IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Revision Case Nos.376 and 377 of 2015

Ashok Muthanna ... Petitioner in both the Crl.RCs.

vs.

1.The Official Liquidator
High Court, Chennai

2.State by Inspector of Police
SPE/CBI/EOW/Chennai ...Respondents 1 and 2 in both the Crl.RCs.

3.R.H.Wheeler
4.V.G.K.Moorthy
5.K.Ramkumar ... Respondents 3 to 5 in Crl.R.C.376/2015

6.M.B.Singh
7.K.Ramkumar
8.P.M.Shivaraman ...Respondents 3 to 5 in Crl.R.C.377/2015

Criminal Revision Cases filed under Section 397 and 401 of the Code of Criminal Procedure praying to set aside the order passed in Crl.M.P.No.5714 of 2014 & 5709 of 2014, dated 07.04.2015 on the file of the XI Additional City Civil and Sessions Court, Chennai-1, direct the 1st respondent to continue to represent and defend the 1st accused company in C.C.No.12 of 2003 & 2 of 2003 on the file of the said court.

For Petitioner : Mr.R.Ravindran

For Respondents: No appearance for R1 and R3
in Crl.R.C.376/2015 Mr.K.Srinivasan, Special P.P., for CBI Cases for R2
Mr.S.Nagarajan for R4
Mr.B.Thirumalai for R5

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in Crl.R.C.377/2015 Mr.K.Srinivasan,Spl.P.P., for CBI Cases for R2.
Mr.B.Ravi for R3
Mr.Karthikeyan for R5
Mr.B.Thirumalai for R4
No appearance for R1.

COMMON ORDER

These Criminal Revision Cases have been directed against the orders passed in Crl.M.P.No.5709/2014 in Calendar Case No.2 of 2003 as well as Crl.M.P.No.5714 of 2014 in Calendar Case No.12 of 2003 by the XI Additional City Civil and Sessions Court, Chennai.

2. The first respondent herein has filed Crl.M.P.Nos.5709/2014 and 5714/2014 under Section 305(6) Criminal Procedure Code, so as to delete him from representing M/s.Fidelity Industries Limited, who has been arrayed as 4th accused.

3. It is averred in both the petitions that M/s.Fidelity Industries Limited has become liquidated and all its properties are vested with the Official Liquidator, but the same has been shown as 4th accused as well as 1st accused, represented by Official Liquidator in Calendar Case Nos.2 and 12 of 2003. Under the said circumstances these petitions have been filed for getting the relief sought therein.

4. The court below, after considering the rival contentions raised on either side has allowed both the petitions and thereby, deleted the petitioner/Official Liquidator from both the proceedings. Against the orders passed by the court below, these Criminal Revision Cases have been preferred.

5. Since common questions of law and facts are involved in both the Criminal Revision Cases, a common order is passed.

6. The learned counsel appearing for the Revision Petitioner has contended that the Revision Petitioner has been shown as 2nd accused in Calendar Case No.2/2003 as well as Calendar Case No.12/2003; 2nd accused and remaining accused, except 3rd respondent are erstwhile directors of M/s.Fidelity Industries Limited and the same has been subsequently liquidated and all its properties are now vested with Official Liquidator. Under the said circumstances, the same company has been shown as one of the accused in both the calendar cases. Since the said company has already been liquidated, its erstwhile directors cannot represent the same and further all its properties are vested with the Official Liquidator. The said company is being

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represented by the Official Liquidator, but the Official Liquidator has erroneously filed these petitions so as to delete him from both the proceedings and the trial court, without considering the factum of liquidation as well as vestige of properties of the said company has erroneously allowed both the petitions and therefore, the orders passed by the court below are liable to be set aside.

7. On the side of the first respondent viz., Official Liquidator, representation has not been made. Under the said circumstances, on the basis of the contentions put forth on the side of the Revision Petitioner, these Criminal Revision Cases are disposed of.

8. It is seen from the records that the present revision petitioner and some of the respondents are the erstwhile directors of M/s.Fidelity Industries Limited. Further, it is seen from the records and also on the basis of the representation that M/s.Fidelity Industries Limited has been liquidated and all its properties are now vested with the Official Liquidator.

9. It is an admitted fact that the erstwhile M/s.Fidelity Industries Limited has been shown as one of the accused in Calendar Case Nos.2 and 12 of 2003. Since the erstwhile M/s.Fidelity Industries Limited has also been shown as one of the accused in both the proceedings and since it has been liquidated and its properties are vested with the Official Liquidator, it is needless to say that the said company should be represented only by Official Liquidator, but at the same time, Official Liquidator cannot be treated nor equated with the position of other accused.

10. The present petitions have been filed so as to delete Official Liquidator from both the proceedings. It has already been pointed out that erstwhile M/s.Fidelity Industries Limited has been liquidated and all its properties have been vested with the Official Liquidator and for better adjudication, presence of Official Liquidator is very much essential. Since presence of Official Liquidator is very much essential, he cannot be deleted from both the proceedings.

11. The court below, without considering the fact that the erstwhile M/s.Fidelity Industries Limited has been liquidated and its properties have been vested with the Official Liquidator and also without considering that the presence of Official Liquidator is very much necessary for better adjudication has erroneously allowed these petitions and therefore, the orders passed by the court below is liable to be set aside.

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In fine, these Criminal Revision Cases are allowed and the orders passed in Crl.M.P.Nos.5709/2014 and 5714/2014 in Calendar Case Nos.2 and 12 of 2003 respectively are set aside and the petition filed in Crl.M.P.Nos.5709 and 5714 of 2014 are dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

nvsri

To
1.The Official Liquidator
High Court, Chennai

2.The State by Inspector of Police
SPE/CBI/EOW/Chennai

3.The XI Additional City Civil and Sessions Court, Chennai-1.

+1 cc to M/s.B.RAvi, Advocate, sr.58741
+2 ccs to M/s.P.Kumaresan,Official Liquidator, sr.59300,59301
+1 cc to Mr.K.Srinivasan, Advocate, sr.59260

Crl.RC.Nos.376 and 377 of 2015

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