

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 22.11.2017	Date of Pronouncing Judgment 05.12.2017
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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition. No: 21905 of 2017
in CrI.M.P.No.12881 of 2017

1. D.Pratish

2. M/s. VGN Developers P Limited,
Rep by Managing Director.

...Petitioners

Versus

The Inspector of Police,
CBI/ACB/Chennai.
(FIR No. RC MA1 2016 A0050)

... Respondent

PRAYER: Criminal Appeal is filed under Section 482 Criminal Procedure Code, to call for records of the respondent and quash the proceedings in FIR No. RC MA1 2016 A0050 on the file of Inspector of Police CBI/ACB, Chennai.

सत्यमेव जयते

For Petitioners : Mr. B. Kumar Senior Counsel
for S.Ramachandran

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

ORDER

This petition is to quash the FIR registered as against D.Pratish and VGN Developers (P) Ltd. who are shown as A4 and A5.

2. The gist of the petitioner is that originally a HTL a Public Sector Company later under disinvestment policy of the Government shed its 74% of holdings of to M/s. Himachal Futuristic Company. The liability of HTL towards the consortium of Banks was lead by State Bank of India exceeded 167, A6, 50, 055. Hence the possession of HTC properties were taken over by the lending Banks under SARFASI Act on 07.03.2007 i.e., 10.46 acres of land in the Industrial Estate at Guindy, Chennai was brought for e-auction but the attempts did not frugality even after five attempts therefore exercising the power under Section 13 r/w Rule 8(5) of SARFASI Act. The Bank entered into private negotiation with M/s. VGN Developers (P) Limited (A5) rep by A9 for Rs. 272 crores which is Rs 72 crores over and above the reserve price of Rs.250 crores sale certificate was issued on 19.05.2013. Through the said private negotiation, HTC has cleared its entire due along with the interest to the bank. The balance sale consideration remains with HTL. For purchase of the property the 2nd petitioner has borrowed money from various public sector Banks including NBFC's and certain private capital companies giving their properties as security. In the said property it has launched construction project of 900 flats and proposed to 90 head with other projects phased manner. While so, CBI has registered FIR on 28.12.2016 against officers of the SBI and the purchaser company alleging 10.46 acres of land of HTL worth Rs. 387 crores as per guidelines value been sold through private negotiation for Rs.272 crores thereby causing a wrongful loss to the Government of India to a tune of Rs. 115 Crores.

3. The petitioners content that, the complaint registered based on source information does not carry any truth on merit but on erroneous understanding of facts. Since the pending of FIR causes serious cloud in the reputation of the petitioner company which enjoy a good reputation as Premium Builders of the Country.

4. According to the petitioners, HTL is not a Government Company and loss if any, dire to private negotiation cannot construed as loss to Government. Further the presumptive loss of Rs.115 crores is based on the alleged guidelines value, but in facts, the property though put to public auction through e-auction, there was no bidder the only bidder, who offered more than the reserve price was M/s. RMZ properties, Bangalore but that deal failed due to objection by the State Government. Therefore when none other were ready to buy the property in view of legal issues, one cannot except a sale price equivalent to Guidelines value. Hence the FIR is liable to be quashed in its counter has stated that as under:-
Para

3. It is humbly submitted that it was inadvertently *mentioned in the FIR that M/s. HTL was a public sector enterprise. M/s HTL was a public sector enterprise prior to 2001 when the Government of India decided to disinvest, M/s. Himachal Futuristic communications Limited (HFCL) had acquired 74% of the stake of M/s. HTL and 26% is remained with Government of India.*

4. It is humbly submitted that the main allegation was criminal misconduct of the officials of State Bank of India for undue waiver of interest to the extent of Rs.53.50 Crores in connivance with the other accused M/s Hindustan Teleprinters Limited and M/s VGN Developers (P) Limited when the sale proceeds of the subject land was appropriated towards loan account which caused wrongful loss of Rs.53.50 Crores to State Bank of India. While preparing the FIR, it was inadvertently mentioned that the loss to Government of India was Rs. 115 Crores being the difference between the sale price (Rs 272 Crores) and guideline value (Rs.387 Crores). The loss was to State Bank of India due to undue waiver of interest to the extent of Rs. 53.50 Crores. Investigation is in progress.

6. It is humbly submitted that the averments mentioned in Para Nos. 6, 7, 18 to 27 are denied. The respondent had not questioned the validity of SARFAESI Rules. However, the main allegation of the FIR is regarding wrongful loss to SBI due to undue waiver of interest to the extent of Rs. 53.50 Crores and the FIR was registered on the following allegations of criminal misconduct of the State Bank officials in connivance with other accused.

i) Criminal misconduct of the officials of State Bank of India for undue waiver of interest to the extent of Rs.53.50 Crores in connivance with the other accused M/s.HTL and the property was also sold for lesser price of Rs 272 Crores to M/s VGN Developers P Limited by SBI under Private treaty.

ii) M/s HTL had not repaid the dues to Government of India to the extent of Rs. 27 Crores along with interest.

iii) M/s HTL had not paid 10 % of the net sale proceeds to Tamil Nadu Small Industries Development Corporation as per NOC given by TN SIDCO which M/s HTL managed through furnishing the Chartered Accountant Certificate for the Company's total liabilities to the extent of Rs.600 Crores as on 31.03.2013

7. It is humbly submitted that the investigation is in progress. The case was registered on 28.12.2016 and pertaining to the period from 2007 to 2013 and collection of documents from Banks, various departments, private persons, scrutiny of the documents and bank statements and examination of witnesses are in progress. Hence at this stage reaching to a logical conclusion is not tenable. FIR is only to set the law into motion. As the investigation is at the crucial stage and hence the quash petition may be dismissed in limine.

5. From the facts placed by the petitioner and the investigation agency, this court finds that the subject property was put to e-auction for the first time on 17.02.2011 fixing reserve price as Rs. 209.54 crores. The second and third auction date was fixed on 09.03.2011 and 04.01.2012 with same reserve price. Thereafter paper publication effected for auction on 05.10.2012, 05.11.2012 and 23.01.2013 with revised reserve price of Rs. 250/- crores. Meanwhile M/s. RMZ properties, Bangalore has offered Rs. 298/- crores for this property but sale not confirmed in its favour but sold to 5th Accused Company through private negotiation for Rs. 272 Crores. Whether such deal was outcome of any criminal design between the Bank Officials and the buyer is now under investigation. No doubt the FIR contains certain wrong information about the character of HTL and the quantum of alleged loss. As stated in the counter, a prime property in the heart of the City had been sold through private negotiation far below the guidelines value. The property originally belong to State Government assigned to HTL, to set up an industry. The SIDCO, through which Government has assigned the land to HTL has given NOC to sell the property subject to discharge of HTL

liability to SIDCO which runs to Rs.600/- crores. While so, whether the private negotiation without taking note of SIDCO interest and the pre-emptive right, if any, to State Government are subject matter of investigation. Unless the investigation gets completed this court cannot jump to a conclusion that the petitioners are innocent bonafide purchaser and not privy to the alleged crime.

6. Accordingly, the Criminal Original Petition stands dismissed. Consequently connected Criminal Miscellaneous Petition is closed.

05.12.2017

speaking/non speaking
Index:Yes/No
Internet:Yes/No
bsm

To
The Inspector of Police,
CBI/ACB/Chennai.

सत्यमेव जयते
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DR.G.JAYACHANDRAN.J.

bsm



Judgment in
Crl.O.P. No: 21905 of 2017
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