

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP Nos.23063 to 23066 of 2014
and CrI.M.P.Nos.4900 to 4903 of 2016
and M.P.Nos.1, 1, 1 and 1 of 2015

Dr.A.C.Muthiah Petitioner in all CrI.O.Ps.

Vs.

The Reserve Bank of India
rep by Sri C.S.Ramkumar
Asst.General Manager
Dept. of Non-Banking Supervision
Reserve Bank of India
Chennai 600 001.

... Respondent in all CrI.O.Ps.

Criminal Original Petitions filed under Section 482
Cr.P.C. to call for the records and quash all further
proceedings in E.O.C.C.Nos.39 to 42 of 2014 pending on the
file of Additional Chief Metropolitan Magistrate/ Economic
Offences Court-II, Egmore, Chennai.

For petitioner : Mr.V.Gopinath
Senior Counsel
for Mr.M.Nirmal Kumar

For Respondent : Mr.T.Poornam

RESERVED ON	PRONOUNCED ON
02/08/16	12/08/16

COMMON ORDER

These petitions have been filed to to call for the
records and quash all further proceedings in E.O.C.C.Nos.39 to
42 of 2014 pending on the file of Additional Chief
Metropolitan Magistrate/Economic Offences Court-II, Egmore,
Chennai.

2. Heard Mr.V.Gopinath, learned Senior Counsel for
Mr.M.Nirmal Kumar, learned counsel on record for the
petitioner and Mr.T.Poornam, learned counsel for the
respondent.

3. The Reserve Bank of India [hereinafter referred to as the "RBI"] has launched four prosecutions in E.O.C.C.Nos.39 to 42 of 2014 before the Additional Chief Metropolitan Magistrate, E.O.W.-II, Chennai, against four accused for offences u/s 58B(1) and 58(B) of the RBI Act, 1934, challenging which Dr.A.C.Muthiah [A3], has filed the above four quash applications.

4. It is the case of the RBI that, M/s First Leasing Company of India Ltd., [hereinafter referred to as "A1 Company"] is a company incorporated under the provisions of the Companies Act, 1956 with Farouk Irani [A2], Dr.A.C.Muthiah [A3], Maharaj Jai Singh[A4] and A.Satish Kumar [A5] as its Directors and had published financial statements for the years 2010, 2011, 2012 and 2013 containing false particulars and statements, in order to make it look as if A1 Company is financially sound, on the strength of which huge loans were borrowed from various financial institutions. As stated above, four separate complaints have been lodged for submitting four financial statements for the four years referred to above, containing false particulars and informations. The prosecution was pursuant to an inspection of the books of accounts of A1 Company that was conducted by the RBI u/s 45 N of the Act from August 26th, 2013 to September 10th, 2013. The main allegations in the complaint are as follows:

"8. The inspection reveals serious irregularities in the business operations of Accused No.1 company. It is observed from the loan data base provided by the Accused No.1 company that the assets financed had no relevance to the nature of business of many of the borrowers. It is also observed that many loans were shown to have outstanding balance even though they have been fully repaid by the borrowers. The repayment amount recovered from the borrowers beyond the interest amount every month was not adjusted against the principal amount. Further, it was observed that many of the loans in the books of accounts were fictitious and the Accused No.1 company could not produce any evidence of disbursement of the loans. As seen from the books of account of the Accused No.1 company, though loans were not availed, disbursements and recoveries were created as if the loans were availed from the Accused No.1 company. It is submitted that with the help of such fictitious loans and recoveries, the Accused No.1 company built

up fictitious assets to boost quantity of its assets and income artificially in the books projecting a false positive net worth, which were reflected in the annual financial statements for the periods 2009 to 2013 of the Accused No.1 company. Through misrepresentations in the published financial statements, the Accused No.1 company was not in a position to seek enhancement of loans from banks and raise funds through debentures and other unsecured instruments. By perpetrating these false statements/ misrepresentations, the Accused No.1 company managed to obtain good rating from credit rating companies on the basis of which it solicited subordinated debt (unsecured debentures) from gullible investors like Rajasthan Rajya Vidyut Karamchhari Trust (amounts invested from superannuation, gratuity, GPF, CPF and PMCF Trust Accounts), United India Insurance (Employees) Pension fund, Accountant General's Office Employees Co-operative Bank Limited to name a few and many other companies, funds and individuals to the tune of Rs.177.22 crore (Rupees one hundred and seventy crore and twenty two lakh only) between April 1, 2012 and September 30, 2013. The entire amount of Rs.177.22 crore remain outstanding as on September 30, 2013 and are yet to be repaid. The Accused No.1 company also managed to obtain working capital assistance from banks which were outstanding to the tune of Rs.1,222.44 crores as on September 30, 2013. These advances were granted against the security of outstanding lease and hire purchased rentals which were substantially fictitious loans.

9. Further, it is submitted that Accused No.1 company falsified the true status of the quality of its loan portfolio by showing debts that are nearing NPA as having been paid for by creating fictitious receipts that were not reflected in the bank statements. The Accused No.1 company thus violated the statutory norms issued in exercise of the powers under Section 45JA of the Act namely, The Non-Banking Financial (Deposit Accepting or Holding/Non-Deposit Accepting or Holding) Companies Prudential

Norms (Reserve Bank) Directions, 2007, relating to the prudential norms on income recognition, asset classification, provisioning etc. Copy of the Prudential Norms (Reserve Bank) Directions, 2007 issued by the Bank is filed herewith as Annexure-V."

5. Mr.V.Gopinath, learned Senior Counsel appearing for Dr.A.C.Muthiah, placed strong reliance on the documents relied upon by the prosecution and submitted that Dr.A.C.Muthiah was only a non-executive Director and therefore, he cannot be criminally made liable for the transgressions of AI Company. The learned Senior Counsel relied upon the following statements in the Special Audit Report dated 26.02.2014, in support of his submission that Dr.A.C.Muthiah had no means to know that the financial statements were fudged:

"Report parameters are in such a way that fictitious transactions cannot be prima facie identified from the Finance Module though such transactions can be identified by means of other checks.

.....
According to the minutes of the Audit Committee, on every meeting it was noted that there had not been any suspected fraud or irregularity or failure of internal control procedures and systems of material nature in respect of transactions that had taken place during the respective period(s).
"

6. Mr.V.Gopinath, learned Senior Counsel placed strong reliance on the judgment of the Supreme Court in K.K.Ahuja vs. V.K.Vora and another [(2009) 10 SCC 48], especially paragraph no.21, which reads as follows:

"21. A combined reading of Sections 5 and 291 of the Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

- (a) the Managing Director(s);
- (b) the whole-time Director(s);
- (c) the manager;
- (d) the secretary;

(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to

act;

(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and

(g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.

It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company."

and submitted that Dr.A.C.Muthiah, being a non-executive Director, does not fall in any of the categories therein and therefore, he cannot be made vicariously liable for the offence committed by A1 Company.

7. This was controverted by Mr.Poornam, learned counsel for the RBI, who submitted that there are enough averments in the complaint to show the involvement of Dr.A.C.Muthiah and made a pointed reference to the following:

"4. Accused No.3 had chaired the Board Meetings held on May 4, 2010, May 5, 2011, May 28, 2012 and May 27, 2013 in which the financial statements for the years ended March 31, 2010, 2011, 2012 and 2013 were considered and adopted by the Board of Directors of the Accused No.1 company.

7. Further, it is submitted that Accused Nos.2 to 5 were Directors of the Accused No.1 company during the period the violations/irregularities stated in this complaint were committed by the Accused No.1 company. In this regard, copies of the published Annual Report showing that the Accused Nos.2 to 5 were directors of the Accused No.1 company are filled herewith as Annexure No.IV collectively. It is further submitted that Accused Nos.2 and 3 were also signatories to the published financial statements for the period ended March 31, 2010, 2011, 2012 and 2013 of the Accused No.1 company. All the directors of the company were presented with the business done report at every meeting of the Board

which reflected the actual business done by the company.

13. The Accused No.1 company and Accused Nos.2 to 5 who were in-charge of and responsible to the Accused No.1 company for conduct of its business during the year ended March 31, 2010, were responsible for filing false statutory/supervisory returns and furnishing incorrect figures in the annual financial statements knowing fully that the information in the returns/financial statement was false. Falsification of information in the supervisory returns continued in the subsequent years also. Copies of the supervisory returns filed by the Accused No.1 company, for the periods, 2009-10, 2010-11, 2011-12 and 2012-13, are filed herewith as Annexure-XI collectively."

8. This Court gave its anxious consideration to the rival submissions. A reading of the complaints show that serious irregularities have been committed by A1 Company in presenting a rosy picture of its financial status, via the annual financial statements for making its creditors believe that the Company is financially sound, but whereas, in reality it was found to be a smoke screen to cover up its financial hollowness. Thus, there are sufficient averments in the complaint for the prosecution to proceed, but whereas, it has to be seen whether there are prima facie materials to proceed against Dr.A.C.Muthiah. The fact remains that Dr.A.C.Muthiah was the Director of A1 Company until his alleged resignation on 01.11.2013. The various averments in the Special Audit Report that has been extracted above cannot be seen in isolation. For example, the Special Audit Report arrived at the following conclusion:

"Conclusion

The walk through attempts to understand that crucial materials were available with the Board of Directors of the Company to identify and detect the mismatch between actual and published numbers."

9. The complaint also states that:

"11(x) The Board of Directors were presented with a business done report at every meeting of the Board which reflected the actual business done by the company. Therefore, critical information was available with the Board to detect the mismatch between the actual

and published financials over the years.”

Thus, there is a clear assertion in the complaint that the Board of Directors knew full well about the malpractices in the accounting and in the teeth of this assertion, it cannot be held otherwise in a proceedings u/s 482 Cr.P.C.

10. It is the specific case of the prosecution that the distorted Annual Reports were signed by Farouk Irani [A2] and Dr.A.C.Muthiah [A3] and the Annual Reports form part and parcel of the complaint.

11. Mr.Poornam, learned counsel turned the tables against Mr.V.Gopinath by relying upon the following statement of law in K.K.Ahuja case (cited supra) and submitted that the fact that Dr.A.C.Muthiah has signed the Annual Report would by itself make him vicariously liable:

“27 (ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.”

(emphasis supplied)

12. In other words, Mr.Poornam submitted that in the place of the expression “cheque”, if the expression “Annual Report” is juxtaposed, the plea of Dr.A.C.Muthiah that he was only a non-executive Director and therefore, he cannot be made vicariously liable, pales into insignificance. There is sufficient force in the submission of Mr.Poornam, learned counsel appearing for the RBI. After having signed the Annual Reports, it is not open to Dr.A.C.Muthiah to contend in the quash applications that he had neither knowledge nor the means to know the manipulation. In the considered opinion of this Court, those facts will have to be tested only in trial and not in the quash proceedings u/s 482 Cr.P.C.

13. Mr.Poornam, learned counsel relied on the judgment of the Supreme Court in Gunamala Sales Private Ltd. v. Anu Mehta & Ors [(2015) 1 SCC 103] wherein, in para 29 it is stated as follows:

“29. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is

sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial."

14. In Gunamala case (cited supra), the Supreme Court has also referred to K.K.Ahuja case and other cases on the subject of vicarious liability. The law laid down in Gunamala case applies in all fours to the facts obtaining in the present case.

15. In fine, there are sufficient materials in the complaint for the prosecution to proceed as against Dr.A.C.Muthiah and his plea that he cannot be vicariously held liable for the alleged offences committed by A1 Company stands rejected.

16. Mr.V.Gopinath, learned Senior Counsel produced the order dated 14.05.2014 passed by the Additional Chief Metropolitan Magistrate, E.O.W.-1, for taking cognizance of the offence and submitted that the order does not satisfy the test laid down by the Supreme Court in M/s GHCL Employees Stock Option Trust v. M/s India Infoline Limited [(2013) 2 L.W. (Cr1.) 245] and Mehmood UL Rehman v. Khazir Mohammad Tunda & Others [(2015) Cri.L.J. 2856] and therefore, the cognizance order requires to be quashed.

17. Mr.Poornam, learned counsel appearing for the RBI submitted that this point was never raised in the quash application and that it is being raised for the first time.

18. It is true that in the aforesaid cases, the Supreme Court has emphasised that the order of Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case and the law applicable thereto. In these cases, the Supreme Court had to deal with private complaints filed by private parties against their adversaries, which were ultimately quashed by the Supreme Court on the finding that they were abuse of process of law. In that process, one of the reasons given by the Supreme Court was that the Magistrate should apply his mind before taking cognizance of a case.

19. In this case, the prosecution has been launched by the Assistant General Manager of the Reserve Bank of India, who is a Public Servant. Under Section 200 Cr.P.C., when the complaint is lodged by a public servant, he need not be examined by the Court. That part, the adjudication order dated 14.05.2014, reads as under:

<https://hcservices.ecourts.gov.in/hcservices/> "ADJUDICATION ORDER DATED 14.05.2014

Perused the complaint. The complainant had filed a complaint against the accused u/s 58B(1) 58B(4A), 58B(6) & 58c of the Reserve Bank of India Act, 1934 R/w section 190 of Cr.P.C. On perusal of the complaint on the file against the accused accordingly the complaint is taken on file against the accused and forwarded to the Addl.C.M.(E.O.II) for disposal according to Law.

Sd/....14.05.2014

Addl, C.M.M. (E.O.I)"

20. In Deputy Chief Controller of Imports and Exports vs. Roshanlal Agarwal and others [AIR (2003) SC 1900], the Supreme Court held as follows:

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. M/s. Mohan Meakins Ltd. & Ors., (2000) 3 SCC 745, and after noticing the law laid down in Kanti Bhadra Shah v. State of West Bengal, (2000) 1 SCC 722, it was held as follows: "The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

21. In Nupur Talwar vs. Central Bureau of Investigation and another [(2012) 2 MLJ (Crl) 799 (SC)], the Supreme Court has referred to all the earlier judgments and ultimately in paragraph 22 [Jagdish Singh Khehar, J. and agreed by A.K.Patnaik, J.], it is stated as follows:

"22. I shall now embark upon the last aspect of the matter, namely, the propriety of the petitioner in filing the instant Review Petition. The parameters within which an order

taking cognizance and/or an order issuing process needs to be passed, have already been dealt with above. It is apparent from my determination, that the matter of taking cognizance and/or issuance of notice, is based on the satisfaction of the Magistrate. In the conclusions recorded hereinabove, while making a reference to past precedent, I have concluded, that it is not essential for the concerned Magistrate to record reasons or to pass a speaking order demonstrating the basis of the satisfaction, leading to issuance of process.

(emphasis supplied)

22. In *Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Chcrian and others* [(2014) 2 SCC 62], the Constitution Bench of Supreme Court has quoted with approval the following statement of law made in *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492]:

24. After referring to the provisions of the Cr.P.C. quoted by us hereinabove, in *Videocon International Ltd.*, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a

valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

In several judgments, this view has been reiterated. It is not necessary to refer to all of them."

(emphasis supplied)

23. In the light of the above law, a perusal of the adjudication order shows that the Magistrate has perused the complaint on file and only thereafter, he has transferred it to the Additional Chief Metropolitan Magistrate, E.O.W.-II, for disposal according to law. In the facts and circumstances of this case, it cannot be stated that he has not applied his mind while taking the complaint on file. As stated by the Supreme Court in Nupur Talwar case (cited supra), it is not essential for the concerned Magistrate to record reasons or pass a speaking order. This Court does not find any infirmity in the cognizance order of the Magistrate.

In the result, these petitions stand dismissed being devoid of merits. Consequently, connected miscellaneous petitions are closed. Any observation made above shall not in any way prejudice the defences available to the petitioner during trial.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

The Additional Chief Metropolitan Magistrate/
Economic Offences Court-II,
Egmore, Chennai.

+4cc's to Mr.M.Nirmal Kumar, Advocate, S.R.Nos.46174 to 46177

+4cc's to Mr.T.Poornam, Advocate, S.R.Nos.46591 to 46594

+1cc to Mr.V.Gokul, Advocate, S.R.No.46902

Cr1.OP Nos.23063 to 23066 of 2014

MP (CO)