

(2021) 11 TEL CK 0006

In the Telangana High Court

Case No : Criminal Petition No. 11427 Of 2013

Vijayaraghavan Devaraj 2 Others

APPELLANT

Vs

State Of A.P. Rep., By Its Pp Another

RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 188, 239
Indian Penal Code, 1860 — Section 323, 420, 427, 448, 506

Citation : (2021) 11 TEL CK 0006

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This petition is filed by the petitioners - accused Nos.1 to 3 to quash the proceedings in CC No.732 of 2012 on the file of III Metropolitan Magistrate, Cyberabad.

2. The facts of the case in brief are that the respondent No.2 - de facto complainant filed a private complaint on the file of III Metropolitan Magistrate, Cyberabad at L.B. Nagar, stating that she was one of the Directors of M/s.Tekibez Soft Solutions (India) Pvt. Ltd., registered under the Companies Act and the said company was having branches all over the world and one such branch was at London. The petitioner No.1 established a company, by name, Conciro Pvt. Ltd., in London and the petitioners No.2 and 3 established a company, by name, Pemba Consultants Limited at London and the said companies were sister concerns and were dealing with the same line of business as that of the company of the de facto complainant. Petitioners No.1 to 3, who were acquainted with the de facto complainant, approached her and her husband and requested to lend 8,800 U.K. Pounds to the petitioner No.1 and 8,800 U.K. Pounds to petitioners No.2 and 3. The de facto complainant and her husband transferred the said amounts to them. On repeated demands of the de facto complainant and her husband, the petitioners No.1 and 2 issued cheques but, the said cheques were

dishonoured. When the de facto complainant tried to contact the petitioners No.1 and 2, they were not answering her telephone calls. The de facto complainant traced the whereabouts of the petitioners in India and when she questioned about the dishonour of cheques, they threatened her and her husband with dire consequences. On 12.2.2012, when the complainant was at her office at Ramanthapur, petitioners No.1 to 3 came to the said office at 3.00 PM, broke the furniture and assaulted the de facto complainant and abused her in filthy language and also ransacked the office.

3. The said complaint was referred to the police for investigation under Section 156(3) Cr.P.C. and FIR No.241 of 2012 was registered by the Uppal Police under Sections 420, 427, 448, 323 and 506 IPC and after completing the investigation, filed charge sheet against the petitioners, arraying them as Accused Nos.1 to 3 and the said charge sheet was numbered as CC No.732 of 2012.

4. Heard the learned counsel for the petitioners, learned Public Prosecutor and the learned counsel for the 2nd respondent-de facto complainant.

5. Learned counsel for the petitioners argued at length contending that the alleged acts of cheating are said to have been taken place in London. No enquiry or trial could take place in India except with the previous sanction of the Central Government as per Section 188 Cr.P.C. As the sanction from the Central Government was not obtained, the offence under Section 420 IPC could not be enquired into or tried in India. The alleged offences of trespass, criminal intimidation had been invented only to bring the petitioners within the jurisdiction of the local police. The incidents of trespass, ransacking the office of the complainant and the criminal intimidation were said to have been taken place on 12.02.2012, whereas the private complaint was filed on 06.03.2012 with a delay of three and half weeks. The long and unexplained delay in filing the complaint would raise grave doubt about the occurrence of the incident. The complaint would go to show that the disputes, if any, which were civil in nature and had been given criminal colour. Even according to the complainant, the cheques were given by Conciro Solutions Limited. Without arraying the said company as accused, no complaint could be maintained against the petitioners, as the company had a distinct legal entity different from its Directors.

6. Learned counsel further submitted that the petitioner No.1 was married to the petitioner No.2 on 17.02.2012 at Vizag. On 12.02.2012 there was a function at the house of PW.1 in Chennai in connection with the marriage. The petitioner No.1 was not at Hyderabad as on the date of alleged offence. There were no independent witnesses to the so called incident of trespass. LWs.1 to 3 were employees of Tekbiz Soft Solutions Limited while LW.4 was not an eye witness. The criminal proceedings were maliciously instituted with an ulterior motive for wreaking vengeance on the accused. He relied upon several judgments on various aspects of private complaints and the duty of the Court, and investigation and duties of Investigating Officer, delay in filing FIR/private complaint, and the necessity of sanction under Section 188 Cr.P.C. and on the aspect that two

offences could not be clubbed into one offence and on the aspect that the company must be made as a party, and on trespass, and on the principles laid down by the Hon'ble Apex Court for quashing the FIRs/Calendar Cases.

7. Learned Public Prosecutor submitted that charge sheet had been filed and the allegations made against the petitioners could be decided by the trial Court.

8. Learned counsel for the respondent No.2 - de facto complainant submitted that the lacunas in investigation, if any, could be brought to the notice of the trial Court and could be decided by the trial Court.

9. Perused the record. The record would disclose that the police after investigation filed charge sheet. The private complaint as well as the charge sheet would disclose cognizable offences against the petitioners. The plea of alibi is a matter of fact which shall be proved before the trial Court by adducing evidence. The judgments relied upon by the learned counsel for the petitioners are distinguishable on facts. As the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and in the rarest of rare cases as per the judgment of the Hon'ble Apex Court in *State of Haryana v. Bhajanlal*¹ and the petitioners could raise all these contentions before the trial Court at the stage of hearing of the charges, if necessary, by filing an application under Section 239 Cr.P.C., it is considered fit to dismiss this petition.

10. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed.