

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

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**Criminal Petition No.775 OF 2020**

Between:

Srikanth Chintalapati

... Petitioner

And

State of Telangana,  
Rep. by Public Prosecutor,  
and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED:

29.08.2023

Submitted for approval.

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

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|---|--|--------|
| 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 |

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*K.SURENDER, J*

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

**+ CRL.P. No.775 of 2020**

% Dated 29.08.2023

#Srikanth Chintalapati

... Petitioner

And

\$ State of Telangana,  
Rep. by Public Prosecutor,  
and others.

... Respondents

**! Counsel for the Petitioner:** Sri Sivaraju Srinivas

**^ Counsel for the Respondents:** Public Prosecutor for R1 & R2  
Sri M.S.Srinivasa Iyengar for R3

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> Criminal Appeal No.2344 of 2023, dated 08.08.2023

<sup>2</sup> (1984) 4 SCC 116

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.775 OF 2020****ORDER:**

1. The petitioner is arrayed as A1 in the charge sheet for the offences under Sections 406, 420, 477-A IPC.

2. A complaint was lodged on 26.11.2018 by the 3<sup>rd</sup> respondent, who is the Chairman of M/s.Aeries Technology Group Private Limited, situated in Hyderabad. The company was carrying on business of operations in Hyderabad employing nearly 350 employees. Petitioner was Chief Operating Officer since 01.08.2012 and worked till 31.08.2018. The petitioner abruptly left the company without intimation. This petitioner along with A2 allegedly committed several irregularities in the company by misappropriating funds of the company meant for procurement, hiring manpower, transport, catering orders and security contracts of the company. During the internal audit and investigation done by the Chairman, it was found that the petitioner and A2 colluded with the vendors and purchases were over charged.

3. Three main IT vendors namely Techmine Solutions, Prime Asset Source Pvt. Ltd. And Digital Waves International Private Limited had a common contact person. The aggregate purchase of the company from the three vendors was Rs.75.00 lakhs per quarter. The petitioner and another caused wrongful loss of Rs.4.50 Crores over a period of three years. The reason was that the quotations were invalid and over priced. Further, the companies lacked competence or local standing to supply such equipment. The said three companies did not have any previous experience or credentials in supplying IT equipment.

4. The petitioner and another also colluded with cab service providers and charged more trips per day than done. The assessment of loss was Rs.1.40 Crores per annum on account of bogus invoices submitted by the vendors.

5. Though, no services were rendered by NAMS Technologies, vendor invoices and mails were fabricated and money claimed to defraud the company on the basis of 'recruitment'.

6. The petitioner while working as a full time employment also worked with two more companies which are KSR Properties

Private Limited and TV Koski Infra Private Limited and drew huge salary from the said companies also.

7. Complainant also noticed that the petitioner indulged in cheating by indulging in fraudulent activities with the help of Kevin Jacobs, Vice President, Mergers & Acquisitions of Epiq. The said Kevin Jacobs fraudulently authorized false bills along with this petitioner. Collusion between the petitioner and Kevin Jacob was to induce the company employees with false promise of offering bonuses and perks with a view to acquire the complainant company business deceitfully.

8. Finally the case complainant alleged that the petitioner and another accused were under legal obligation to protect the interest of the company, but they cheated the company knowing fully well that it would cause damage and wrongful loss. The defacto complainant sought to prosecute the petitioner and another for the offence under Section 418, 420, 409 and 406 of IPC.

9. On the basis of the allegations made by V.V.Raman Kumar, the defacto complainant/3<sup>rd</sup> respondent, investigation was

undertaken by the Banjara Hills Police and filed charge sheet for the offence under Section 406, 420 and 477-A of IPC.

10. Sri Sivaraju Srinivas, learned Senior counsel appearing for the petitioner would submit that none of the ingredients of any of the offences under Sections 406, 420 and 477-A of IPC are made out. Except stating that the petitioner has committed several illegalities while working in the company, no evidence is produced by the third respondent nor had the police collected any such evidence to infer commission of any illegal acts by the petitioner to attract penal consequences for the offences alleged. Counsel further submits that none of the witnesses speak anything against the petitioner and the entire trial would be a futile exercise.

11. On the other hand, Sri Srinivas Iyenger, learned Senior Counsel appearing for the 3<sup>rd</sup> respondent would submit that the allegations made in the complaint and the charge sheet are very serious in nature. The said allegations have to be tried by the competent court by giving an opportunity to the 3<sup>rd</sup> respondent to prove the allegations against the petitioner. At the initial stage

when trial has not even commenced, the Court can only look into the allegations made against the accused and cannot draw inferences whether the allegations are correct or not. For the said reason, criminal petition has to be dismissed and learned Magistrate should be directed to proceed with the trial.

12. Having gone through the record, the *defacto* complainant narrated that several deceitful and fraudulent acts were committed by the petitioner herein resulting in huge loss to the company. The witnesses examined by the police are five employees of the company who speak about not using cab services on 15<sup>th</sup> August, one chairman of Creative Solutions, who extracted the biometric log sheet of the employees and furnished the same. Two other witnesses are panchas for confession-cum-seizure of A4 and A5.

13. The Hon'ble Supreme Court in the case of **Salib @ Shalu @ Salim v. State of U.P**<sup>1</sup> held as follows:

“26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the

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<sup>1</sup> Criminal Appeal No.2344 of 2023, dated 08.08.2023

inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

14. This Court cannot blindly proceed on the basis of allegations made in the complaint and charge sheet unless the basis is admissible evidence collected during investigation. A charge sheet is a report prepared by the Investigating officer on the basis of oral and documentary evidence concluded during investigation according to his understanding. Inferences are drawn by the Investigating Officer in the report that the accused have committed offences. However, it is the duty of the Court to



look into the oral and documentary evidence that has been collected during the course of investigation to find out whether any material is available to proceed with trial of the offences *dehors* the final report filed by the Investigating Officer. The charge sheet or final report is not evidence.

15. If the contents of the charge sheet have to be made the sole basis to decide whether criminal prosecution should be carried on or not, such approach would be wholly incorrect. Several assumptions and conclusions may be drawn by the Investigating Officer which may be legally impermissible. In most of the cases, charge sheets are based on the confession of an accused, which confession would not be looked into by the Court unless there is supporting corroborative evidence. Such charge sheets filed on the basis of confessions when there is no corroborative evidence, the High Court under Section 482 of Cr.P.C can quash the proceedings though there are allegations made in the charge sheet which *prima facie* disclose ingredients of criminal offences.

16. The present case is a classic case wherein the *defacto* complainant has filed the complaint on the basis of assumption

that the petitioner and another indulged in fraudulent activities and caused huge loss to the company without any supporting documentary evidence. The case is of circumstantial evidence. In **Sharad Birdhichand Sarda v. State of Maharashtra**<sup>2</sup>, the bench of S. Murtaza Fazal Ali, A. Varadarajan and Sabyasachi Mukherjee, JJ laid down the following five golden principles i.e. the panchsheel of the proof of a case based on circumstantial evidence:

*“(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’.*

*(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*

*(3) the circumstances should be of a conclusive nature and tendency,*

*(4) they should exclude every possible hypothesis except the one to be proved, and*

*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

17. In the complaint, there is an allegation that purchases were made from three vendors namely Techmine Solutions, Prime

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<sup>2</sup>(1984) 4 SCC 116

Asset Source Pvt. Ltd and Digital Waves International Private Limited resulting in huge loss of an amount of Rs.4.50 Crores over a period of three years. Making bald allegations that the quotations were invalid or over priced in the complaint would not suffice. There is no investigation done to say that the petitioner in collusion with the said companies had defrauded the complainant company. The said three company representatives or the person in-charge are not made accused in the present case to draw any inference of criminal conspiracy. On the basis of assumption that such loss of Rs.4.50 Crores was incurred over a period of time without any admissible evidence and only on the basis of assumption drawn by the complainant, the accused cannot be charged with such offence.

18. The other allegation is that 4800 extra trips were charged to the company in between May, 2018 to September, 2018 causing loss of Rs.35.00 lakhs per quarter to a tune of Rs.1.40 Crores per annum. The invoices are bogus which were submitted by the vendors and approved by the petitioner and another. Once again the said vendors are not arrayed as accused, no proof is filed to state that 4800 extra trips were charged. However, four witnesses

were examined to state that they did not utilize the company cab services on 15.08.2018 as it was Independence day and they had stayed in their house. Such evidence of four witnesses will not have any bearing on the allegation of excess payment of 4800 trips.

19. Similarly, other allegations are also made on the basis of inferences drawn by the *defacto* complainant without any factual or documentary evidence. It is not the case that this petitioner had any role in authorizing payments to any of the vendors. In the absence of the petitioner being empowered with any financial powers to make payments, the question of either the offence of cheating or the criminal misappropriation does not arise, in the absence of the alleged beneficiary vendors being charged for conspiracy or any documents filed to prove the allegations of misappropriation and consequent wrongful loss.

20. The other allegation is one of falsifying the accounts. The petitioner was not the person who maintains the accounts. To attract an offence under Section 477-A of IPC, an employee with a fraudulent intention should have made any false entries or

abetted such false entries in the books maintained by the company. No books of accounts are collected by the Investigating Officer nor any instances narrated whereby this petitioner had intentionally made any alterations or omissions in the account books or abetted the same. None of the ingredients of Section 477-A of IPC are attracted.

21. None of the allegations made in the complaint are substantiated by documents but the basis is assumption of complainant. The case is one of circumstantial evidence and proof in criminal misappropriation or such fraudulent acts as alleged in the complaint for colluding with other vendors and causing wrongful loss, documentary evidence has to be provided. Further more, as already stated, none of the vendors, to whom the wrongful gain ensued on account of the alleged acts by this petitioner are neither examined as witness nor arrayed as accused.

22. Continuance of the proceedings before the trial Court on the basis of such inadmissible and assumptive evidence would only be a futile exercise and waste of trial Court's time.

23. In the result, the proceedings against the petitioner in Crime No.1129 of 2018 on the file of Banjara Hills Police Station, Banjara Hills, Hyderabad and consequent charge sheet No.267 of 2019 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

24. Criminal Petition is allowed.

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**K.SURENDER, J**

Date: 29.08.2023

Note: LR copy to be marked.

B/o.kvs

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

**CRIMINAL PETITION No.775 OF 2020**

**Dt. 29.08.2023**

kvs