HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.7501, 7508 and 7512 of 2015

COMMON ORDER :

This Criminal Petition is filed by the accused No.8 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.125, 127 and 126 of 2010 on the file of Special Judge for Economic Offences at Hyderabad, where the learned Magistrate has taken cognizance for the offences punishable under Sections 63, 68 and 628 of the Companies Act, 1956, (for short 'the Act') which is outcome of complaint of 1st respondent/ Registrar of Companies against 9 accused viz., A-1—M/s.Sibar Software Services (India) Limited rep. by its Managing Director A-4, A-2—Dr.T.H.Chowdary, A-3—Shri Devineni Seetharamaiah, A-4—Prasad D.Lingamaneni, A-5—Ms.Srilatha Lingamaneni, A-6—Sivaram P.Gogineni, A-7—Ms.Padmasree Mutyala, A-8—S.Ragothaman and A-9—Srinivasa Rao Marupudi.

2) The contention of the learned counsel for petitioner is that A-1 public limited company rep. by its Managing Director with knowledge in software having handful of projects from foreign countries also and he decided to approach capital market to raise funds through the issue of equity shares. After obtaining permission from SEBI and after compliance of necessary formalities the said company issued its prospectus inviting the public to purchase equity shares for Rs.10/- each for cash at par and

the SEBI approved the prospectus under the declarations and investors protection guidelines. The issue opened on 29.12.1999 and applications received from investors to allot shares and shares were accordingly allotted. The list showing allotment of shares filed by the Registrar of Companies and the funds received were applied for expansion of the activity of the company. The said company has not invested the funds in overseas associate companies and invested in Indian Companies and at present the company is doing business smoothly with no complaints and the other accused are the directors or officers of the Company and of whom so far as the petitioner/ accused No.8 is concerned he resigned from his directorship way back 30.10.2000 though it is subsequent to the public issue in questioning as can be seen from Form No.32.

3) It is submitted that as per Section 63 of the Act whenever prospectus issued after commencement of the Act includes any untrue statement, every person who authorizes to issue of the prospectus shall be punishable with imprisonment and or fine and as per Section 68 of the Act, any person who, by his false promise induces another for subscribing to the shares of a company, shall be punishable for a period of 5 years or with a fine of Rs.1,00,000/- and as per Section 628 of the Act, if any person makes any statement in any report, return, certificate, balance sheet, prospectus or other documents

required under the Act knowing it to be materially false, shall be punishable for imprisonment for period of 2 years and with fine.

4) It is submitted by the learned counsel for the petitioner that the 1st annual report of the company shows the petitioner/ A8 already resigned from the board of directors of the company and the petitioner is a non-promoter, non-executive and not even director of the company, hence he is no way concerned with the day-to-day affairs of the company and the only allegation in the complaint filed by Registrar Companies against the accused including the entity as failed to invest in overseas associate companies as stated in progress and the ingredients for Sections 63, 68 and 628 of the Act no way makes out therefrom and it is undisputedly invested in Indian Companies and functioning smoothly for no any complaint from any manner from any investment report alleging investing to subscribe and the learned Special Judge did not apply his mind to take cognizance and further alleged offence was during the year 1999 and complaints were filed in the year 2010 more than 10 years thereafter and that was barred by limitation and thereby sought for quashing.

5) It is not in dispute that the offence under Section 68 of the Act is punishable upto 5 years and Section 468 Cr.P.C says only for the offence upto three years, the prosecution must be maintained within three years and thereby the offence under Section 68 of the Act is not barred

by limitation but for the offence under Section 628 of the Act says punishable for two years and under Section 63 of the Act equally for two years or below and with fine.

6) Heard learned counsel for the petitioner—accused No.8 as well as the additional solicitor general representing the 1st respondent—Registrar Companies and also the public prosecutor representing the State of AP and perused the material on record.

7) The annual report filed before the Registrar of Companies is with seal of the Registrar companies dated 31.10.2001 and the 1st annual report referring to resignation of the petitioner—A8 as director from the board due to his commitments elsewhere the complaint filed was on 28.08.2007 the public issue was on 29.12.1999. It is not shown the offence under Sections 62 and 628 much less 68 of the Act for continuation of offences but for simply mentioning in the complaint as to how they are continuing offences of public issue published within the time limited subscriptions received from investors in the shares and closed for any facility to commence the cause of action therefrom. To say the offences under Sections 62 and 628 of the Act are barred by limitation as referred supra and coming to Section 68 of the Act there is undisputedly no any complaint from any investor to say any false promise or inducement for subscribing to make the company or its managing director much less any directors to be responsible. In fact so far as the petitioner/ accused No.8

among other directors concerned as pointed out in the quash petition filed by A-2 before another bench of this Court passed on 28.03.2013 covered by reported judgment i n ***Dr.T.H.Chowdary vs. Registrar of Companies and another***[1] ***quashing the proceedings dated 28.03.2013 referring to*** earlier expressions in ***Gopi Nair (K) vs Ramukutty (K)***[2], ***Hemachandra Prasad Nag Chowdary vs. Registrar of Companies***[3]***, Hindustan Lever Ltd vs. State***[4] and in fact as referred supra for no any specific allegations against any of the directors of any responsibility for day-to-day affairs and if so how with the clear details as contemplated by law, which is mandatory to prosecute as held by three judge bench of Apex Court in ***S.M.S.Pharmaceuticals Ltd., vs Neeta Bhalla***[5]***,*** proceedings so far as accused No.2 is concerned quashed.

8) In the three cases supra, and so far as the petitioner/ accused No.8 is concerned, he is no way in a worse but for in a better footing when compared to Accused No.2 apart from he resigned from the board of directors in the year 2000 and that is reflected in the First Annual report of the Company and so far as the notices are concerned after the public issue amounts were received from the share holders as to not invested in overseas associate Companies as published in a public issue but for Indian Companies even concerned.

9) Having regard to the above, as the said

expression of this Court in another bench made final nor challenged by the 1st respondent—Registrar of Companies in quashing the proceedings so far as accused No.2 is concerned saying no evidence made out for any of the penal consequences under the three sections besides a bar of limitation for some of the penal provisions and no prosecution susceptible for no specific allegations as to how he is made liable to day-to-day affairs of the company much less to the issue of prospectus for the statements therein and for its implementation, subsequently, if any, to make liable but for at best even attracting any offence against A1 entity and its Managing Director—A4 by virtue of the status and the same is nothing but abuse of process as held by the Apex Court in ***Chandran Ratnaswami vs K.C.Palanisami***[6] particularly at para No.33 to 47 and 56 are as under:

> ***33. Lord Justice Neill in R. vs. Beckford, [1996] 1 Cr.App.R. 94: [1995] R.T.R. 251 observed that: "The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried." What is unfair and wrong will be for the court to determine on the individual facts of each case.***
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> **34. This Court in State of Karnataka vs. L. Muniswamy and Others, (1977) 2 SCC 699 observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding**

ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case (at p.703 of SCC):

"7. …..

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction." This case has been followed in a large number of subsequent cases of this Court and other courts.

35. In State of Haryana and Others vs. Bhajan Lal and Others, 1992 Supp.(1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of Cr.P.C. under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the

Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: (SCC pp. 378-79, para 102) "102. (1) ……… (2) …..
(3) …… (4) …..
(5) …..
(6)…..
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."
36. This Court in Zandu Pharmaceutical Works Ltd. and Others vs. Mohd. Sharaful Haque and Another, (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8) "8. … It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."
37. In Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736 this Court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court noticed the prevalent impression that civil law

remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that: (SCC p. 749, para 13) "13. … Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

38. In the case of Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, (2007) 12 SCC 1, this Court after considering series of decisions observed:

"46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

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50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts

have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued."

39. In G. Sagar Suri and Another vs. State of U.P. and Others, (2000) 2 SCC 636, this Court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

40. In the case of S.N. Sharma vs. Bipen Kumar Tiwari and Others, AIR 1970 SC 786 (at p.789), this Court has stated thus:

"7. ..... It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

41. In the case of State of West Bengal and Others vs. Swapan Kumar Guha and Others, AIR 1982 SC 949 while examining the power of a police officer in the field of investigation of a cognizable offence, Chandrachud, C.J. has affirmed the view expressed by Mathew, J. and observed as follows: (at p.958 of AIR) "22. .... There is no such thing like unfettered

discretion in the realm of powers defined by statutes and indeed, unlimited discretion in that sphere can become a ruthless destroyer of personal freedom. The power to investigate into cognizable offences must, therefore, be exercised strictly on the condition on which it is granted by the Code. ...."

42. In the case of Uma Shankar Gopalika vs. State of Bihar and Another, (2005) 10 SCC 336, this Court has held as under:

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted

suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

43. Coming back to the instant case from the affidavits filed by the parties, the facts which come into light are that the appellant-Chandran Ratnaswami settled in Canada since 1974. He is holding executive posts in various companies based in Canada and has made investment in India worth more than 1 billion USD. He is also a Director on the Board of various renowned companies including ORE Holdings Limited based in Mauritius. The said company ORE entered into a Joint Venture Agreement (JVA) with C.G. Holdings Private Limited (respondent No.1 – K.C. Palanisamy's Company) and N. Athappan for constructing and developing a hotel property, shopping complex etc. owned by Cherraan Properties Limited (CPL) and Vasantha Mills Limited (VML). ORE invested Rs.75 crores and got 45% in Cheran Enterprises Private Limited (CEPL). Athappan invested Rs. 4 crores and got 10%.

44. Disputes arose between the parties when respondent No.1 alleged to have transferred shares of CPL and VML to CEPL instead of bringing money and got 45% shareholdings in CEPL. Respondent No.1 allegedly swindled the said 75 crores deposited by the appellant Company ORE and transferred the immovable assets of CPL and VML, subsidiaries of CEPL.

Consequently, ORE filed Company Petition before the Company Law Board on account of alleged acts of oppression and mismanagement indulged by respondent No.1. The matter before the Company Law Board was hotly contested and finally the Company Law Board by order dated 13th August, 2008 directed respondent No.1, CG Holdings and CEPL to return the investment of appellant Company ORE and Athappan with 8% interest. On payment of money it was directed that respondent K.C.

Palanisamy will take control of CEPL and its subsidiaries. Clarification Petition was also disposed of by Company Law Board on 13th August, 2008.

45. Both the parties moved the Madras High Court by filing appeals and those Company Appeals were finally disposed of on 5th August, 2011 and the order passed by the Company Law Board was confirmed.

The Division Bench of the Madras High Court while confirming the view taken by the Company Law Board held that both parties cannot jointly run the business and, therefore, to ensure smooth exit of ORE and Athappan, the Company Law Board passed the order. The said order of the Division Bench passed in appeals, however, was not challenged by respondent No.1 K.C. Palanisamy.

46. The appellant filed execution case, which is pending. It further appears that a suit was also filed being O.S.No.90 of 2007 before the District Munsiff Court.

47. Instead of complying with the order of the Company Law Board and the directions and observations made by the Madras High Court in the aforementioned Company Appeals, respondent No.1 started filing several criminal complaints against the appellant. The first complaint was filed by the respondent before the Economic Offences Wing, Chennai, alleging that ORE invested only Rs. 75 crores and for not bringing Rs. 300 crores in Joint Venture Company. The petition filed in the High Court seeking direction to EOW to take action on the complaint was, however, withdrawn. Respondent No.1 then filed a second complaint before the Judicial Magistrate, Perundurai which was dismissed after examining respondent No.1 and his two witnesses. The respondent then filed another complaint before the Judicial Magistrate, Kangeyam without disclosing the dismissal of the earlier complaint filed before the Judicial Magistrate, Perundurai. The said complaint finally came to be registered as FIR No.7 of 2007. The appellant moved

the High Court for quashing the said FIR. In the said petition, the High Court, after noticing the similar complaint filed earlier by respondent No.1 in the court of Judicial Magistrate, Perundurai, finally observed that the second criminal proceeding initiated by respondent No.1 has no merit. The court further passed a stringent remark against the conduct of respondent No.1 for filing cases on the same issue.

56. Although we do not appreciate the action of a senior Superintendent of Police, but in view of the order passed in these appeals, we do not want to proceed any further in Contempt Petition (C) No.166 of 2013, which stands disposed of.

10) Having regard to the above, the Criminal Petitions are allowed and all the proceedings relating to C.C. No.125, 127 and 126 of 2010 on the file of Special Judge for Economic Offences at Hyderabad so far as petitioner/ accused No.8 is concerned, are hereby quashed. The bail bonds of the petitioner/ accused No.8, if any, shall stand cancelled.

11) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.30.10.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION Nos.7501, 7508 and 7512 of 2015

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Date:30.10.2015

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[1] (2014) 182 Comp Case 13 (AP)

[2] [2003] 115 Comp case 59

[3] (2010) 158 Comp Cas 21 (AP)

[4] (2008) Crl.LJ 608

[5] (2005) 127 Comp Case 563 (SC)

[6] 2013 (6) SCC 740