IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL. O.P.No.23663 of 2016
and
CRL.MP.Nos.11176 & 11177 of 2016

1.ChhayaGulabGhule
2.Nirupama Achyut Gokhale ... Petitioners

Vs.

The Additional Superintendent of Police,
Central Bureau of Investigation,
Anticorruption,
Chennai. ... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.4/2008 pending on the file of the XI Additional City Civil & Sessions Court for CBI Cases as against the Petitioner company to quash the same.

For Petitioner : M/s.M.Rajendiran

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor
for CBI

O R D E R

The Petitioners have filed this petition under Sections 120-B, 419, 429, 467, 468 r/w. 471 of IPC and Section 13(2) r/w. 13(1) (d) of Prevention of Corruption Act, 1988.

2. The case of the petitioners is that the first and second petitioners namely ChhayaGhulabGhule and NirubamaAchyutGokhaleare representing the company namely M/s.Conveytech Plants & Equipments Pvt Ltd., and having register officer at Plot No.7, Shivprasad Society, Panmala, PuneSinghagad Road, Pune, Maharashtra, India-411030. The Company namely M/s.Solocon Plants & Equipments Pvt. Ltd., was incorporated on 14.01.1985 under the Companies Act, 1956. The first directors of the company was ShriGulabBhivbaGhule and ShriAchyutBalkrishnaGokhale. The petitioners were appointed as directors of the Company by Board Resolution dated 20.11.2001 and Form No.18 also filed to that effect. The Company name was changed as M/s.Conveytech Plants &

Equipments Pvt.Ltd., by the proceedings of ROC dated 04.06.2002 as per Section 23(1) of the Companies Act, 1956. The Directors namely G.B.Ghule and A.B.Gokhale had resigned from directorship of company by board resolution dated 18.11.2002 and the petitioners are continued as directors of the Company. They came to know that there was a case pending in C.C.No.4/2008 on the file of the XI Additional City Civil and Sessions Court for CBI Cases after receipt of the summons dated 24.08.2014 issued by the trial court. The petitioners have obtained certified copy of charge sheet. To shock and surprise of the petitioners that A-4 namely M.R.Babu has committed a fraud in collusion with A-1 V.M.Ganeshan and A-2. Subramanian. The charge sheet itself shows that the case was foisted against A-1 M.R.Babu on the capacity as director. The case of the petitioner was arising out that the A-1 M.R.Babu claimed himself as director of petitioner's company, which is utter false. Assuming that A-1 Mr.Babu committed a fraud by impersonated that he was the director of petitioner's company. It is the duty to the respondent to ascertain that whether the A-1 M.R.Babu was director or not of the petitioner's company. A1 M.R.Babu did not had any contact with the petitioner's company and in fact first time the petitioners are heard this name. The petitioner did not know about A-1 at any point of time. The petitioner is understand that the details of petitioner's company were obtained through A-2 Subramanian. The Charge Sheet reveals that the A-2 Subramanian was a key person in the above said occurrence. The A-2 probably collected the company details as he claimed himself as chief Executive Officer of Bhagyanagar Solvent Extractions Private Limited. In year 2002 & 2003 the petitioner company has supplied design, manufacture equipments to Bhagyanagar Solvent Extractions Private Limited in which as a supplier the petitioner's company known about Bhagyanagar Solvent Extractions Private Limited., as a buyer of Industrial Components namely biomas to the power project. A-2 has misused our company name by taking advantage of the petitioner's company profile and set up a fake person namely M.R.Babu (A4). It is clearly shown that the M.R.Babu (A4) impersonated and creating fake documents as he was the director of petitioner's company.

3. After the fraud committed by the accused was known to the Andhra Bank, the case has been filed against the accused. The respondent not only arrayed the accused persons who are all involved in the offence and the company also arrayed as accused in this case. The fact remains that A-4 M.R.Babu is not a director and he was not even employee of the company. The Investigation Officer has included the petitioner's company as an accused in this case without conducting proper enquiry. If the investigation officer verified the role of accused A-4 with the petitioner's company at an earlier stage, the petitioner need not standing before this court as an accused representing for the company. After demise of A-4 M.R.Babu now the Company received summon from the trial

court to represent the case in the place of deceased M.R.Babu A-4 for A-29. It is clear case of impersonation of A-4 and fraudulent act of A-1, A-2. Hence, the petition.

4. The petitioner's company having a good reputation and running peacefully. The petitioners first time came to know that there was a case filed by the respondent and pending on the file of the Hon'ble XI Additional City Civil and Sessions Court for CBI Cases, Chennai. The petitioner further came to know that A-4 namely M.R.Babu impersonating and committed a fraud in collusion with Andhra Bank Manager V.M.Ganesan (A1) and opened a current account for the purpose of obtaining overdraft facility in the bank namely Andhra Bank, Sowcarpet Branch, Chennai. The petitioner do not know that the case was pending against the company until the summon dated 24.08.2016 was received by them.

5. Merely because of the fraud committed by A-4 representing as Director of M/s. Convey Plants & Equipments Pvt. Ltd., the petitioners need not be standing before the Trial Court as an accused. It is a prima facie made out that this is a false case for the reason the A-4 claimed himself as Director of M/s. Convey Plaints & Equipments Pvt.Ltd., The fact remains that the A4 was never acted as a Director of M/s. Conveytech Plants & Equipments Pvt.Ltd., at any point of time. Since A4 claimed himself as Director of the petitioner's company is false, it is automatically there is no role on the part of the petitioners company in this case. The entire case travelled by the role of A1 who was the Branch Manager of the Andhra Bank, Sowcarpet Branch, Chennai. Admittedly, several accounts were opened in the name of several companies in collusion with A1. Since, the fraud committed by A4 inconnivance of A1 and A2 in the name of the petitioner's company, the company is not responsible for fraud committed by the individual. The entire offence committed behind back the company. The petitioner further submits that the petitioners company is no way connected with the offence committed by A4 in collusion with A1 and A2.

6. Memorandum of Articles of Association is clearly reveals about the objects, shareholders and Directors of the company. The A4 who representing for A-29 M/s.Conveytech Plant & Equipments Pvt.Ltd., while he was alive. In normal course a person who claimed himself as Director and approached the bank to open the current account, it is the duty of the Bank Manager to ask Board Resolution or Authorisation from the concerned company at time of opening the account. In this case, there was collusion between the A1, A2 and A4 and opened the account without knowledge of the company. Hence, the company is not responsible for the offence committed by any third party. Moreover, it is clear case of vital role played by the Bank Manager collusion with fraudulent persons who representing as Directors of various

companies/firms. Likewise the petitioner's company also implicated in this case by the respondent without ascertaining the company details. The petitioner submits that it is apparently reveals that the company did not take part of the alleged account opened by A4 representing for A-29.

7. The learned counsel for the petitioner would submit that one Babu misused the petitioner/Company as Director and the said Babu never been a Director of the petitioner/Company. This petitioner has been summoned and notice given to this petitioner u/s.305 of Cr.P.C., by the investigation agency. Therefore, the petitioner has filed quash proceedings against the petitioner/accused.

8. The learned Additional Public Prosecutor would submit the petitioner/Company only received notice u/s.305 Cr.P.C., Therefore, this Court cannot invoke extraordinary jurisdiction of power u/s.482 of Cr.P.C.,

9. Heard both sides and perused the available records.

10. On perusal of the notice issued to the accused/A23 by IX Additional City Civil Court for CBI Cases under Section 305 of Cr.P.C., it is revealed that originally the accused/A23, M/s.Convey Plants & Equipment Pvt.Ltd., was represented by A4, one Mr.Babu. From the said notice, it is understood that the said A4/Babu was expired and after his demise nobody is representing for A23/Company since A23 is the Company and hence, it should be represented through authorised representative. Therefore, notice has been issued to A23/Company under Section 305 of Cr.P.C.,

11. Sub-section (2) of 305 Cr.P.C., reads as follows:

> " (2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

Therefore, once the Company has been arrayed as an accused, it should be represented through somebody for which the Company may appoint the representative for the purpose of enquiry or trial. Considering the facts and circumstances of the case, there is no fault on the part of the trial Judge for sending notice u/s.305 of Cr.P.C., to the Company. Admittedly the petitioners are the directors of the A23 Company. Whatever the grievance over the notice as stated in the petition the petitioners can agitate before the trial court after entering into appearance. Though this court has inherent power u/s.482 of Cr.P.C., and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional case and it would not be proper for this court to analyse the case of the petitioners in the light of probabilities in order to determine the averment made in the petition.

Under the above said circumstances, this court is not inclined to exercise its inherent power by invoking Section 482 of Cr.P.C., to quash the proceedings and the petition is liable to be dismissed. Accordingly, the petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gv

To

1.The XI Additional City Civil & Sessions Judge for CBI Cases, Chennai.

2.The Additional Superintendent of Police, Central Bureau of Investigation, Anticorruption, Chennai.

3.The Special Public Prosecutor for CBI Cases, High Court, Madras.

+1cc to Mr.M.Rajendiran, Advocate, S.R.No.65434

CRL. O.P.No.23663 of 2016
and
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KS(CO)
CA(14/12/2016)