for refund. To his shocking and on legal advice, the defacto-complainant approached the police. Hence to take action.

3. The petitioner/ accused herein as plaintiff filed suit O.S.No.69 of 2018 on 26.12.2017 before III Addl.Senior Civil Judge, Secunderabad which is about 8 months prior to the giving of the present complaint and registration of FIR dt.31.08.2018, claiming damages of Rs.11lakhs against two defendants viz; his wife by name Fathima Farisa as 1st defendant (D.1) and the defacto-complainant Mohd.Abdul Mujeeb herein as 2nd defendant(D.2) with the averments that his marriage with the D.1 was performed on 23.12.2001 at Secunderabad as per Muslim law and they lived for some time happily and after 45days of marriage the plaintiff/ accused left Damman(KSA) to join his services and called his wife-D.1 to Damman and she joined his conjugal society and she became pregnant and came back to India for delivery and was blessed with two male children (twins) namely Mohammed AfnaanTaseer aged about 15 years and Mohammed Izhaan Taseer, aged about 15years and they are under the custody of the Plaintiff's-/ accused parents. The D.1 was also blessed with a female child namely Tamkanat Eeman, aged about 8 born on 20-05-2009, who is also now under the custody of the parents of the plaintiff/ accused. The accused is currently working in Saudi Arabia and he further

submits that his wife is having illicit intimacy with one P.Sashi Kumar, R/o. Boiguda, Secunderabad and when questioned on his return to India in September 2014, with the intention of settling in India permanently, D.1 instead of mending her ways, left his matrimonial society in the first week of October 2014 by leaving behind the male twins but taking the girl child with her to her parents in West Marredpally. The family members of his wife/ D.1 assaulted father of the plaintiff/ accused and broke his hand on February 2015 and a case in Cr.No.140 of 2015 was registered by Chilkaiguda Police. The plaintiff/ accused submits that he filed a petition under Section 7 to 10 and 25 of Guardians of the Family Court Act 1984, seeking the custody of his minor daughter, vide Family O.P.No.202 of 2015 and said case at the intervention of the religious leaders and with rejoining of his wife, was dismissed for default on 28.10.2015 and the FIR No.140 of 2015 was also closed. The plaintiff/ accused again for employment went to Saudi Arabia in the month of August 2015 and during this time his wife again began to develop intimacy with his uncle (younger brother of his father)-Mohammed Abdul Mujeeb/ D.2, the defacto-complainant herein who was also working in Saudi Arabia. The D.2 used to send objectionable messages to his wife/ D.1 such as "*Tera dhiyankidarhaitera hero idharhai.*" He also used to address her as "sweetie". The D.1 replied as "*You are my ever green hero.*" The D.2 kept on sending several objectionable Whats App messages to the D.1. The accused is in possession of one such telephonic conversation, between the D.1 and the D.2 which is as follows:-

D.2: Check if anyone else to our conversation.

D.1: No. Baba and ammi are sleeping

D.1: I am worried if my husband gets hold to our Whatsapp messages.

D.2: Do not get worried nobody can recover messages, he is just bluffing.

D.2: Listen to me and just do what I say and everything will be alright and nobody will come to know about anything.

When the Plaintiff/ accused confronted his wife/ D.1, she was serious with him and when the plaintiff/ accused objected such kind of behaviour of D.1 with D.2, the D.1 left the house of the plaintiff/ accused on 11-04-2017 and staying at her parents' house at West Marredpally leaving all the three children and the plaintiff

is bearing all the expenses of the Children who are studying in Faust High School, Marredpally. The plaintiff/ accused came to India on 21-06-2017 to spend time with his parents and children on the eve of Ramzan festival but the D.1 did not bother to get any touch with him and did not send Ramzan Greetings to the children and even did not speak to children on their birthdays which shows she totally abandoned all the three children that forced him to file a custody petition and the same is still pending. The accused/ Plaintiff, having come to know the illicit intimacy between D.1 and D.2, issued a legal notice dated 24-07-2017 to the D.1 and his two brothers namely, M.A. Bari and M.A. Khalid. In spite of receiving said notice, the D.2 did not mend his ways. Soon after returning to Secunderabad, in the month of December 2017, both the D.1 and D.2 were found one in each other's Company and secretly met at Hotel Benson Taj, Secunderabad on 06-12-2017 and later to Bata opposite to Kamat Hotel near Clock Tower, Secunderabad. The plaintiff/ accused is having photographic and videographic evidence to this effect. The Plaintiff has to engage the services of a detective agency to track the actions of the Defendants which are causing severe mental agony to him. The D.2 knowing fully well that the D.1 is wife of the accused/ petitioner enticed her and the activities of the defendants known to all and the plaintiff/ accused has to suffer untold humiliation belonging to a traditional Muslim family. Hence, he claims Rs.11lakhs from the defendants jointly and severally.

4. Heard the learned counsel for the petitioner/ accused/ plaintiff and the defacto-complainant/ D.2 and the learned Public Prosecutor and perused the material on record including the contentions in the quash petition vis-à-vis the rival claims of the learned counsel for the petitioner/ accused in support of the quash petition with reference to the facts supra and in seeking to quash the proceedings. The learned counsel for the defacto-complainant/ D.2 in supporting the crime pending for nothing to interfere by saying all remedies are left open only after filing of final report.

5. From the very report, the alleged enrolment and payment of Rs.50,000/- was in the year 2012 for the years 2012-2013 and the report was only in the end of

August 2018 nearly six years later with no reason or cause for the delay and without even whisper as to when the so called additional amount of Rs.2lakhs asked and as to when the e-mail messages of copies of the certificates sent and when the so called originals given with no even proof regarding the dates and from which cell number to which cell number the conversation and with what proof owning of the mobiles which are the pre-requisite, leave about the fact that about 8 months prior to the very report there is already a civil suit filed by the accused against the defacto-complainant/ D.2 and the defacto-complainant/ D.2 in the suit supra even filed his written statement just before giving of present complaint to police in the end of August, 2018 that too without any whisper regarding the written statement running in 8 paras and 3 pages and it clearly shows there is animosity in relation to the so called extra marital relationship with the wife of Accused/ petitioner covered by the civil dispute probably that is the root cause in filing the complaint after six years to the so called enrolment with no even proof regarding any payment much less Rs.50000/- and any proof regarding his involvement in the admission or so called messages.

6. Having regard to the above the dispute between the parties is predominantly in relation to the extra marital relationship of wife of the petitioner/ accused with the defacto-complainant and twisting the facts, the present complaint filed and the prosecution is not bona fide with any legitimate claim.

7. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner/ accused in Cr.No.479 of 2018 of Chilkalguda Police Station, Hyderabad. Needless to say from the submission at this stage of charge sheet filed by police for equally the same taken cognizance or not. The petitioner/ accused is acquitted and his bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date:22.02.2019
vvr

Dr. B.SIVA SANKARA RAO J,