(2016) 01 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3727 of 2013

T. Siddartha Rao APPELLANT

Vs

Lavanya Lewis and Others RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:
Penal Code, 1860 (IPC) — Section 406, Section 420

Citation : (2016) 1 ALTCrl 409 : (2016) 2 AndhLDCriminal 876

Hon'ble Judges : Dr. B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : T.M.K. Chaitanya, for the Appellant; N. Naveen Kumar, Public Prosecutor (TG), for the Respondent

Final Decision : Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—1. The petitioner is sole accused of Crime No. 210 of 2012 of Kharkana Police Station, Secunderabad registered for the offences punishable under Sections 420 and 406 of IPC on the report of the first respondent defacto complainant. He sought for quashing of proceedings of the said crime pending.

2. The averments of the report of the defacto complainant dated 14.12.2012 in nutshell are that the accused is no other than the brother of defacto complainant-Mrs. Lavanya Lewis represented by GPA holder Pretham Powaku of Secunderabad. That she is working in a Multinational Company in Texas and in order to support her brother and from his interest to establish a company without any financial investment, she helped him by investing the entire amount which she was remitting to Bank accounts from her account and company account of MFK LLC, Chase Bank, account No. 00000746517416 from USA, but, however he has been mentally harassing her for money and threatening to stop the process of US work and also harassing the ex-employees to extract money. That in February, 2011, she visited India and set up a pilot programme of operational activities of the business with a clear intention to support her brother

and mother and entire amount remitted to their Bank accounts SBH A/c. No. 52001012362 and ING Vysya Bank from USA and not a single penny invested by them. Moreover, even operational expenditure was sent by her and has been spent by them and all the work and other assignments, she had diverted to the company and efforts made by her in its improvement ignoring about the setting up the pilot programme as consultants and the activities included Finance and Accounting Human Resource Management, Commission optimization, inventory optimization, MIS and Reporting, Sales Force Efficacies, Training, Analytical and Research, Security and Surveillance and Process Reengineering for domains of telecommunications and its wireless retail industry. That in May, 2011, knowing the dynamics of the business, her brother envisaged his interest to start a private limited company keeping himself and her mother as directors at the captioned address with approx. 4000 square feet in the family interest, she demanded rent of INR 35,000/- per month and the entire expenditure of incorporating the company was provided by her and her brother and mother made no contribution and the expenses for the incorporation sent to the consultants viz. M/s. Radhika of ICICI Bank account No. 006901514461 directly from her and the reason being her personal experience of his financial mis-dealing from February to April, 2011 and the shares allotted to her brother and mother have purely academic and compliance interest and they do not have any investment bearing Annexure-9. Subsequent to incorporation on 10.05.2011, on the feedback of her consultant Mrs. Preetham supra suspected gross mis-utilisation of funds sent by her and she asked her brother of the financial transactions account for the company and this is where the relation with him started deteriorating. He could not distinguish personal and professional relations and started harassing the staff who were hand picked and chosen by her to bend her resolve and divert the focus from financial issues to administrative related issues and with the help of her father Mr. A. Rao who has been her mentor and supporter and also been involved in heading the Finance Department in USA office. On multiple conversations on phone with her brother with respect to the financial/employee harassment issues and thereafter he had assured her to mend his ways. That she visited India on 22nd June, 2012 for personal monitoring, day to day work, events and other matters and keeping away her from busy schedule in the USA, this visit was unscheduled and could have been monitored from US itself. Keeping in view of the volatile situation here she was forced to spend huge amounts in air tickets and also leaving her infant son and family to solve issues in India. This shows the incompetence of handling any organization by her brother. That having addressed all the issues and personally taking a guarantee that those sort of issues will not be repeated, she had turned back not totally convinced and in lieu of these developments they increased monitoring levels even more and in the month of 7th June, 2011, he sent the details of the secondary account of SBH No. 62189507955 and in July, 2011, she planned to move the office to a separate location because of her brothers misconduct and big headedness towards employees and in July/August, 2011, they started to have issues with him. There he too took an opportunity to show his personal grudge against the managers and leads who was reporting his incapability of his administration and started unfolding the events, that in August, 2011, she finished six months of operation and it was the appraisal time for all employees and he was always part of the employment, he was demanding to raise his salary to 15%, even after he was an under performer and never active in the operations of the company and under the influence of the brotherhood, she had to raise his salary to 15% from 7%. It is further averred that he started having huge differences between employees and management of USA and she had to come to India on 19.10.2011, to resolve the issues and she has made up her mind to get separated and make a subsidiary of her own and she stated one of the situation where her brother started projecting unnecessary expenses on capital in nature like generator worth ten lakhs shows that he was completely depending on her for any kind of expenditure and all the operational and management decisions were taken by her and he had no say in this whatsoever.

3. Considering all the above controversies with her brother, the defacto complainant requested Mr. Preetham Powaku to be part of the non operations on the full time basis from November, 2011. During the course of his consultation from February to November, 2011, some of the equipment purchased from personal accounts of Mrs. Radhika Powaku W/o. Preetham Powaku and the equipments purchased from personal accounts were also confiscated by her brother forcibly and should account as theft in the Court of law and these remittances made by her from MFKLCC Chase Bank Account No. 00000746517416 were to pursue the pre-incorporation expenses and also certain amount was given to her brother for the share capital investment. Due to her brothers wrong attitude and gross misutilisation of funds, they started rethinking the dealings with him and wanted to get independent and she asked her to settle all the accounts with her i.e., equipment purchased by her during her visits in India and money sent in all capital equipment and in February, 2012, the accused (her brother) started blackmailing and threatening her to through all the employees out and actually locked the gates and when the employees had to come to work the next day, he tried to physically push the employees and he misutilized the funds sent to him and wanted the GPA holder and key employees to aid him for his unlawful activities and asked the auditor to misappropriate the books of account and upon their refusal he started harassing the employees physically and mentally.

4. It is their further averment that she had referred some of his acquaintances to work in the organisation and under great mental apathy, they called her in the USA to vent their feelings and being humane in nature, she asked him not to treat the employees in cruel manner and that her brother is not sound of mental health and it is brought to her notice that he has been harassing his earlier employees to settle his scores with her and she had helped him to start his company by supporting him monetarily and professionally. However, his attitude and work was pathetic and through sources she had learnt that he was grossly

mistreating his employees. Upon the request, Mr. Preetham sent minutes of the meeting which they had with Indian Auditors RPVS and Associates on 17.02.2012 with a good intention to restructure the organisation. However, on 27.02.2012, her brother sent an email to her father Mr. A. Rao stating that he wanted to shut down the process and her brother stopped contacting them over phone and her father A. Rao sent couple of emails asking to resolve the domestic issue and has become incommunicable. On 12.03.2012, her father advised that he shall be visiting India in a weeks time to resolve the issues again he was harassing the employees and threatening the employees to lock up the company and on 13.03.2012, she also advised her brother that she shall move office by 1st April, 2012 and assured to settle the issues and she tried her best to convince her brother and the defacto complainants and her fathers emails are also evidenced in this regard and as this was shaking up the entire family bondage, her brother has shown his true intentions to make money out of the family bargain and on the day they had a meeting in March, 2012 in the presence of her mother, corporate lawyer, Mr. A.G. Reddy and few other people from his side and her brother had wrongfully diverted the funds and mis-utilised the trust, he also not complied with standard Governmental compliances like paying employees on time, submitting employees TDS, issuance of employees Form-16, registering with the Labour Department, issuance of offer letters, pay slips, mandatory fire safety devises, putting all the employees live in grave danger and no medical kit provided for employees and she hanged her head in shame for doing business of such heinous and sadistic brother.

5. Being a U.S. Company, she strongly believed in human values and decided to disassociate her brother in lieu of his activities and added that she cannot accept her brother actions when he was slave driving his employees and taking disadvantaged her brother and lured her to invest huge amounts in the company which in turn he misutilised the said amounts for self gain, causing wrongful loss to the company and the equipments, material and data under the lights and her companies, still her brother is under illegal position of all equipments, material and data whereby a request to take action against him for criminal breach of trust, extortion, inducement to deliver the property, misappropriation of amount, extortion, illegal possession and threatening.

6. It is the contention in the quash petition to quash the above FIR supra that his sister resorted to settle family scores by lodging the false complaint illegally and it is of civil nature by giving colour of criminal offences to settle the personal scores by using the police machinery and the reports given by him against her on even dates also closed by police and the report given by his sister was registered and that shows the influence behind and it is she, his sister, who requested him to join her business in India as she is the Chief Operating Officer of the company and head office is operating from America and due to certain misunderstandings and to settle those issues she is trying to implicate him in the criminal offence untenably of the civil dispute and if she wants to get her accounts, data, material, the course open to her is to file a suit for rendition of accounts, but not

by giving complaint for alleged criminal offence and if at all there is breach of contract that is with no any criminal liability and if there is any failure or non refund of the accounts, material and data on his part to the complainant, the remedy available is to work out the same, before the competent civil forum and the offence is of civil nature. He placed reliance upon the expression of the Apex Court in Anil Mahajan Vs. Bhor Industries Limited and another , 2006 (1) SCC Crl. 746 where it is held that to attract the offence of cheating, fraudulent and dishonest intention must be shown to be existing from the inception of the transaction and failure to keep promise at a subsequent stage will attract no offence and mere use of expression cheating in the complaint is of no consequence for no basis to the averment of deciding cheating or fraudulent intention of accused at the time of entering into the transactions and in the other expression of the Apex Court placed reliance of Uma Shanker Gopalika Vs. State of Bihar 2006 (2) SC (Crl.) 49, it was held that breach of contract would amount to cheating if only intention to cheat was existing from the inception and if such intention developed later that would not amount to cheating and other expression of the Apex Court placed reliance of Ram Jas Vs. State of U.P. , 1974 Crl.LJ 1261 also it laid down that the ingredients required for cheating there should be fraudulent or dishonest inducement by deceiving from the inception which are of lagging. The other decisions relied upon are Indian Oil Corporation Vs. NEPC, India Limited , 2006-AIR SC 2780, where it is held referring to G. Sagar Suri Vs. State of U.P. , AIR 2000 SC 754, that the prevalent impression of civil remedies, time consuming did not adequately protect interests of vendors or creditors and the effort to settle civil disputes which do not involve criminal offences by applying pressure through criminal prosecution to be discouraged. He also relied upon Ajay Mitras case , 2003 SCC Crl.703, where the three Judge Bench of the Apex Court held that mens rea of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the FIR therein referred the other expressions of A.L. Panian Shanmugam Vs. State of Andhra Pradesh 1991 SCC Crl.84 of mercantile transactions consignments are delivered on credit and very often the payment cannot be made on due date that does not attract penal consequences. Among the other decisions relied upon in S.W. Palanitkar Vs. State of Bihar , 2002 SCC Crl. 129, held every breach of trust may not result in a penal consequence unless there is evidence of mental act of fraudulent misappropriation and if the breach of trust is coupled with mens rea along with criminal prosecution; in Trilock Singh and others Vs. Satya Deo Tripathy , AIR 1979 SC 850, it is observed that breach of agreement is purely civil dispute and in Nageswar Prasad Singh alias Sinha 1998 AIR (SCW) 4007, it is held that entering into agreement for sale and delivery of possession and subsequently went back from agreement by non execution of sale deed does not constitute offence of cheating and having regard to the above and from the other expression in G.V. Rao Vs. LHV Prasad and others , 2000(3) SCC 693 intention is essential ingredient from the inspection that is required to be established thereby the proceedings are liable to be quashed.

7. Heard learned counsel for the petitioner and the learned counsel for the first respondent defacto complainant and perused the material on record.

8. From the averments stated above there is nothing to show from the inception there is luring with deceitful means in entering into contract for the starting of the business between the complainant and the accused i.e., sister and brother, to attract the offence of cheating, but for the allegation show while continuing there is a development of deceitful means by accused that does not constitute offence of cheating as held by the Apex Court in Uma Shankers case (supra) among other expressions referred above. However, so far as breach of trust is concerned, the report clearly speaks several amounts sent to his account and the entire business was entrusted by her including office management and he having dealt with, where according to her there is a breach of trust by misappropriation and misutilisation and these are the matters required to be investigated.

9. Having regard to the above, but for to say, there is no offence of cheating under Section 420 of IPC, so far as offence under Section 406 of IPC is concerned, to quash the crime proceedings there is no prima facie material.

10. Having regard to the above and in the result, the petition is partly allowed while quashing the FIR to the extent of offence under Section 420 of IPC and insofar as the offence under Section 406 of IPC, the quash petition is dismissed as the crime requires investigation by police to file final report. In the event of police filing final report and any cognizance taken up by the Magistrate, for further remedies it is needless to say left open to the petitioner/accused to avail as per law.

11. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.