

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.5157 OF 2019

Between:

Mr. Rajeev Guptha

... Petitioner/Accused No.5

And

1. M/s. SP TSKS, INC
(Previously known as M/s. SP Consulting, INC)
2. M/s. Supra Group LLC Series 1
Complainants 1 & 2 Rep. by its SPA Holder
Mr.G.Venkat Reddy ... Respondents /Complainants
3. State of Telangana,
Rep. by its Public Prosecutor
High Court of Judicature at Hyderabad. ... Respondent No.3

Criminal Petition No. 3410 OF 2019

Between:

Mr. Pankaj Mangla & 2 Others
No.4,7& 9

... Petitioners/Accused

And

1. M/s. SP TSKS, INC
2. M/s. Supra Group LLC Series 1
Complainants 1 & 2 Rep.by its SPA Holder
Mr. G.Venkat Reddy ...
Respondents/Complainants
3. State of Telangana,
Rep. by its Public Prosecutor
High Court of Judicature at Hyderabad. ... Respondent No.3

DATE OF JUDGMENT PRONOUNCED: 22.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 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 their fair copy of the Judgment? Yes/No

K.SURENDER, J

***THE HON'BLE SRI JUSTICE K. SURENDER**

+CRLP No. 5157 of 2019

% Dated: 22.08.2023

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High Court of Judicature at Hyderabad ...Respondent No.3

! Counsel for the Petitioner: Sri M/S Indus Law Firm

^ Counsel for the Respondents: Sri. Pulimamidi Shashidhar Reddy
& Sri. Public Prosecutor

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.5157 and 3410 of 2019****COMMON ORDER:**

1. Criminal Petition No.5157 of 2019 is preferred by A5 and Criminal Petition No.3410 of 2019 is preferred by A4, A7 and A9.

All the petitioners are accused in C.C.No.395 of 2017 on the file of XII Additional Chief Metropolitan Magistrate, Red Hills, Hyderabad.

2. The respondents 1 and 2 filed private complaint before the learned Magistrate which was taken cognizance and summons were issued to all the accused.

3. It is the case of the complainants represented by SPA holder that, A1 Company fully knowing that they were not holding any shares in A3 Company induced both the complainants to invest money in A1 company for purchase of shares of the A3 company. The said inducement was made in collusion with A2 to A8. The complainants have in all transferred an amount of Rs.93,35,365/- (US \$ 143,621,70) towards transfer of shares by A1 in their favour.

4. Failure to transfer the shares as promised after receiving the amount was the reason for initiation of present criminal proceedings.

5. Learned counsel appearing for the petitioners would submit that the entire transactions are in between A1 and the complainants for transfer of A3's shares. No specific role is attributed to these petitioners to implicate them in the criminal case.

6. On the other hand, it was argued on behalf of the respondents that the petitioners were in fact active participants in the negotiations in between A1 and the complainants for the purpose of transferring A3's shares. For the said reason of active involvement of these petitioners, proceedings cannot be quashed.

7. From the reading of the complaint, it is evident that the entire amount was transferred in favour of A1. The petitioners/A4, A5 and A7 have not received any money from the complainants or from A1 to whom the money was transferred.

8. Admittedly, civil suit was filed against A1 and A2 before the Courts in the US for recovery of the amounts paid to A1. These petitioners A4, A5 and A7 are not made parties in the said disputes nor any application is made against these petitioners, which is not disputed by the complainants.

9. To attract an offence under Section 406 of IPC, a person must have been entrusted with money or property which should have been subjected to misappropriation. It is not the case that any amounts were transferred in favour of A4, A5 and A7. The transactions are in between the complainant for the purpose of transferring shares of A3 by A1. There is no allegation in the complaint as to how A4, A5 and A7 have induced the complainants pursuant to which amounts were transferred. It is vaguely alleged that all the accused were responsible and liable since all of them were parties to negotiations for the purchase of shares by the complainants. Such bald statements cannot form basis for criminal prosecution. Admittedly, all the amounts were transferred to A1.

10. Under Indian Penal Code, there cannot be any vicarious liability unless expressly stated in criminal complaint as to how they can be made liable either by virtue of Section 34, 149 or 120-B of IPC. In the absence of any ingredients of any of the provisions being attributed against these petitioners/A4, A5 and A7, the proceedings are liable to be quashed against them. However, A9, being the Indian subsidiary to A1, this Court is not inclined to grant any relief.

11. In the result, the proceedings against petitioners/A4, A5 and A7 in C.C.No.395 of 2017 on the file of XII Additional Chief Metropolitan Magistrate, Red Hills, Hyderabad are hereby quashed.

12. Accordingly, Criminal Petition No.5157 of 2019 is allowed. Criminal Petition No.3410 of 2019 is partly allowed quashing the proceedings against A4 and A7 only. Consequently, miscellaneous applications, if any, shall stand dismissed.

K.SURENDER, J

Date: 22.08.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.5157 and 3410 OF 2019

Dt. 22.08.2023

kvs