IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-10-2015

Coram

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1048 of 2009

1.Hameetha Khatoon
2.Nazrulah Rahiman
3.Safiullah Rahim Khan
4.Ghouse Rahim Khan

.. Petitioners/Respondents 1 to 4/ Accused 3 to 6

Versus

1. P.Chinnathambi
   S/o.Mr.Parasuraman
   Executive Engineer
   TNEB, Krishnagiri.

.. 1st Respondent/Petitioner/ Defacto Complainant

2. The State by its
   Inspector of Police
   Soolagiri Police Station
   Krishnagiri District.

.. 2nd Respondent/5th Respondent/ Complainant.

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 03.02.2009 made in Crl.R.C.No.14 of 2006 on the file of the Principal Sessions Judge, Krishnagiri, reversing the order dated 21.04.2006 made in Crl.M.P.No.1662 of 2005 in C.C.No. 59 of 1999 on the file of the Judicial Magistrate No.I, Hosur.

For Petitioners: Mr.Sirajudeen for M/s.Siraj and Siraj

For Respondents: No Appearance for R.1

Mr.V.Arul
Government Advocate
(Criminal Side) for R.2

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ORDER

This Criminal Revision Case has been filed by accused Nos.3 to 6. According to the revision petitioners/accused Nos. 3 to 6, earlier, they were the Directors of Company. The petitioners 1 & 4 and petitioners 2 & 3 have resigned from the Company as the Directors of Company on 23.08.1996 and 22.06.1998 respectively and therefore, they have got nothing to do with the administration of the Company and they cannot be held responsible for any commission and omission of the Company, which has taken place after the said dates. The date of occurrence of the crime is 19 & 20.09.1998. Hence, the very prosecution of the case as against the accused Nos.3 to 6 is not

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maintainable. According to the petitioners, the very burden of proof regarding the theft of energy lies only on the prosecution and the mere mentioning of the names of the petitioners as Directors of Company would not attract any of the penal provision in the absence of any specific overt act attributable against them. In the case of criminal liability, there cannot be any vicarious liability. Hence, originally, the petitioners have filed a petition in Crl.M.P.No.1662 of 2005 in C.C.No. 59 of 1999 before the Judicial Magistrate No.I, Hosur, seeking to discharge them from the offence under Sections 39 (1) and 41(1)(c) of Electricity Act, 1910. The said petition was allowed by order dated 21.04.2006 discharging the accused Nos. 3 to 6 from the charge. As against the same, a revision was filed in Crl.R.C.No.14 of 2006 by the then Executive Engineer/defacto complaint. The revision was allowed by the learned Principal Sessions Judge, Krishnagiri, on 03.02.2009, thereby, reversing the order of discharge. Aggrieved against the same, the present revision has been filed by the petitioners/accused Nos.3 to 6.

2. Mr.Sirajudeen, learned counsel appearing for the petitioners/ accused Nos. 3 to 6 would submit that the revision was not filed by the defacto complainant before the Principal Sessions Judge, Krishnagiril, in the capacity of the Executive Engineer, but, it was filed in his individual capacity, therefore, the revision is not at all maintainable. He would further contend that subsequently, the petitioners/accsued Nos. 3 to 6 have paid Rs.10,00,000/- on 26.04.2000; Rs.5,00,000/- on 31.05.2000; and Rs.5,00,000/- on 04.11.2000 by way of Demand Draft drawn in favour of the Tamil Nadu Electricity Board to show their bona fides and the receipts for the same were also produced before this Court. He would further add that to show that the petitioners 1 & 4 and petitioners 2 & 3 have resigned from the Company as the Directors of Company on 23.08.1996 and 22.06.1998 respectively, the Certificates issued by the Auditor to the said effect have been produced. He would further contend that the ROC acknowledgment was also available with the petitioners. He would further submit that unfortunately, these documents were not produced before the Court below and if these documents are taken into consideration, the petitioners cannot be held liable for the alleged actions, which have taken place after their resignation from the Company as the Directors of Company.

3. Mr.V.Arul, learned Government Advocate appearing for the second respondent would mainly contend that in a case of discharge, the main requirement is that the Court has to first satisfy as to whether there is a prima facie case made out. When there is no evidence let in, the Trial Court cannot come to the conclusion regarding whether they were the Directors at the relevant point of time, but, the Trial Court has allowed the petition seeking for discharge, whereas, the first Appellate Court has rightly pointed out that the question of resignation has not been proved in accordance with law as there was no acknowledgment produced from the ROC records, which is the ultimate document to decide as to whether they are the Directors of the Company at the relevant point of time or not. Since, the same was not proved in accordance with law, the first Appellate Court has rightly allowed the revision, thereby, reversing the order of discharge. He would rely on the judgment of the Hon'ble Apex Court reported in AIR 2008 Supreme Court 1903, Hem Chand vs.

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State of Jharkhand, for the proposition that the genuineness of the documents could be looked into only at the time of trial and not at the time of framing of charge. Lastly, he would contend that the Trial Court has taken into consideration the xerox copy of the extract from the minutes of meeting of the Board of Directors and xerox copy of Form-32, to come to the conclusion that accused Nos. 3 to 6 have resigned from the Directorship prior to the occurrence and therefore, accused Nos.3 to 6 are entitled for discharge. He would further submit that the first Appellate Court on finding that the originals have not been produced and ROC acknowledgment has not been produced earlier and if they were produced at the later point of time, the genuineness of the same can be gone into only after the trial and hence rightly the first Appellate Court has reversed the judgment of the Trial Court discharging accused Nos.3 to 6 and it needs no interference at the hands of this Court and hence, he seeks to dismiss this revision .

4. Notice was served on the first respondent. There was no representation for the first respondent. The name of the first respondent was printed in the cause list, inspite of the same, there was no representation for the first respondent. The Hon'ble Apex Court in the judgment reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and has ultimately held that the Court can decide the matter even in the absence of the parties or their counsel, but, only criteria is that the case should be decided on merits in the absence of the parties. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the petitioners/accused Nos.3 to 6 and the learned Government Advocate appearing for the second respondent and also after perusing the materials available on record.

5. On a careful perusal of the entire materials available on record and also on a perusal of the judgment passed by both Courts below, it is seen that earlier, accused Nos. 3 to 6, were the Directors of Company. The petitioners 1 & 4, viz., Hameetha Khatoon and Ghouse Rahim Khan and petitioners 2 & 3, viz., Nazrulah Rahman and Safiullah Rahim Khan, have resigned from the Company as the Directors of Company on 23.08.1996 and 22.06.1998 respectively. The date of occurrence of the crime is 19 & 20.09.1998. The main contention of the learned counsel for the petitioners is that the petitioners 1 & 4 and petitioners 2 & 3 have resigned from the Company as the Directors of Company on 23.08.1996 and 22.06.1998 respectively and therefore, they have got nothing to do with the affairs of the Company and they cannot be held responsible for any commission and omission of the Company, which has taken place after the said dates and they cannot be held vicariously liable. To substantiate that the petitioners/accused Nos. 3 to 6 resigned from the Company, they placed reliance upon five documents viz., (i) 23.08.1996 - xerox copy of the extract from the minutes of meeting of the Board of Directors of M/s.Metallurgicals (P) Limited; (ii) 22.06.1998 - xerox copy of Form-32 Regn.No. 08/11349;(iii) 20.09.1996 - xerox copy of Form-32 Regn.No.08/11349; (iv) 20.08.1998 - xerox copy of ROC Cash counter receipt; and (5) xerox copy of ROC cash counter receipt produced on the side of the accused.

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6. First of all, all these documents, which have been produced are xerox copies. Secondly, even for Form-32, no acknowledgement has been produced. No certificate from the Registrar of Companies has been produced. No doubt, at this point of time, the petitioners have filed an additional typed-set of-papers, in which, the certificate issued by the Auditor on 15.12.2005 was enclosed. The petitioners ought to have produced the authentic Certificate of the Auditor or certified copy of the Certificate and ROC acknowledgment before the Trial Court, but, the same were not produced, therefore, the First Appellate Court has correctly come to the conclusion that as to whether the accused Nos. 3 to 6 were the Directors of Company or not can be decided only after the full-fledged trial and not at this stage. At the time of trial only, the documents will be permitted to be produced and the cross-examination will be done on those documents and only then, the Court will be able to find out whether the accused Nos.3 to 6 were the Directors of Company at the relevant point of time or not. Similarly, at the time of trial only, the petitioners will have an opportunity to produce relevant documents and also the acknowledgment from the ROC records itself to establish their case. Therefore, the question now to be decided is at the prima facie stage. Admittedly, the petitioners/accused Nos. 3 to 6 were all Directors of Company at a particular point of time. It is not their case, they were never Directors or Administrators of the Company. They have taken active participation in the administration of the Company, their only contention, whether they have taken active participation in the administration of the Company at the relevant point of time or not, can be decided only after full-fledged trial. According to the prosecution, there is a huge amount due and the Company is liable for the same. The petitioners can get the relief only after the full-fledged trial. The petitioners have to be given sufficient opportunity to produce the documents, if any, to establish that they were not the Directors of Company at the time of occurrence. As rightly pointed out by the prosecution, as per the judgment of the Hon'ble Apex Court reported in AIR 2008 Supreme Court 1903, Hem Chand vs. State of Jharkhand, the genuineness of the documents could be looked into only at the time of trial and not at the time of framing of charge. A prima facie case is available to establish that they were the Directors of Company. As per the latest judgment of the Hon'ble Supreme Court reported in (2010) 9 Supreme Court Cases 368, Sajjan Kumar vs. Central Bureau of Investigation, the Supreme Court has categorically held that at the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The Hon'ble Apex Court in the said judgment in paragraph Nos. 19 and 20 has held as follows:-

> ''19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie

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whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeking whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

Thus, it is clear that the Hon'ble Apex Court has held that the Court has to first satisfy as to whether a ground for presuming that the accused has committed an offence is made out. In the case on hand, a prima facie case is made out against the accused Nos.3 to 6. Though, it is the contention of the petitioners that they were not the Directors of Company and petitioners 1 and 4 and petitioners 2 and 3 have resigned from the Company as the Directors of Company on 23.08.1996 and 22.06.1998 respectively, but, admittedly, prior to that date, the petitioners have been in the administration of the Company. Further, to prove that the petitioners have resigned from the Director of Company on the dates as mentioned by them, no certified copies of the documents have been produced. The Trial Court only taking into consideration the alleged resignation of the petitioners from the Company prior to the date of occurrence has discharged them. As there was no certified copies of the documents available before the Trial Court to prove the fact that the petitioners were not Directors of Company at the time of occurrence, the order passed by the Trial Court is not correct. Hence, I do not find any reason to interfere with the reasoned judgment of the first Appellate Court dated 03.02.2009. The first Appellate Court has rightly allowed the revision, thereby, the order passed by the Trial Court dated 21.04.2006 discharging the accused Nos.3 to 6 was set aside.

7. In the result, this Criminal Revision Case is dismissed. The judgment of the first Appellate Court, dated 03.02.2009 is confirmed. Having regard to the fact that the Calendar Case is pending 1999, the Judicial Magistrate No.I, Hosur, is directed to get on with the case in C.C.No.59 of 1999 and after affording an opportunity to the petitioners/accused Nos. 3 to 6 to produce the relevant documents to

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show that they were not Directors of Company at the relevant point of time, shall dehors any observation made by this Court in this order and uninfluenced by the same, shall decide the matter independently and dispose of the same, on merits and in accordance with law, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

Paa

Sd/-
Assistant Registrar (C.O)

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Sub-Assistant Registrar

To

1. The Inspector of Police
   Soolagiri Police Station
   Krishnagiri District.

2. The Principal Sessions Judge,
   Krishnagiri.

3. The Judicial Magistrate No.I,
   Hosur.

4. The Chief Judicial Magistrate,
   Krishnagiri

5. The Section Officer,
   Criminal Section, High Court,
   Madras, (For returning records),

6. The Public Prosecutor,
   High court, Madras

+1 C.C. To Mr.Siraj and Siraj, Advocate in SR.NO.59167

Crl.R.C.No.1048 of 2009

GR(CO)
sd : 19/11/2015

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