IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.09.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.R.C.No.152 of 2014
and
M.P.No.1 of 2014

The Official Liquidator,
High Court, Chennai. ... Petitioner /Accused I

Vs

1.The Inspector of Police,
CBI/BS & FC/Bangalore

2.Mr.Ashok Muthana
3.Mr.Biswajit Ghosh
4.Mr.K.Ramkumar
5.Mr.V.G.K.Moorthy .. Respondents/
Complainant Accused 2 to 5

Prayer:- Criminal revision case filed under Section 397 read with 401 Cr.P.C., to set aside the order passed, in Crl.M.P.No.1423 of 2013 in C.C.No.77 of 2007, on 17.1.2014, by the learned Additional Chief Metropolitan Magistrate, Chennai, to relieve the official liquidator from being arrived as accused 1 and order one of the accused from the 2 to 5 to represent the company before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner :Mr.P.Kumaresan

For Respondents :Mr.K.Srinivasan,
Spl Public Prosecutor,CBI
for R1
Mrs.Nagarajan for R2
Mr.R.Ravindran for R5

ORDER

This criminal revision case has been preferred against the order dated 17.1.2014 passed, in Criminal M.P.No.1423 of 2013 in Calendar Case No.77 of 2007, by the Additional Chief Metropolitan Magistrate, Chennai.

2. The Official Liquidator, as petitioner, has filed Crl.M.P.No.1423 of 2013 in C.C.No.77 of 2007, praying to delete his name from the proceedings of C.C.No.77 of 2007.

3. It is averred in the petition that the complainant has launched prosecution against the first accused and its Directors and after sometime, the first accused has been liquidated and all the assets of the first accused are vested with the Official Liquidator. But, in C.C.No.77 of 2007, the Official Liquidator has been treated as one of the accused. Since the Official Liquidator is not personally liable for the criminal offences alleged to have been committed by the first accused and its Directors, presence of the Official Liquidator is not necessary in C.C.No.77 of 2007. Under the said circumstances, the present petition has been filed.

4. The trial Court has dismissed the petition. Against the dismissal order, the present criminal revision case has been preferred.

5. The learned counsel appearing for the revision petitioner/petitioner has sparingly contended that the Official Liquidator, who is representing A1 company, cannot be equated with the position of the real accused, but the Court below has treated the Official Liquidator as one of the accused. Under the said circumstances, the present petition has been filed. But the Court below has erroneously dismissed the same and therefore, the dismissal order passed by the Court below is liable to be set aside.

6. The learned counsel appearing for the fifth respondent has contended that since A1-Company has been subjected to liquidation, the entire assets including records, are vested with the Official Liquidator, but the Official Liquidator has refused to defend the company nor produce relevant documents before the lower Court.

7. As adverted to earlier, the present petition has been filed so as to delete the Official Liquidator from the proceedings of Calendar Case No.77 of 2007.

8. It is an admitted fact that the concerned company has been arrayed as the first accused. It is equally an admitted fact that the said company has been liquidated and all its assets and records are vested with the Official Liquidator. It is also equally an admitted fact that C.C.No.77 of 2007 has been instituted on the basis of offences alleged to have been committed by the first accused and its Directors. Since all the assets as well as records are vested with the Official Liquidator, his presence is very much essential in C.C.No.77 of 2007, for the purpose of adjudicating the matter in toto. But at the same time, the Official Liquidator cannot be treated nor equated with the position of the real accused. Therefore, it is quite clear that the relief of deletion sought for in the present petition cannot be granted. However, the following direction can be given:

In fine, this criminal revision petition is disposed of as per the observation made earlier. However, it is made clear that the Official Liquidator cannot be treated as one of the accused, in Calendar Case No.77 of 2007. If the accused have filed any petition in respect of production of certain documents, which are in possession of the Official Liquidator/petitioner, the Official Liquidator/petitioner is bound to produce the same, as per direction to be given by the Court below.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Inspector of Police,
CBI/BS & FC/Bangalore

2. The Additional Chief Metropolitan Magistrate,
Chennai.

3.The Official Liquidator, High Court, Madras

4. The Public Prosecutor,
High Court, Madras.

1 cc to M/s.S.Nagarajan , Advocate Sr.No.47503
1 cc to Mr.P.Kumaresan , Advocate Sr.No.47897

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pmk.6.10.2015