

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.11.2016

PRONOUNCED ON: 28.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos. 3997, 7716 and 20884 of 2009 & M.P. No.1 of 2009

T.K. Chandiran Petitioner/ Accused No.5 in
Crl.O.P. No.3997/2009

1 R. Seniappa Sridhar

2 R. Vidhyadhar

3 R. Vasantha Kokilam

4 R. Angappa Murali Petitioners in Crl.O.P. No.7716/2009

V.R.A.R. Ramakrishnan Petitioner in Crl.O.P. No.20884/2009

vs.

1 State represented by
the Inspector of Police
Sulur Police Station
Coimbatore District
Crime No.480 of 2007 ..Respondent/Complainant

2 V.R.A.R. Ramakrishnan ..Respondents/Defacto Complainant
in Crl.O.P.No.3997/2009

1 State represented by
the Inspector of police
Sulur Police Station
Coimbatore District
Crime No.480 of 2007

2 V.R.A.R. Ramakrishnan Respondents in
Crl.O.P.No.7716/2009

(R2 impleaded as per order dated
30.04.2009 in M.P. No.3 of 2009)

State represented by
the Inspector of Police
Sulur Police Station
Coimbatore District
Crime No.480 of 2007

Respondent in Crl.O.P. No.20884/2009

Prayer in Crl.O.P. No.3997 of 2009:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to Charge Sheet in C.C. No.381 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court, Palladam, Coimbatore District and quash the charge sheet insofar as the petitioner.

Prayer in Crl.O.P. No.7716 of 2009:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in C.C. No.381 of 2008, pending trial before the District Munsif cum Judicial Magistrate, Palladam and quash the same.

Prayer in Crl.O.P. No.20884 of 2009:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to direct further investigation under Section 173(8) Cr.P.C. to be conducted in Cr. No.480 of 2007 on the file of Sulur Police Station, Coimbatore District by a competent agency other than the respondent herein.

For petitioner in Mr. N.R. Elango, Sr. Counsel
Crl.O.P. Nos.20884/2009 for Mr. M. Krishnamurthi

For petitioners in Mr. S. Ashok Kumar, Sr.
Counsel
Crl.O.P. No.7716/2009 for Mr. C.D. Johnson

For petitioner in Mr. Ashok Kumar, Sr. Counsel
Crl.O.P. No.3997/2009 for Mr. Ibrahim Ali

For R2 in Mr. N.R. Elango, Sr. Counsel
Crl.O.P.Nos.3997 & 7716 for Mr. M. Krishnamurthy
of 2009

For State in Mr. C. Emalias
all the three Crl.O.Ps. Addl. Public Prosecutor

COMMON ORDER

While Crl.O.P. Nos.3997 of 2009 and 7716 of 2009 have been filed seeking to call for the records relating to Charge Sheet in C.C. No.381 of 2008 on the file of the District Munsif-cum-

Judicial Magistrate Court, Palladam, Coimbatore District and quash the charge sheet insofar as the petitioners, CrI.O.P. No.20884 of 2009 has been filed seeking to direct further investigation under Section 173(8) Cr.P.C. to be conducted in Cr.No.480 of 2007 on the file of Sulur Police Station, Coimbatore District, by a competent agency other than the respondent herein.

2 On the complaint of one Ramakrishnan, the first respondent police registered a case in Crime No.480 of 2007 and after completing the investigation, filed a final report in C.C. No.381 of 2008 before the District Munsif-cum-Judicial Magistrate Court, Palladam for offences under Sections 120-B and 420 read with Sections 109 and 120-B IPC against Seniappa Sridhar (A1), Vidhyadhar (A2), Vasantha Gokilam (A3), Angappamurali (A4) and T.K. Chandiran (A5), challenging which, the accused are before this Court in CrI.O.P. Nos.3997 and 7716 of 2009.

3 Heard Mr. S. Ashok Kumar, learned Senior Counsel for the accused, Mr. N.R. Elango, learned Senior Counsel for the de facto complainant and Mr. C. Emalias, learned Additional Public Prosecutor appearing for the State.

4 For the sake of convenience, the parties are referred to by their name.

5 The prosecution case, as stated in the final report, is as under:

"The Rathna Textile Mills (P) Ltd. was established during the year 1974 in Bangalore. Rathnasabapathi and Ramakrishnan were brothers and started the said company with 5 lakhs each as capital and both of them had 50% of shares with each of them. Both of them have developed the said company and had each 400 shares in the above said company. Rathanasabapathi became the Managing Director of the and Ramakrishnan became the Director of the above said company. During the year 1978, both the Managing Director and Director have purchased a land of 9 acres and 34 1/2 cents near National Highway No.17 at Neelambur Village, Palladam Taluk, Coimbatore District in the name of the above said company. In between the year 1978 and 1995 both of them had personal enmity regarding several reasons and hence, the said Ramakrishnan had filed several civil cases before the Hon'ble High Court of Bangalore against Rathinasabapathy.

On 25.10.1995, the said Rathinasabapathi had convened General Body Meeting and made the accused A1 and the accused A2 as the Directors of the said company without the consent of the said Ramakrishnan. On 23.4.1997, the said Rathinasabapathy died. From that date onwards, the accused A1 and A2 were looking after the business of the said company and also made the accused A4 as Director of the said company. Thereby, the accused A1 A2 and A4 along with the said Ramakrishnan were the owners of the above said land of 9 acres and 34 1/2 cents at Neelambur since the Court case were not decided.

On 14.11.2008 or prior to this date, the accused A1 to A5 noted in the charge sheet conjointly conspired in between themselves and entered into an agreement to sell the about said land of 9 acres and 34 1/2 cents in which the said Ramakrishnan is also having half share decided to sell the said land and to cheat the said Ramakrishnan without giving intimation to him and executed a sale deed in favour of TCS Textile Company and to receive the entire cash of said land for themselves without paying the share of 50% to Ramakrishnan which they have to pay. Thereby the accused A1 to A5 noted in the charge sheet appear to have committed an offences of criminal conspiracy punishable u/s 120-B IPC."

6 From the above narration, the following facts emerge:

- Rathnasabapathy and Ramakrishnan were brothers;
- Both of them established The Rathna Textile Mills (P) Ltd. in the year 1974 in Bangalore, for which, Rathnasabapathy was the Managing Director and Ramakrishnan was the Director;
- The company purchased the property measuring 9 acres and 34 1/2 cents near NH 17 in Neelambur Village, Palladam Taluk, Coimbatore;
- On account of misunderstanding between the brothers, Rathnasabapathy removed Ramakrishnan from the Directorship with effect from 18.03.1996 on the ground that he had not attended six consecutive meetings of the Board;

- Rathnasabapathy co-opted his children Seniappa Sridhar [A1] and Vidhyadhar [A2] as Additional Directors with effect from 25.10.1995;
- Similarly, he appointed his other son Angappa Murali [A4] as a Director with effect from 26.03.1999.
- Several litigations were initiated in the Court by Ramakrishnan, challenging his brother's action;
- Rathnasabapathy died on 23.04.1997;
- The Company represented by Seniappa Sridhar [A1], Managing Director and Vidhyadhar [A2] Director, sold the property on 14.11.2005 for Rs.47 lakhs to Chandiran (A5);
- Vasantha Kokilam (A3) is the widow of Rathnasabapathy and Seniappa Sridhar (A1), Vidhyadhar (A2) and Angappa Murali (A4) are her children; and
- The allegation against the accused is that they had sold the property in which Ramakrishnan had 50% share.

7 Mr. S. Ashok Kumar, learned Senior Counsel for the accused submitted that Ramakrishnan was removed from the Directorship by Rathnasabapathy as early as 18.03.1996 and that Ramakrishnan filed a company petition in Comp. Petition No.117 of 1995 before the Karnataka High Court for winding up of the Rathna Textile Mills (P)Ltd. even during the lifetime of Rathnasabapathy. After the demise of Rathnasabapathy, Ramakrishnan filed O.S. No.17254 of 2005 in the City Civil Court, Bangalore, against the legal heirs of Rathnasabapathy seeking the following reliefs:

a Declaring that the defendants are the holders of only 400 equity shares in the company the Rathna Textills Mills Pvt. Limited.

b Declaring that the plaintiff continues to be Director of the company the Rathna Textiles Mills Private Limited.

c Declaring that the defendants have no manner of right or authority to represent the company the Rathna Textile Mills Private Limited.

8 According to Mr. S. Ashok Kumar, the company petition in Comp. P.No.117 of 1995 was dismissed as withdrawn on 16.09.2005 on the ground that he has filed a suit in O.S. No.17254 of 2005. The suit in O.S.No.17254 of 2005 appears to have been ultimately dismissed on 02.04.2012 under Order 7 Rule 11(a), CPC. Therefore, the learned Senior Counsel contended that Ramakrishnan's claim that he is a Director in Rathna Textils Mills Pvt. Ltd. has no legal validity and the same has been negatived by the Courts and hence, the sale made by A1 to A4 to Chandiran (A5) cannot amount to cheating.

9 Mr. Ashok Kumar, learned Senior Counsel further submitted that the property was sold by the company to Chandiran (A5) and the entire sale consideration of Rs.47 lakhs is intact and safe in the account of the company and if the civil right of Ramakrishnan is established, he can, at any time, withdraw his share. In support of this contention, R.Vidhyadhar (A-2) has filed a sworn affidavit dated 22.11.2016, wherein, he has stated as follows:

"4. I submit that the entire sale proceeds of property in Survey No.125/1, 126, measuring 9.34 acres situated at Nelambur Village, Palladam Taluk and Sular sub-registration and was deposited at Indian Bank, R.S. Puram Branch and Coimbatore on 25.11.2005 in Current Account No.7016.

5. I further submit that on 30.11.2005, a sum of Rs.45 lakhs (Forty Five lakhs) was deposited as short term deposit (STD). The above said amount of Rs.45 lakhs was deposited after deducting broker commission.

6. I further submit that in the year 2006, a sum of Rs.11,93,699/- (Eleven lakhs Ninety Three Thousand Six Hundred Ninety Nine Rupees only) was paid as capital gain on 12.03.2007.

7. I further submit that as on date there is a fixed deposit as on 31.03.2016 is Rs.22,92,454/- (Twenty Two lakhs Ninety Two Thousand Four Hundred & Fifty Four Rupees only) Current Account Balance on 31.03.2016 is Rs.21,19,707 (Twenty One Lakhs Nineteen Thousand Seven Hundred and Seven Rupees only) in the Indian Bank, R.S. Puram Branch, Coimbatore."

10 Per contra, Mr. N.R. Elango, learned Senior Counsel appearing for Ramakrishnan submitted that Rathnasabapathy had illegally removed Ramakrishnan from Directorship with effect from 18.03.1996 on the ground that Ramakrishnan did not attend the requisite number of Board Meetings. He further submitted that

though in Form 32, it is stated that Ramakrishnan was removed on 18.03.1996, the same has been filed before the Registrar of Companies only on 01.12.2005; therefore, the removal of Ramakrishnan is a ploy by Rathnasabapathy and in any event, Ramakrishnan has got 400 equity shares and therefore, the accused 1 to 4 ought not to have sold the land to Chandiran (A5) without his knowledge and consent. He further contended that the investigation has been very perfunctory, inasmuch as the police have not taken steps to find out where the sum of Rs.47 lakhs has gone and therefore, Ramakrishnan has filed CrI.O.P. No.20884 of 2009 seeking further investigation in Cr. No.480 of 2007.

11 As a riposte, Mr. Ashok Kumar, learned Senior Counsel submitted that Ramakrishnan also entered into a sale agreement dated 29.05.2007 in respect of the same property with one Rathnavelu and had the document registered as Document No.667 of 2007 in the Sub Registrar's Office, Sulur, agreeing to sell his share of the property for Rs.25 lakhs.

12 This Court gave its anxious consideration to the rival submissions.

13 The fact remains that the property in question belongs to a private limited company. Even in the final report, it is stated that disputes were pending between Rathnasabapathy and Ramakrishnan between 1978 and 1995. Ramakrishnan filed Comp. Petition No.117 of 1995 before the Karnataka High Court for winding up of Rathna Textile Mills (P) Ltd. and he withdrew the same after filing a suit in O.S. No.17254 of 2005. That suit was also dismissed subsequently on 02.04.2012.

14 Mr. N.R. Elango, learned Senior Counsel for Ramakrishnan submitted that Ramakrishnan has filed separate proceedings in Company Petition No.8 of 2008 before the Company Law Board and the same is pending adjudication.

15 From the conspectus of the aforesaid facts, Ramakrishnan's Directorship in Rathna Textile Mills Pvt. Ltd. is still uncertain and it has to await the outcome of the pending litigations.

16 In the meantime, the Board of Directors, viz., the accused 1, 2 and 4 decided to sell the property to Chandiran (A5), which is a commercial decision of the Board and as such, the same cannot be questioned via a criminal prosecution. The sum of Rs.47 lakhs is intact in the account of the company and at any time, if Ramakrishnan succeeds, he can take back his share of money. Thus, the immovable asset of the company has been converted as movable asset by the Board of Directors (A1 to A4). It is not the case of the police that A1 to A4 had misappropriated the amount themselves without anything more. It

is also not the case of the police that a property of a huge value has been sold for a song by the accused 1 to 4 in order to cheat Ramakrishnan.

17 To recapitulate, the accused 1 to 4 had sold the entire property for a sum of Rs. 47 lakhs on 14.11.2005 to Chandiran (A5), whereas, Ramakrishnan had registered a sale agreement in respect of his half share of the property for Rs.25 lakhs on 29.05.2007. This means that the value of the entire property even according to Ramakrishnan in the year 2007 is Rs.50 lakhs. Therefore, the sale of the property for Rs.47 lakhs in the year 2005 by A1 to A4 to Chandiran (A5) cannot be considered as a sham transaction. It is not the case of the police that the accused 1 to 4 had received a huge amount in black from A5 (Chandiran) and had shown only Rs.47 lakhs on record. In this case, the sale agreement by Ramakrishnan in the year 2007 is only for Rs.25 lakhs for his half share, which is Rs. 50 lakhs for the whole property.

18 Hence, this Court does not find anything fishy in the sale of the property for Rs.47 lakhs in the year 2005 by the accused 1 to 4 to Chandiran (A5). In fact, the conduct of Ramakrishnan in registering a sale agreement in the year 2007 in respect of the property that has been purchased by Chandiran (A5) is itself blameworthy, because, his intention was to create encumbrance in the property and cause inconvenience to Chandiran (A5). Thus, in the considered opinion of this Court, a purely civil dispute has been given a criminal colour and the prosecution of the accused is clearly an abuse of process of law.

19 Under Section 291 of the Companies Act, the Board of Directors of a Company is entitled to take such commercial decisions. The position of a share holder has been succinctly set down by the Constitution Bench of the Supreme Court in *Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay* [AIR 1955 SC74], in the following words:

"That a share-holder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the share-holder acquires any interest in the assets of the company. A share-holder has not got a right in the property of the company."

This judgment negatives the contention of Mr. N.R. Elango that Ramakrishnan is at least a shareholder having 400 equity shares and therefore, has a subsisting interest in the property.

20 As a sequel, Crl.O.P. Nos.3997 and 7716 of 2009 are allowed and the entire prosecution in C.C. No.381 of 2008 is hereby quashed. Connected M.P. is closed.

Coming to Crl.O.P. No.20884 of 2009, the facts obtaining in these cases do not warrant a direction from this Court for further investigation of the case, as sought by Ramakrishnan. As a sequitur, Crl.O.P. No.20884 of 2009 is dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

- 1 The Inspector of Police
Sulur Police Station
Coimbatore District
- 2 The District Munsif-cum-Judicial Magistrate Court
Palladam
Coimbatore District
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 cc to M/s.Ibrahim, advocate,sr.69395

+1 cc to M/s.C.D.Johnson,advocate,sr.69856.

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Crl.O.P. Nos. 3997, 7716 and 20884 of 2009

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