IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.11.2016

DELIVERED ON: 14.12.2016

CORAM:

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

Crl.O.P. Nos.19382, 19385, 19448 and 19449 of 2007

Elevate Properties Limited
New Delhi
represented by Managing Director
Raman Sharma
Nehru Palace
New Delhi Petitioner in Crl.O.P. No.19382 of 2007

vs.

1 State of Tamil Nadu represented by:
the Inspector of Police
Chennimalai Police Station
Erode District

2 Cheran Holdings Pvt. Ltd.
represented by its Director Subramani
181, Thattankadu Thirunagar
Chennimalai - 51
Erode District Respondents in Crl.O.P. No.19382 of 2007

(R2 impleaded vide order dated 23.09.2010 in
M.P. No.1 of 2010)

1 Odyssey America Reinsurance Corporation
represented by Prem Watsa
300, First Stanford Place
Stanford C.T. - USA 06902

2 Hamlin Watsa Investment council
by its Principal Officer Chandran Ratnasami
Wellington Street
Suite 800, Toronto, Canada

3 Fairfax Financial Holding Ltd.

by its Principal Officer Chandran Ratnasami
Wellington Street
Suite 800, Toronto, Canada

4 O.R.E. Holding Limited
represented by Paul Rivett
I.F.S. Court
Cyber City, Mauritius

5 Chandran Rathinasamy
Principal Officer
Hamlin Watsa
Investment Council
95 Wellington Street West
Suite 800, Toronto, Canada

6 Prem Watsa
Chairman of Fairfax Financial Holding Ltd. and
Chairman of OARC and
Chairman of ICICI Bank Ltd.
Mumbai Petitioners in Crl.O.P. No.19385/2006

1 State of Tamil Nadu represented by:
the Inspector of Police
Chennimalai Police Station
Erode District

2 Cheran Holdings Pvt. Ltd.
represented by its Director Subramani
S.F. No.501/1
Maravapalayam Village
Kangeyam Taluk
Erode District Respondents in Crl.O.P. No.19385 of 2007

(R2 impleaded vide order dated 23.09.2010 in
M.P. No.1 of 2010)

Ramasamy Athappan Petitioner in Crl.O.P. No.19448 of 2007

vs.

1 The Inspector of Police
Chennimalai Police Station

Perundurai, Tamil Nadu

2 Cheran Holdings Pvt. Ltd.
represented by its Director Subramani
S.F. No.501/1
Maravapalayam Village
Kangeyam Taluk
Erode District Respondents in Crl.O.P. No.19448/2007
(R2 impleaded vide order dated 23.09.2010 in
M.P. No.1 of 2010)

Nandhakumar Athappan Petitioner in Crl.O.P. No.19449/2007

vs.

1 The Inspector of Police
Chennimalai Police Station
Perundurai, Tamil Nadu

2 Cheran Holdings Pvt. Ltd.
represented by its Director Subramani
181, Thattankadu Thirunagar
Chennimalai
Erode District Respondents in Crl.O.P. No.19449/2007

(R2 impleaded vide order dated 23.09.2010 in
M.P. No.1 of 2010)

Prayer in Crl.O.P. No.19382 of 2007:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in Cr. /FIR No.238 of 2007 on the file of the Chennimalai Police Station, Erode District and quash the same.

Prayer in Crl.O.P. No.19385 of 2007:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in Cr./FIR No.238 of 2007 on the file of the Chennimalai Police Station, Erode District and quash the same.

Prayer in Crl.O.P. No.19448 of 2007:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records pertaining to FIR No.238 of 2007 pending on the file of the first respondent and quash the same as against the petitioner/sixth accused.

Prayer in Crl.O.P. No.19449 of 2007:

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records pertaining to FIR No.238 of 2007 pending on the file of the first respondent and quash the same as against the petitioner/eighth accused.

For petitioner in Crl.O.P. No.19382/2007	Mr. Ar.L. Sundaresan, Sr. Counsel for Mr. J. Sivanandaraaj
For P1 in Crl.O.P. No.19385/2007	Mr. P.S. Raman, Sr. Counsel for Mr. J. Sivanandaraaj
For PP 2-4 & 6 in Crl.O.P. No.19385/2007	Mr. Ar. L. Sundaresan, Sr. Counsel for Mr. J. Sivanandaraaj
For P5 in Crl.O.P. No. 19385/2007	Mr. S. Ashok Kumar, Sr. Counsel for Mr. J. Sivanandaraaaj
For petitioner in Crl.O.P. Nos.19448 & 19449/2007	Mr. J. Sivanandaraaj
For R1 in all Crl.O.Ps.	Mr. C. Emalias Addl. Public Prosecutor
For R2 in all Crl.O.Ps.	Mr. A. Ramesh, Sr. Counsel for Mr. R. Ashraf Khan

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COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash FIR No.238 of 2007 pending on the file of the first respondent police.

2 For the sake of convenience, the parties will be referred to by their name.

3 On the complaint lodged by one Chenniappan, the first respondent police registered a case in Cr. No.238 of 2007 on 01.06.2007 under Sections 120-B, 406, 409 and 420 IPC against Odyssey America Reinsurance Corporation (A1), Hamlin Watsa Investment Council (A2), Fairfax Financial Holding Ltd. (A3), O.R.E. Holding Ltd. (A4), Elevate Properties Pvt. Ltd., New Delhi (A5), Ramasamy Athappan, Chief Executive Officer of India International Pvt. Ltd., Singapore (A6), Chandran Rathinasamy, Principal Officer, Hamlin Watsa Investment Council (A7), Nandhakumar Athappan (A8) and Prem Watsa, Chairman of OARC and Director of ICICI Bank Ltd., Mumbai. (A9), challenging which, the accused have preferred these respective quash petitions.

4 Chenniappan, the de facto complainant is the proud father of the famous K.C. Palanisamy, who is said to be an adept in the art of luring people into big business and entangling them in criminal prosecutions. There can be no better words than to extract a passage from the order of a learned Single Judge of this Court in *K.C. Palaniswamy vs. The State of Tamil Nadu represented by the Home Secretary, Secretariat, Chennai and others [MANU/TN/4161/2011]:*

> "28. However, this Court is not inclined to accept the request made by the petitioner. The petitioner is not an innocent party in filing such complaints and he himself has not obeyed the order passed by the Delhi High Court in the application for winding up and asking him to refund the amount siphoned off by him which was obtained as a loan by DAIL. Parties who comes to Court must come with clean hands. Not only the petitioner has come to this Court with unclean hands, but he himself being an accused in several cases had also suppressed the entire proceedings of the Delhi High Court including the order directing the company to retransfer the money siphoned of from DAIL."

5 The father-son duo are the Managing Director and Director respectively of Cheran Holdings Private Ltd. (for brevity "CHPL"). The allegation in the impugned FIR is as follows:

- In the year 2005, one Ramasamy Athappan (A6) approached CHPL and promised to bring in foreign investments to the tune of USD 17 million (INR 78.45 crores) to be used as long term loan for the business purposes of CHPL on CHPL pledging their company's shares.

- As per the agreement, the accused had promised to transfer the amount of USD 17 million to another company by name Data Access India Ltd. (for brevity “DAIL”) and through DAIL to CHPL.

- Admittedly, USD 17 million came into the kitty of CHPL via DAIL.

- While so, CHPL received an order dated 18.11.2005 in Company Petition No.292 of 2004 from the Delhi High Court calling upon them to deposit the said sum before the Company Court (Delhi High Court) within two weeks.

- Therefore, it is the contention of Chenniappan that the accused herein had cheated CHPL of their lawful shares. Hence, the FIR.

6 Heard M/s. P.S. Raman, Ar.L. Sundaresan and S. Ashok Kumar, learned Senior Counsel and Mr. J. Sivanandaraaaj, learned counsel appearing for the petitioners, Mr. C. Emalias, learned Additional Public Prosecutor appearing for the State and Mr.A.Ramesh, learned Senior Counsel appearing for Chenniappan (de facto complainant) and perused the records.

7 It is the case of the accused that the father-son duo lured

them into investing USD 17 million into DAIL and after the amount was credited into the account of DAIL, it was immediately siphoned to the account of CHPL from where it vanished into thin air. Therefore, it is the contention of the accused that it was actually the father-son duo who had cleverly floated several companies to cheat them of USD 17 million and that they should have been made as accused, but, unfortunately, with the clout commanded by the father-son duo, the victims of the crime have been arrayed as accused.

8 Per contra, Mr. A. Ramesh, learned Senior Counsel appearing for Chenniappan (de facto complainant) submitted that the shares of CHPL were pledged on the promise of USD 17 million and the money had to be ultimately deposited with the Company Court (Delhi High Court) in compliance of the order dated 18.11.2005 passed by the Delih High Court in Comp. Petition No.292 of 2004, etc. batch.

9 To have a proper understanding of the dispute, it may be necessary to say a few words about the company petition before the Delhi High Court.

10 One Pacific Convergence Corporation Ltd. filed winding up

petitions in Company Petition No.292 of 2004 etc. batch against DAIL before the Delhi High Court. In the said proceedings, unimpeachable evidence to the effect that USD 17 million came into the kitty of DAIL and immediately, it went to the account of CHPL, was produced and that is why the Delhi High Court, by order dated 18.11.2005, had directed CHPL to deposit the said sum before the Company Court (Delhi High Court). The accused herein had nothing to do with the winding up proceedings. In fact, at the instance of CHPL, the accused, unaware of the winding up proceedings, transferred USD 17 million into the account of DAIL. The moment the amount was transferred to the account of DAIL, it was quickly transferred to the account of CHPL and immediately, the entire USD 17 million went down the drain, leaving the accused high and dry.

11 At this juncture, it may be necessary to extract paragraph nos.66,70 and 71 of the order dated 18.11.2005 passed by the Delhi High Court in Comp. Petition No.292 of 2004, etc. batch.:

> "66. In the present case, no permission of RBI has been obtained by any party. In case the company was to receive any loan in foreign exchange from abroad, prior permission of the RBI was required. It is therefore, the case of the bank that the entire story of the respondent company that the said amount of 17 million US dollars was received as loan by the respondent company from its 100% subsidiary is false. In fact, as per the letter dated 18.8.2004, written by the respondent company, seeking no objection from the bank for opening a current account with ABN AMRO Bank, Chennai, the investor was to infuse funds into the respondent company by transferring amount in Indian Rupees from its account with ABN AMRO Ban, Chennai to the account of the respondent company in Indian Rupees. The investor was CHPL and K.C.P. and not DAA. The swift message of DAA received with the remittances of 17 Million US Dollars

cannot be changed. The respondent company has fabricated the story of unsecured loan by CHPL to DAIL through DAA. The said story is neither plausible nor possible.

70. That apart, allegations of the bank need serious consideration that pursuant to the orders of this Court, ABN AMRO Bank had filed its affidavit which clearly shows that after receiving the amount in accounts of the respondent company, the same were transferred on different dates in to the account of Cheran Holding Pvt. Ltd. and on its sister concerns. On the filing of C.A. 36/05 by CHPL, it became apparent that the present management of the company is fraudulently and illegally keeping the amount with its other companies, which is the security of the bank and which was received in the account of the company from Data Access America towards payment of its dues. Further serious allegation made by the bank is that the company has tried to fabricate further documentations to fill in lacunas in the false story set up in CAs. No.35 and 36/2005 and in order to place the said documents on record, affidavit was filed in C.A. No.179/2005.

71 All these factors persuade me to pass interim orders to protect the interest of the secured creditors. The averments made by the company in its applications, replies to applications and affidavit about these transactions are not without suspicion and cannot be accepted at the face value. Similar is the position in the case of CHPL and SPIL. The company has annexed a letter dated 25th November 2004 allegedly issued by the ABN AMRO Bank to the RBI, forwarding another inward remittance certificates stating that the said remittance was towards loan to the company. The company filed another letter dated 16th September, 2004 of ABN AMRO Bank to the RBI, seeking approval for returning the amount of USD 17 million to Data Access America. From the said correspondence of ABN AMRO Bank, it is apparent that the amount of USD 17 million is still under the control of the company."

(emphasis supplied)

12 To a pointed question posed by this Court to Mr. A. Ramesh, learned Senior Counsel appearing for Chenniappan (de facto complainant), as to whether CHPL had deposited USD 17 million as directed by the Delhi High Court, he had no answer. Obviously, CHPL has not deposited the money into the Company Court, till date and therefore, there is no question of CHPL or Chenniappan suffering any wrongful loss and the accused having a wrongful gain. The order clearly shows that DAIL and CHPL had acted in tandem to siphon the huge sum of USD 17 million that

was brought in by the accused.

13 For the same transaction, K.C. Palanisamy filed a police complaint and since no action was taken on his complaint, he filed a private complaint in Crl. M.P. No.6096 of 2006 before the District Munsif-cum-Judicial Magistrate, Perundurai, which was dismissed on 13.03.2007. The dispute between the father-son duo, on the one side and the accused, on the other, went upto the Supreme Court and the Supreme Court, in *Chandran Ratnaswami vs. K.C. Palanisamy and others [2013 (3) CTC 512]*, has extracted the order dated 13.03.2007 passed by the District Munsif-cum-Judicial Magistrate, Perundurai and had concluded that the criminal prosecution against the accused is an abuse of process of law. Paragraph nos.53 and 54 of the said judgment are worth extracting:

> "53. Neither the High Court nor the Magisterial Court have ever applied their mind and considered the conduct of the respondent and continuance of criminal proceedings in respect of the disputes, which are civil in nature and finally adjudicated by the competent authority i.e. the Company Law Board and the High Court in appeal.
>
> 54. We are of the definite opinion that the complainant has manipulated and misused the process of Court so as to deprive the appellants from their basic right to move free anywhere inside or outside the country. Moreover, it would be unfair if the appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction. Hence, allowing the criminal proceedings arising out of FIR No.7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed. Since the High Court failed to look into this aspect of the matter while passing the impugned order, in our opinion, the same could not be sustained in law."

14 It is also seen that for a transaction of the year 2005, Chenniappan has lodged the complaint in the year 2007, based on which, the present FIR has been registered. It may be relevant to state here that on the complaint given by Chenniappan for the same transaction, but, couching the complaint in a different language, two other FIRs have been registered in Kangeyam P.S. Cr. Nos.466 and 468 of 2007 against the accused herein, which are also under challenge before this Court and separate orders are passed in those petitions. This reference is made in order to show how Chenniappan has been successful in having FIRs registered in different police stations for the same cause of action.

15 In *State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335],* at paragraph no.102, the Supreme Court has given broad guidelines for quashing an FIR. Guideline nos. 5 and 7 are usefully extracted hereunder:

> "5 Where the allegations made in the FIR or complaint are so absurd and inherently improbably on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> 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."

16 At the risk of repetition, money has come into the coffers of CHPL in which, Chenniappan is a Director and CHPL has not deposited the

amount in the Company Court (Delhi High Court), as directed by the Delhi High Court in Company Petition No.292 of 2004, but, is crying foul that the accused had cheated them.

17 In view of the above, the present FIR lodged in the year 2007 in respect of a transaction of the year 2005, pursuant to the complaint given by Chenniappan, father of K.C. Palanisamy, in which the petitioners have been arrayed as accused, deserves to be quashed as it satisfies guideline nos.5 and 7 at paragraph no.102 of the judgment of the Supreme Court in *Bhajan Lal and Others (supra).*

In the result, the FIR in Cr. No.238 of 2007 is hereby quashed and these Criminal Original Petitions are allowed with the above observation. Connected Miscellaneous Petitions are closed.

14.12.2016

cad

P.N. PRAKASH, J.

cad

To

1 The Inspector of Police
Chennimalai Police Station
Erode District

2 The Public Prosecutor
High Court of Madras
Chennai 600 104

Crl.O.P. Nos.19382, 19385, 19448 and 19449 of 2007

14.12.2016