IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2015

DELIVERED ON : 14.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.14397 of 2015

and M.P.Nos.1 and 2 of 2015

N.T.Rajan .. Petitioner

Vs

1.State rep by Inspector of Police
Central Crime Branch, Team-I
Egmore, Chennai 600 008.

2.Sundram Fasteners Limited
Rep by Mr.S.Rajagopalan
General Manager-Finance
Padi, Chennai 600 0560. .. Respondents

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records and quash the FIR dated 28.09.2012 in Cr.No.500 of 2012 for offences committed under Section 406, 420 and 477-A IPC on the file of the respondent.

For Petitioner	Mr.T.Thiageswaran for M/s.Waraon & Sairams
For R1	Mr.C.Emalias, Addl. Public Prosecutor
For R2	Mr.S.R.Rajagopal

O R D E R

The petitioner seeks to quash the F.I.R. dated 28.09.2012 in Crime No.500 of 2012 for offence under Sections 406, 420, 477-A I.P.C.

2. On a complaint lodged by M/s Sundaram Fasteners Ltd., the respondent police registered a case in Crime No.500/2012 on on 28.09.2012 for offence under Sections 406, 420, 477-A I.P.C., against one Venkatesan and others.

3. The crux of the allegation in the complaint is that, Venkatesan was working as Senior Executive (Finance) in the defacto complainant company and in that capacity, he had siphoned huge amounts by adopting ingenious techniques. It is averred in the complaint that, Venkatesan would raise invoices for purchase of consumables and sanction payments to non existent vendors. Under that head, he has defrauded to the tune of Rs.1,60,00,000/-. Yet another method he adopted was to sanction huge amounts as Traveling Allowance to same accused for travels which were never undertaken by them. Under these heads, he misappropriated to the tune of Rs.42,00,000/-. Venkatesan and the named accused in the F.I.R., were arrested and their involvement in the crime came to light. Thereafter, the respondent police arrested Rajan, Kannan and Shanmugam.

4. The specific allegations in the FIR is that Venkatesan, the principal accused had siphoned funds on bogus bills that were raised in the name of M/s Sharp Instruments, in which Shanmugam and this petitioner were partners.

5. Learned counsel for the petitioner submitted that the petitioner was a partner with Shanmugam in M/s Sharp Instruments only from 04.08.2002 to 29.04.2009 and thereafter, the partnership was dissolved. Learned counsel for the petitioner relied upon a copy of the Dissolution Deed that was filed along with typed set of papers.

5. In reply to this submission, learned Additional Public Prosecutor and the learned counsel appearing for the defacto complainant submitted that, the dissolution of partnership was done only on paper to hoodwink the investigation, inasmuch as this dissolution was not even informed to Corporation Bank, Porur Branch where M/s Sharp Instruments was having their account. It was also contended that even in the Income Tax Returns filed up-to-date shows M/s Sharp Instruments as a partnership firm and therefore, the dissolution of Partnership Deed dated 29.04.2009 has been created only for the purpose of escaping from criminal liability.

6. Learned counsel for the petitioner/accused submitted that the petitioner was not in India and he was in Saudi Arabia for a very long time and therefore, he was not involved in the offence.

7. This Court gave anxious consideration to the rival submissions. The Hon'ble Supreme Court in State of Haryana vs.

Bhajan Lal [AIR 1992 SC 604] has laid down the parameters for quashing the FIR. The FIR in this case clearly discloses how the money of the defacto complainant has been siphoned by the principal accused Venkatesan with the help and active connivance of certain bogus Companies, one of which is M/s Sharp Instruments, in which Shanmugam and this petitioner are partners.

8. While deciding a quash application, this Court cannot go into disputed questions of fact. Whether this petitioner was abroad during the relevant point of time, and whether he had resigned from the partnership in the year 2009, are questions for which a finding cannot be given in a quash application. This petitioner was arrested on 19.01.2015 and was released on bail on 02.02.2015. As partner of M/s Sharp Instruments, he enjoyed the spoils of defalcation by the principal accused Venkatesan.

9. Learned counsel relied upon a judgment of the Hon'ble Supreme Court in State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi v. Rajiv Khurana [AIR 2010 SC 2986] by contending that, a sleeping partner cannot be held liable for criminal offence. On a careful reading of the said ruling, it is seen that, the said case arose under the Insecticides Act, 1968 which deals with vicarious criminal liability for offences committed by Company. The principle therein cannot be invoked for offences of this nature, where it is alleged that bogus bills were raised by M/s Sharp Instruments and money was embezzled by the main accused via the Partnership Firm in which Shanmugam and this petitioner were partners. Further, the question whether the petitioner was in Saudi Arabia, is a question of fact which cannot be determined in a proceedings to quash the FIR, especially when investigation is at a very crucial stage.

10. Learned counsel relied upon a judgment of this Court in R.Pandiar v. The State [2012-2-LW(Crl)28]. In that case, after the filing of the Final Report, a discharge application was filed by the accused, which was dismissed by the trial Court, against which the accused came to the High Court invoking his revisional jurisdiction. In those circumstances, this Court allowed the revision application and discharged the accused. In this case, the investigation has not yet been completed and Final Report has not been filed before the jurisdictional Court. Hence, the said judgment will not be of any help to the petitioner.

In the result this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gms
To
1.Inspector of Police
Central Crime Branch, Team-I
Egmore, Chennai 600 008.

2.The Public Prosecutor
High Court, Madras.

+1 cc to M/s.Waraon & Sairam Advocate sr.56372
+1 cc to M/S.S.R.Rajagopal, Advocate sr.56345

Crl.O.P.No.14397 of 2015

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