IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2015

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THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.O.P No.6746 of 2009

& M.P.No.1 of 2009

1. P.Pappathi
2. P.Bhanumathi .. Petitioners/A3,4

Vs

Special Police Establishment
The Central Bureau of Investigation
Economic Offences Wing
Chennai .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the charge sheet in C.C.No.9 of 2009 now pending before the Additional Chief Metropolitan Magistrate, Egmore Court, Chennai, as regards the above petitioners are concerned.

For Petitioners : Mr.Ramesh, Senior Counsel for Mr.B.Natarajan

For Respondent : Mr.K.Srinivasan Special Public Prosecutor

ORDER

This Criminal Original Petition has been filed under section 482 of the Code of Criminal Procedure, 1973 praying to quash the proceedings of C.C.No.9 of 2009 pending on the file of Additional Chief Metropolitan Magistrate Court, Egmore, Chennai in respect of the petitioners/accused Nos.3 and 4.

2. It is averred in the petition that the first accused is a Company under the name and style of M/s.Palpap Technical Software International Ltd. The second accused is the Managing Director. The accused 3 and 4, mother and sister of the 2nd accused, are the Directors of the said Company. The second accused, by way of creating documents, has obtained loans in the name of the first accused from Indian Bank, Anna Nagar, Chennai. The petitioners/accused 3 and 4 have stood as guarantors by way of giving their immovable properties. The petitioners/accused 3 and 4 have not colluded with the second

accused in creating false documents and they are innocent persons and they have been falsely roped in Calendar Case No.9 of 2009. Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

3. In the counter filed on the side of the respondent, it is averred that for the purpose of obtaining loan, present petitioners have executed guarantee documents by way of showing their properties and further, the petitioners have signed certain documents in relation to the alleged loan. After considering the role alleged to have been played by the petitioners, they have been arrayed as accused 3 and 4 in Calendar Case No.9 of 2009 and therefore, there is no merit in the petition and the same deserves to be dismissed.

4. The only point that has to be decided in the present Criminal Original Petition is as to whether the petitioners can be discharged from the proceedings of C.C.No.9 of 2009 for the reasons stated in the petition?

5. The learned counsel appearing for the petitioner has fairly conceded that the second accused has acted as Managing Director of the first accused company and for the purpose of obtaining loan, he created so many documents and the present petitioners have stood as guarantors by way of showing their immovable properties and in fact they have not participated in the alleged criminal acts done by the second accused and simply because the petitioners have executed guarantee documents for the loan obtained by the second accused in the name of the first accused, they have been falsely implicated in C.C.No.9 of 2009. Under the said circumstances, the present petition has been filed.

6. The learned Special Public Prosecutor appearing for the respondent has also equally contended that since the petitioners have stood as guarantors for the loan obtained by the second accused in the name of the first accused, they are also liable for the criminal acts done by the 2nd accused. Under the said circumstances, they have been arrayed as accused 3 and 4 in Calendar Case No.9 of 2009 and therefore, the relief sought for in the present petition cannot be granted.

7. Basing upon the divergent submissions made on either side, the Court can easily deduce the following aspects:

It is an admitted fact that the second accused is the Managing Director of the first accused. It is also equally an admitted fact that the present petitioners/accused 3 and 4 are Directors of the first accused. The entire loan transactions have been routed only by the 2nd accused. As rightly admitted even on the side of the respondent, the present petitioners have executed certain guarantee documents by way of giving separate immovable properties. In the counter filed on the side of the respondent, it has not been specifically stated that the petitioners/accused 3 and 4 have executed guarantee documents by way of giving bogus sureties. Further, it is not the case of the respondent that the properties given by the petitioners/accused 3 and 4 are not their absolute properties.

8. Considering the role alleged to have been played by the present petitioners/accused 3 and 4, the Court can easily come to the conclusion that the petitioners/accused 3 and 4 have executed guarantee documents only by way of showing their absolute properties. In fact, there is no mala fide intention on the part of the petitioners/accused 3 and 4. Since there is no sinister motive on the part of the petitioners/accused 3 and 4 for executing guarantee documents by way of showing their absolute properties, this Court is of the considered view that the present petitioners are not liable for the criminal acts alleged to have been done by the second accused/Managing Director of the first accused. Under the said circumstances, the present petitioners/accused 3 and 4 can be exonerated from the proceedings of C.C.No.9 of 2009.

In fine, this Criminal Original Petition is allowed and the proceeding in C.C.No.9 of 2009 against the petitioners/accused 3 and 4 is alone quashed. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1. Additional Chief Metropolitan Magistrate,
Egmore Court, Chennai.
2. Special Police Establishment
The Central Bureau of Investigation
Economic Offences Wing, Chennai
3.The Public Prosecutor,
High Court, Madras.

copy to: The Section Officer,
Criminal section, HighCourt, Madras-104.

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