IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No. 4285 of 2015

CRIME NO. 445/CR/EOW-III/2011 OF CBCID, KOZHIKODE DISTRICT

PETITIONER(S)/6TH ACCUSED :

MOHAN V. NAIR, AGED 46 YEARS,
S/O.(LATE) RAMAN NAIR, AISWARYA HOUSE, OZHUR P.O.,
TIRUR, MALAPPURAM DISTRICT.

BY ADVS.SRI.C.P.CHANDRASEKHARAN (CALICUT)
SMT.APARNA C.MENON
SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENT(S) :
----

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE SUPERINTENDENT OF POLICE, CBCID,
KOZHIKKODE.

2. SUB INSPECTOR OF POLICE,
THALASSERY POLICE STATION, THALASSERY -683 007.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Msd.

Crl.MC.No. 4285 of 2015

APPENDIX

<u>PETITIONER(S)' ANNEXURES :</u>

ANNEXURE-A: **TRUE COPY OF THE FIR IN CRIME NO.542 OF 2011 OF THALASSERY POLICE DATED 28.06.2011.**

ANNEXURE-B: **TRUE COPY OF REPORT DATED 01.12.2012.**

ANNEXURE-C: **TRUE COPY OF THE REPORT DATED 22.12.2012.**

<u>RESPONDENT(S)' ANNEXURES :</u>

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

===================

Crl.M.C No.4285 of 2015

===================

Dated this the 19th day of August, 2015

O R D E R

The prayer in this Crl.M.C is as follows:

> "... to quash the FIR in Crime No.445/CR/EOW-III/11 to the extent it includes the petitioner as 6th accused."

2. In compliance with the orders passed by this Court, the respondent officer concerned (Inspector of Police, CBCID, EOW III, Kozhikode) has filed a statement dated 27.7.2015 in this case, the contents of the such statement reads as follows:

> "1. It is submitted that on 28.06.2011 at 12.00 hrs 1 to 5 acused who are the promoters of Pearls Agro-tech Corporation India Ltd (PACL) assembled at Saradha Krishna Ayer Auditorium, Thalassery, Kerala State for accepting deposits through agents for the company and the complainant Sri.Jacob.T.P, SI of police, Thalassery, on suspicion that the activities of the company were against the provisions of company law, issued notice U/S 41(A) Cr.PC to appear before the Police station with relevant documents etc.
>
> 2. The Sub Inspector of Thalassery, registered a Suo-moto case in this regard as Cr.No:542/12 U/S 3 & 4 of Prize Chits and Money Circulation Scheme (Banning) Act 1978. Subsequently the case was taken over by the CBCID and the case is under investigation as Cr.No:445/CR/EOWIII/KKD/11.
>
> 3. The case in vignette is that the accused company "PACL Ltd" has been collecting deposits from the public offering exorbitant interest and was giving back the principal amount with interest at the rate of 12%. A good number of witnesses have deposed that they were lured to deposit money and some of them had received back the investment

with 12% interest after the tenure of 72, 120, 180 and 240 months. The company is receiving the deposits in the guise of purchasing, development and sale of agricultural land and also for doing farming activities in the land purchased for the customers. The company in their brochure promised the customers that they have various schemes of investment both in installments and lump sum and returns money after the tenure with 12% interest. The schemes were vetted by a Chartered Accountant and she vouches that in all the schemes the profit/interest provided by the company is 12%. A good number of the customers questioned during the course of the investigation were unaware of the land deal of the company and the investments were made on promise of good interest as specified in the brochure. In the agreement between the company and the customer there is a specific clause that the sale proceeds out of the farming activities done on the land of the customer shall be given every year but no customer was given by such sum so far, the company has thereby committed the offence of cheating also. On questioning the witnesses, who have invested money in PACL India Ltd, it is learned that most of them are hailing from rural areas and are also below average financial background. They had opted PACL Company only in the version and trust of their local PACL agents on their assurance of getting more interest than Bank rate, Post office, LIC or any other recognized financial institutions.

4. In Kerala the company is having its presence since 1996 and the amount collected through the branches in Kasaragod, Kozhikode and Thrissur alone comes around 872 crores in the last four years. So far nobody was given any land in Kerala.

5. The company with the intention of cheating the customers had obtained agreement and special power of attorney from the customers at the time of their joining the schemes. The very purpose of this agreement/power of attorney is to take back the land which is said to be allotted to the customer. This clearly shows that there is a treacherous intention on the part of the company by allotting the same piece of land to different customers under the cover of the above said agreement and power of attorney. The company is not having sufficient land to allot all its customers as the number of customers is huge.

6. The claim of the company is that it had allotted land to all its customers as promised. None of the allotment letters contain the survey numbers or any other distinguishing marks to identify the properties assigned to them. The customers were not given the possession of land owned by him/her or registered deed for their title.

7. Several notices U/S 41(A) CrPC were sent to the Directors and Company Secretary to appear before the investigating officer for recording their statements. But the company secretary in this letter

stated that he was joined in the company only on 2012 and requested to withdraw the notice issued to him. The Directors of PACL Company did not made any response to the notice issued to them. More over notices U/S 91 CrPC were also issued to the managers of customer service centers at Thrissur, Kozhikode and Kasaragod to produce the details of new customers enrolled after May 2013, but no reply received to these notices also. This act itself shows that the company is not Co-operating with the investigation of the case. In Crl.MA No.7582/2014 in Crl MC No.4561/2014 the Hon'ble High Court of Kerala ordered not to arrest the Managing Director of the Company for a period of three months but that will not affect the investigating officer to get the presence of signatory of the Managing director for the purpose of investigation by issuing notice U/S 41 (A) and 160 of Cr PC. Notices were issued to the Directors and secretary of the company but no response to the notice.

8. PACL Company claims that they have possessed land in different states in India. This includes that land in Madurai, Thirunelveli, Rajasingamangalam, Selam, Namakkal, Puthukottai, Dindigal etc districts in Tamil Nadu state. The 1st enquiry about the so called land in Peraiyur Tahasil, Madurai district in 53 items of survey numbers revealed that these lands are under the possession by different individuals and not owned by PACL Company. The Thasildar Peraiyur issued a certificate in this regard. Subsequently letters were also sent to the District collectors Thirunelveli, Rajasingamangalam, Selam, Namakkal, Puthukottai, Dinddigal in Tamil Nadu State to verify the details of land and is awaiting for the replies from the authority concerned.

9. The CBI has registered a case in Crim No.RC.BD 1/2014/E/0004/CBI/BS & FC/New Delhi against PACL Company U/S 120 (b) r/w 420 IPC on 19.02.2014. In the investigation report received, it is clearly mentioned that from 1996 onwards M/S Pearls Green Forest(PGF) Ltd along with its directors and group companies including M/S PACL Ltd colluded with each other to dishonestly and fraudulently cheat the customer/investors by making false allotments of land to the customers/investors, without having the ownership of the said land by the company and in the grab of the said business model they have dishonestly collected thousands of crores of rupees on the basis of sham transactions. Enquiry further revealed that M/S PGF Ltd and M/S PACL Ltd had dishonestly induced native customers to invest in sale and development of agricultural land scheme with complete knowledge that at no point of time, the companies were the owners of the property in question ie the land which they said to be allotted to the customers against their investment effectively. This is a pyramidical scheme of investment by which one set of investors are returned with profits by raising funds from a second set of investors that has to be larger than the 1st set who are in turn repaid by raising funds from a still larger 3rd set of investors. Such a scheme is doomed

to fail and invariably collapse when no more fresh investors can be found to perpetuate the cycle of the fraud.

10. In Madhyapradesh State, Inderganj Police registered a case in Cr.No.256/2011 U/S 420 IPC against M/s PACL Company and the case is under investigation. The Hon'ble High Court of Madhyapradesh also observed illegality in the business activity of the petitioners company while considering the writ petition No.3599/2011 filed by the petitioner company.

11. A Case in Cr.No.713/2014 U/S 420 IPC is registered at Kozhikode Town Police Station against the same company on 29.8.2014 and the investigation in this case is also going on.

12. As per nationwide complaints regarding the company, the PACL the Securities and Exchange Board of India (SEBI) had look into the matter in detail and they passed an order as PR No.98/2014 on 22.8.2014 to return 50,000 crores of rupees they collected from the public by the way of cheating to its investors within three months.

13. The investigation so far conducted revealed that the petitioners company had swindled away several hundred crores of rupees by running this illegal deposit scheme under the camouflaged version of real estate business. The deposited amounts in these accounts are the proceeds of the crime and are liable to be freeze since the company has collected these amounts through their illegal business activities.

14. The case is still under investigation and the volume of fraud committed by the petitioners company is not fully ascertained and large number of people joined in the scheme of this company and is nothing but fraud scheme to induce people to part with their hard earned money. The PACL Company is thereby making a parallel economy and this will spoil the economic fabric of the country.

15. All the offences alleged in the FIR are clearly made out from the investigation so far conducted and further in-depth investigation is required to find out whether the company is having at least an inch of agricultural land anywhere in India.

16. Investigation is in progress and the all the materials regarding the illegal deed of the company could be unearthed only upon further investigation. In Kerala the company is having its presence since 1996 and the amount collected through the branches in Kasargod, Kozhikode and Thrissur alone comes around 872 crores in the last four years. So far nobody was given any land in Kerala.

At the time of registering the case Mr. Mohan V Nair was the Kozhikode district head of the said company and the investigation team summoned him for unearthing the details of the company and about the offence, but he intentionally suppressed the facts about the company but the investigation team conducted a search on 01.12.2012 and found out many valuable evidences from the office which is run by the accused subsequently being the Manager of the Customer Service Center district head of the company at Kozhikode, the petitioner, Sri. Mohan V. Nair, S/O (Late) Raman Nair, Age 46 years, Aiswarya House, Ozhur. P.O, Tirur, Malappuram District, arrayed as 6th accused in this case was arrested on 01.12.2012 and produced before the court and remanded to judicial custody. As per the directions and conditions of the Hon'ble High Court he was bailed out. Now he is working as the Kerala State head of PACL Company at the Customer Service Center, Thrissur.

The petitioner has filed the writ petition to escape from the clutches of law and has approached the Hon'ble Court by suppressing the real facts."

3. In view of the aspects stated above, this Court is of the considered opinion that the Crl.M.C could be closed with liberty to the petitioner to work out his remedies in accordance with law.

With these observations, the Crl.M.C stands finally disposed of.

sd/-

sab ALEXANDER THOMAS, JUDGE