

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

**CRIMINAL PETITION Nos.1257, 2174, 2193 AND
2439 OF 2010**

COMMON ORDER:

In the four criminal petitions filed, under section 482 Cr.P.C.,petitioners are seeking to quash the proceedings of Crime No.203 of 2009 of C.C.S., D.D., Hyderabad and another calendar case No.22 of 2010, pending on the file of the

XII Additional Chief Metropolitan Magistrate, Hyderabad, against the respective petitioners A1 to A4 in the said Crime No.203 of 2009 supra and the other calendar case referred supra viz., Criminal Petition Nos.2193 of 2010 filed by A1 and A2 and 2439 of 2010 filed by A3 and A4 respectively and similarly Criminal Petitions Nos.2174 of 2010 filed by A1 and A2 and 1257 of 2010 filed by A3 and A4 respectively.

2. The defacto complainant/A1, Sri Srinivas Gundluri, arrayed as 1st respondent respectively in all the four quash petitions supra and the respective 2nd respondent is the State- represented by Public Prosecutor, on behalf of Station House Officer concerned.

3. The defacto complainant – Srinivas Gundluri, Managing Director of M/s.SSVG Engineering Projects Private Limited (for short, 'M/s.SSVG'), originally filed a private complaint against M/s. SEPCO Power Construction Corporation,

represented by its Deputy General Manager, Sri Wang Changcai (for short, 'M/s.SEPCO') and said Wang Changcai as A2, one P.Subba Rao, Manager of M/s.Wartha Power Company Limited (for short, 'M/s.Wartha'), as A3 and Sri Kishore, Director of M/s.Wartha, as A4, before the learned XII Additional Chief Metropolitan Magistrate, Hyderabad, by mentioning in the private complaint against the said accused of committed offences punishable under sections 120(B), 452, 341, 386, 418, 504 and 506 IPC, for the alleged criminal conspiracy, house trespass, wrongful restraint, extortion, cheating, criminal intimidation etc., offences, in extorting by putting him in fear of dire consequences on life with threat, cheque for Rs.20,12,54,785/-. The said private complaint dated 07.07.2009 in S.R.No.2890 was referred by learned Magistrate under Section 156(3) of Cr.P.C., to the C.C.S., D.D., Hyderabad on 08.07.2009 in dis.No.942 of 2009, to register crime and to investigate and pursuant to which, the crime No.203 of 2009 was registered for the offences 'supra' on 21.07.2009 and the police after investigation, filed the final report on 09.11.2009 on the ground of 'lack of evidence'.

4. As per the final report, besides Srinivas Gundluri supra, 14 more witnesses shown examined in column No.13 of the final report and it is stated that the complainant was also informed of the referred report dated 09.11.2009 on the very same day in filing before the court on 10.11.2009. Needless to repeat the complaint averments, that was forwarded by the

learned Magistrate to the police for investigation and the detailed part II case diary of the respective witnesses, it is suffice from total perusal of the material of the gist mentioned in the final report referred supra, that speaks said Srinivas Gundluri, Managing Director of M/s.SSVG, in his very private complaint, registered as FIR, stated that the office is at first floor, 12-2-460 of Srinivas Gundluri Complex, Amba Gardens, Mehdipatnam, Hyderabad, that SSVG received work order from A1 – M/s.SEPCO, on 16.06.2009, for site clearing and Grading for main power house at Chattisgarh and subsequently, he received cheque for Rs.20,97,46,840/- towards advance for said work from M/s.SEPCO, on 25.06.2009 and after receiving the said cheque, M/s.SSVG, started procuring the machinery and relevant material and also mobilized experts, consultants and secured manpower to execute above work and the complainant, after making arrangements like procuring machinery and manpower etc., was waiting for execution of work, whenever M/s.SEPCO, handover the site situated at Champa District of Chattisgarh; that while so, on 04.07.2009, at about 05.30 p.m., all the four accused supra trespassed into his chambers at SrinvasGundluri Complex supra with deadly weapons, confined him in his chair and A3 and A4 caught hold of him and A2 put the knife on his throat and threatened him with dire consequences and compelled to issue a cheque for Rs.20,12,54,785/-, drawn on IDBI Bank in favour of

M/s.SEPCO and after extorting the cheque by putting him in fear, they fled away and immediately after that the complainant intimated to the police, he is apprehending danger to his life and thereby to take action against the assailants.

5. In the final report from the above facts of the private complaint registered as crime supra, the Station House Officer started investigation saying from the investigation conducted recorded the detailed statements of Srinivas Gundluri, where he stated in April, 2009, his company - M/s.SSVG, had discussion with A1 - M/s.SEPCO, at their office at Janjgir of Champa District with its Deputy General Manager - A2 - Wang Chengcai, for the project work related to site clearing and Grading for mainpower house at Nariyara Village of Akaltara Taluka of JanjgirChampa District of Chattisgarh and on request of A2- Wang Chengcai, he issued quotation on 03.05.2009 in the name of A1 - M/s.SEPCO. The contract value furnished of Rs.42,92,19,800/-, which value remains till completion of entire work. On 16.06.2009, he received work order for the said clearing and Grading for main power house and the same was signed by A2, on behalf of A1, through A3 - Manager of M/s.Wardha, Hyderabad, who also signed on the work order. On 25.06.2009, received letter from M/s.SEPCO, signed by A2, in which he was advised to mobilize manpower, machinery and equipment and commence the work not later than 29.06.2009, failing which

the work order be terminated and amount paid to be refunded and the amount paid is by way of cheque No.664051, dated 25.06.2009, issued by M/s.SEPCO – A1, drawn on ICICI Bank, Korba Branch, Chattisgarh, for Rs.20,97,46,840/-, after deducting TDS. Immediately, he mobilized manpower and machinery, for which incurred expenditure of Ten Crores and started reminding the M/s.SEPCO – A1 to handover the site covered under the work order for said project work, however, M/s.SEPCO, was not handing over the site and he addressed letter to A1, M/s.SEPCO and A2, its Deputy General Manager, in this regard even. It is while so, on 04.07.2009, at about 05.30 p.m., the alleged occurrence taken place and he went to Asif Nagar Police Station and submitted written complaint to the Inspector of Police, but he refused to take the same and instructed to approach C.C.S. Police, as the amount is more than Rs.30 Lakhs to entertain from the limitation and on the same day, he sent a letter to M/s.SEPCO – A1, not to present the cheque in the bank and addressed a letter to the Manager of IDBI Bank for stopping payment on 10.07.2009. He sent letter to A2 for reimbursement of huge loss together with the copies of bills, else to take action against him also.

6. The police final report of investigation further speaks after recording above versioned statement of Srinivas Gundluri supra, on 22.07.2009, visited the office of Srinivas Gundluri and collected visitors register and verified the same

and noted that entry of visit of Subba Rao, Wang Changcai and 20 others, between 05.30 to 06.30 p.m., on 04.07.2009 was noted, however, it seems to be inserted in the visitors register. The Investigation Officer further says on 04.08.2009, verified with C.C.S. records and Asif Nagar Police records as to said Srinivas Gundluri lodged any police report and recorded the statement of Inspector of Asif Nagar Police Station of no complaint received from Srinivas Gundluri, much less orally, much less on 04.07.2009 and as per the police station records, on 10.09.2009, a case was registered in Crime No.352 of 2007 on complaint of one SreeCharanAtluri against Srinivas Gundluri of M/s.SSVG and Srinivas Gundluri, cause filed through R.Venkateshwar Rao, Managing Director, a case against SreeCharanAtluri, referred by court as a counter to the above crime, that was registered as Crime No.381 of 2007, that was referred as 'lack of evidence'. The Investigation Officer stated that Srinivas Gundluri is in the habit of giving counter complaints whenever any complainant lodged any complaint against him. He recorded the statements of other witnesses working in and around of the office of M/s.SSVG in Srinivas Gundluri Complex, where the alleged incident taken place and no one did state of noticing any incident or nuisance taken place in the complex on the alleged date and time and also verified the tower locations of mobile numbers belonging to the complainant on the specified date and time of 04.07.2009

between 05.00 to 07.00 p.m., and found that Srinivas Gundluri was on that day under the tower of Jubilee Hills Check Post by 17:03:27 hours and later under tower of Jubilee Hills, Road No.10, between 17:11:21 to 17:16:58 hours and later at 17:45:07 hours, he was under tower of Nagarjuna Circle and at 17:56:13 hours, Masab Tank, at 18:14:29, Mehidipatnam RTC bus terminal area and between 18:51:10 to 19:20:42 hours, Gudimalkapur Tinny Angles and at 19:25:18, Mehdipatnam RTC bus terminal area and at 20:01:12 hours, Masab Tank, whereas he alleged in the complaint of alleged incident against him taken place at Srinivas Gundluri Complex, Mehdipatnam, of alleged trespass and other criminal acts by the accused between 05.30 to 06.30 p.m. From the tower location details of his mobile phone clearly shows he was not available in his office at that time and so far as Subba Rao and Kishore concerned, they were available between 04.00 to 05.30 p.m., in Jubilee Hills power. He collected information from the Manager, IDBI Bank, Banjara Hills, of the account statement of Srinivas Gundluri and shows he issued cheques before and after cheque number 859055 issued to the accused persons, self cheque of one lakh bearing No.859050 on 30.03.2009, transferred to own account on 31.03.2009, cheque No.859051 and cash withdrawn by self on 08.04.2009, cheque No.859053 and the impugned cheque drawn in favour of M/s.SEPCO, cheque No.859055 on 25.06.2009 and he was

asked to furnish the cheque book containing the so-called cheque of all leaves used and unused by serving notice on 05.08.2009, for which Srinivas Gundluri did not respond and another notice dated 11.08.2009 issued for further examination with reference to it and the cover returned as unclaimed and the statements of accused also stated recorded. The investigation there from revealed that Srinivas Gundluri of M/s.SSVG, received work order from M/s.SEPCO, on 16.06.2009, for site clearing and Grading of mainpower house on the contract worth Rs.42,92,19,800/- and received cheque from the M/s.SEPCO of Rs.20,97,46,840/- as advance on 25.06.2009 and exchanged the cheque for Rs.20,12,54,785/-, drawn on IDBI supra impugned as security and he did not commence the work mentioned in the work order and utilized huge amount for his business purpose and M/s.SEPCO, issued letter of termination of the work order and demanded for refund of the advance money and on 02.07.2009, M/s.SEPCO, filed police report in Korba PS of Chattisgarh, against Srinivas Gundluri of M/s.SSVG and other Directors, vide crime No.273 of 2009, which is pending under investigation for the offences under Sections 406, 420 and 120(B) IPC and the theory covered by the private complaint brought into existence by him of the so-called cheque obtained by extortion on 04.07.2009 at his office and he issued letter to IDBI for stop payment on the even date i.e., 04.07.2009 and on

13.07.2009, M/s.SEPCO, presented the cheque, that was returned for stop payment, thereby, case is referred as 'lack of evidence'.

7. Srinivas Gundluri, there from filed protest petition on 14.12.2009 before the learned XII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, which is covered by Cr.M.P.No.390 of 2010, by showing the Station House Officer, C.C.S., D.D., Hyderabad, also as one of the respondent No.5, among the so-called accused as R1 to R4, to reject the referred report and to take cognizance saying the referred report is outcome of tainted investigation with ill-motive. He averred in the protest petition that there is a clinching proof of the acts of the accused and the Investigation Officer, dishonestly did not choose to take actual evidence of the complainant. He lodged a complaint with police on 04.07.2009, a copy of which he enclosed. He issued a stop payment letter to the Bank even on that date, that also enclosed and the possession of the extracted cheque lying with accused later presented is also proved from the investigation and referred in the final report. What he says is on 30.07.2009, while the Crime No.203 of 2009, outcome of private complaint, was under investigation, the police called him and in the presence of accused 2 to 4, instead of enquiry, under the threat in collusion with accused and by abuse in filthy, forced to sign on two non-judicial stamp papers of Rs.100/- each and he was made to sign and he lodged a

complaint with the Chief Minister in this regard on 30.07.2009 itself, that is also enclosed and he sent copy of the same also to police on 06.08.2009. It is on his request, the Hon'ble Chief Minister on 07.08.2009, ordered for change of Investigating Officer, but the Investigating Officer was not changed, that shows the collusion between accused and the Investigating Officer, who closed the investigation without even conducting proper investigation, without examination of complainant and other witnesses and filed false report as if 'lack of evidence', despite knowingly the accused are dangerous persons and A1 and A2 caused death of 20 persons and injuries to number of persons and there are paper clippings also in this regard and thereby the false final report with false investigation is liable to be set aside and cognizance to be taken and he filed as many as 14 documents and cited besides himself as eye witnesses G.Bhasker and Ch.Anilkumar, to the alleged occurrence dated 04.07.2009.

8. No doubt, in his report so-called copy given to Asif Nagar PS or in the private complaint dated 07.07.2009 referred to police in registering Crime No.203 of 2009 supra, he did not mention the protest petition two witnesses as if eye witnesses; what he mentioned in the said private complaint Para (viii) was nobody came forward to rescue him even though few persons witnessed the incident; that is, in fact, one of the crucial aspects. The learned Magistrate recorded the sworn statements of said Srinivas Gundluri and the two

other witnesses on 12.01.2010. The sworn statements of the said 2 witnesses viz., Bhasker and Anil Kumar speak that Bhaskar, as Manager and Anil Kumar, as Security Guard, were on duty on 04.07.2009 and it was about 05.30 p.m., the accused persons came along with ten or more persons and asked the security person about Srinivas Gundluri, whether in office or not and as per the Srinivas Gundluri and Bhasker, Manager, A3 and A4 caught hold of Srinivas Gundluri and A2 kept a knife on the neck and threatened with dire consequences abused and took signatures of him on the cheque leaf bearing No.859055, by putting a date 25.06.2009, drawn on IDBI Bank, Banjara Hills Branch and also threatened him and other staff members and cautioned not to inform anybody and they armed deadly weapons and even Srinivas Gundluri, lodged complaint with police, it was of no away and there is every fear to their lives.

9. Though the probability of security guard on duty and the manager in the office viz., said G.Bhakser and Ch.Anilkumar, be there, the non-mention gives one of the doubtful factors if at all any incident occurred much less in their presence for so not mentioning even in the private complaint dated 07.07.2009 referred supra to the police by the learned Magistrate, further it is not his say that his cell phone not with him and those were not his movements with cell phone, which were not considered in the cognizance order of the learned Magistrate.

10. Importantly, another circumstance that requires to be considered herein is that leave about the Crime No.25 of 2010, from the report dated 03.02.2010 of P.Subba Rao – A3 herein as complainant against Srinivas Gundluri, Bharathi Devi Gundluri and M/s.SSVG respectively, registered for the offences punishable under sections 406 and 420 r/w 34 IPC, by C.C.S., Hyderabad, in complaint filed by M/s.SEPCO, represented by A2 against Srinivas Gundluri as Managing Director of M/s.SSVG and Bharathi Devi Gundluri, Director and Promoter of M/s.SSVG, apart from other Directors. In the crime registered from the private complaint referred to police for investigation by Judicial First Class Magistrate, Korba, Chattisgarh, the endorsement reads the order of proceedings dated 04.07.2009 of appellant Wang Chengcai – A2 herein along with one B.K.Shukla, officer present and made the appeal to take action against the accused in the complaint for the penal sections and referred to police for investigation, after hearing, to take action as per law, which is a criminal offence by registering FIR and to investigate.

11. It is one of the grounds mentioned in the quash petitions there from by the accused persons of apart from the police final report showing no occurrence taken place on 04.07.2009 at the office of Srinivas Gundluri at Srinivas Gundluri Complex for he was not even in the office at the relevant time for the police final report mobile tower movements, the A2 was in the Korba court on that day, from

the endorsement of the Magistrate present, that also falsifies the very story of the cheque obtained under threat and coercion by extortion with criminal intimidation by trespass and mischief etc., for nothing happened as concluded by police also from investigation and the protest petition, by inserting the security guard and the Manager as if witnessed and as if taken place, for the Magistrate to ignore in taking cognizance of the same unsustainable.

12. It is also necessary to mention in this background that the learned Magistrate did not consider these aspects including in taking cognizance in allotting calendar case No.22 of 2010. It is also necessary to mention in this context that the civil suit O.S.No.72 of 2010 filed by M/s.SEPCO, against M/s.SSVG, Srinivas Gundluri, Managing Director and Bharathi Devi Gundluri, one of the Directors, promoters for Rs.23,33,30,430/-, which is in relation to the amount of advance with interest and the civil suit was decreed before the Court of III Additional Chief Judge, City Civil Court, Hyderabad, on 15.06.2015, for recovery of the said cheque amount of Rs.20,97,46,840/- with interest @ 7% per annum from date of suit till date of decree and subsequent interest of 6% per annum till realization, there one C.Ravi Kumar, on behalf of M/s.SSVG, was examined as D.W.1 and A3 herein – P.Subba Rao, as P.W.1.

13. The accused are also relying upon a letter of undertaking given by Srinivas Gundluri witnessed by NareshBandi and G.Kondala Rao, addressed to M/s.SEPCO, dated 30.07.2009, about the advance amount covered by the cheque of Rs.20,97,46,840/-, as per the work order vide letter dated 25.06.2009, saying the repayment to be made in two instalments of Rs.6,00,00,000/- (rupees six crores only) by 03.08.2009 and remaining nearly fifteen crores by 16.08.2009. In fact, said Srinivas Gundluri, besides filed protest petition supra, filed another complaint as if a fresh and independent complaint on 14.12.2009 and it was taken on file on 18.02.2010, that is covered by C.C.No.22 of 2010, it is the same besides the docket order taken on the protest application i.e., on 28.01.2010, saying on perusal of the material papers including evidence of the witnesses raise *prima facie* case in ordering summons to the accused persons by registered post returnable by 18.02.2010, vide from the protest petition, C.R.M.P.No.390 of 2010.

14. As referred supra, in the crime registered by Korba PS against Srinivas Gundluri, pursuant to the warrant, there was a transit bail obtained also by Srinivas Gundluri, from the court herein, with undertaking to appear before the Korba court, vide order dated 22.04.2010 in CrI.M.P.No.690 of 2010 of Crime No.272 of 2009 of P.D.Balko, Korba District, Chattisgarh, which by transit bail order granted by Chief Metropolitan Magistrate, Hyderabad and it shows, he jumped

the bail without submission pursuant to the transit bail order and he sought for bail later and also sought for quashing of the crime proceedings and the matter where he went unsuccessful even went to the Supreme Court covered by Criminal Appeal No.1377 of 2010, where also ultimately he went unsuccessful and it was dismissed on 30.07.2010, where he was asked to deposit some amount initially even he deposited Rs.5 crores, later committed deposit of Rs.2 crores and odd later and another three crores respectively by 27.04.2010 and 13.05.2010, the consequences of which results in dismissal of the appeal before the Supreme Court supra. Suffice to say, the cognizance order either on the protest petition or on the private complaint as if a fresh one respectively against the petitioners by the learned Chief Metropolitan Magistrate, no way sustained, as said proceedings and its continuation in the factual backdrop are nothing but abuse of process and are liable to be quashed to sub-serve the ends of justice, more particularly, for the reason the learned Magistrate did not go through the police final report much less by assigning any reasons for its differing even on protest to take cognizance apart from disentitled to take cognizance on another private complaint as if a fresh one of the facts.

15. Accordingly and in the result, all the four criminal petitions are allowed and the proceedings in C.C.No.22 of 2010 on the file XII Additional Chief Metropolitan Magistrate,

Hyderabad and the cognizance order dated 28.01.2010, on the protest application in C.R.M.P.No.390 of 2010 of Crime No.203 of 2009 are quashed and bail bonds of the accused, if any, are cancelled.

16. Miscellaneous petitions pending, if any, in all these cases shall stand closed as consequence.

DR.B.SIVA SANKARA RAO,J

10.10.2017

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