HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

*****

Criminal Petition No.1159 OF 2020

Between:

Vinod Kumar Viswanath. … Petitioner

And

The State of Telangana through
Public Prosecutor and another. … Respondents

DATE OF JUDGMENT PRONOUNCED: 20.12.2022

Submitted for approval.

<u>THE HON'BLE SRI JUSTICE K.SURENDER</u>

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

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K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

\+ CRL.P. No. 1159 of 2020

% Dated 20.12.2022

\# Vinod Kumar Viswanath. ... Petitioner

And

$ The State of Telangana through
Public Prosecutor and another ... Respondents

! **Counsel for the Petitioner:** Sri Roopesh Kumar Reddy

^ **Counsel for the Respondents:** Sri S.Sudershan, Addl. Public Prosecutor for R1

Sri V.V.Ramana, learned for R2.

\> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1159 OF 2020

ORDER:

1. This Criminal Petition is filed to quash the proceedings against the petitioner/accused in CC No.9054 of 2019 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad.

2. The accused/petitioner is Chartered Accountant by profession. The services of the petitioner were taken by the 2nd respondent as a Chartered Accountant at a fee of Rs.10.00 lakhs, having engaged him in the month of March 2018. The said amount was towards completing statement of affairs in the liquidation process of the company and settlement before the High Court. On 21.03.2018, the petitioner visited Visakhapatnam and an amount of Rs.5.00 lakhs was paid as fee. Again, the petitioner visited Visakhapatnam on 13.08.2018 and the remaining amount of Rs.5.00 lakh was also paid. On 19.08.2018, the petitioner requested additional Rs.5.00 lakhs stating that the work entrusted was heavy. However the fee claimed was denied. Though the petitioner had to hand over the report, he did not submit the report and asked for more clarifications. As the report was not ready, the same was informed to the High Court. On 22.08.2018 a legal notice was issued demanding the petitioner to handover the report and

since there was no response, complaint was filed with ICAI at New Delhi. Simultaneously, the 2nd respondent also approached the police at S.R.Nagar. Since there was no response from the police, private complaint was filed.

3. Learned Magistrate, having examined the 2nd respondent, took cognizance of the offence under Section 403 and 406 of IPC on 05.07.2019, which reads as follows:

> "The present complaint is filed against the respondent for offences under Sections 403, 406 and 420 for committing criminal misappropriation, criminal breach of trust and cheating. Complainant in his evidence says that they engaged the services of Respondent as a C.A for an amount of Rs.10,00,000/- but after taking much time, when the date of delivery of report has come, respondent demanded more money for which reason they could not submit report before the Hon'ble High Court. As per the statement of complainant, accused was entrusted with some work for which he was paid, but the accused after receiving the money failed to fulfill the promise as agreed and demanded more money. Certainly, it amounts to criminal misappropriation and breach of trust. Hence. Taken cognizance of offence U/s 403 and 406 of IPC against Accused. Register. Issue summons to Accused. Call on 30.09.2019."

4. To attract an offence under Section 403 of IPC, it has to be proved that; i) any movable property was entrusted. Such property was dishonestly misappropriated or converted to the use of the person to whom it was entrusted.

5. In the present case, even according to the 2nd respondent, the money of Rs.10.00 lakhs was given to the petitioner towards his professional fee as a Chartered Accountant for carrying out

the work of preparing report when the company was under the process of liquidation. As seen from the statement of the 2nd respondent, the report was not submitted on time and the petitioner had asked for more clarifications. It is not the case of the 2nd respondent that the work entrusted was never taken up by the petitioner nor that the petitioner was not a qualified Chartered Accountant to undertake the work of preparing a report when a company is under the process of liquidation.

6. A professional shall make all such endeavor to fulfill his professional job that is entrusted to him to the best of his ability. For any reason, the job that has been entrusted to the professional is not up to the satisfaction of the client, it cannot be said that the fee which was given towards carrying out such professional work was subject to criminal misappropriation. When the petitioner was competent Chartered Accountant to carryout the said work, any delay caused for the reason of seeking some clarification from the company and not submitting the report within the time frame as promised would not mean that no job was done or that the fee which was given towards his professional services was misappropriated.

7. To attract an offence under Section 406 of IPC, which is punishment for criminal breach of trust, it has to be proved that

when a person, in any manner is entrusted with the property, or with any dominion over the property, dishonestly misappropriates or converts to his own use such property. Every professional is accountable to his clients. However, as already discussed in the above paragraphs, the fee was given to the petitioner requiring his professional services as Chartered Accountant. It would not amount to criminal breach of trust when the petitioner is a competent professional to deal with the work that was entrusted, only for the reason of not completing his professional obligation in time.

8. For the aforementioned reasons, the impugned cognizance order passed by the learned Magistrate in CC No.9054 of 2019 dated 05.07.2019 is set aside and the proceedings against the petitioner/accused in the said CC are hereby quashed.

9. Accordingly, the Criminal Petition is allowed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 20.12.2022
Note: LR copy to be marked.
B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1159 of 2020

Date: 20.12.2022.

kvs