

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. REVISION CASE No.396 of 2016

and

CRL. MP. No.2631 of 2016

1. Balu
2. S.Asaithambi
3. K.Subramani
4. P.Kuppusamy
5. P.Loganathan
6. S.R.Nadanasabapathi
7. T.A.Balasundaram

... Petitioners

Vs.

1. The Inspector of Police,
CBCID, Namakkal,
Namakkal District.
2. G.Subramani
Sri Arthanareswara Paper and Boards Pvt. Ltd.,
Veppadai, Tiruchengode Taluk,
Namakkal District.

... Respondents

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order dated 10.02.2016 passed in C.M.P.No.1029 of 2015 in C.C.No.1 of 2015 on the file of the Chief Judicial Magistrate, Namakkal, Namakkal District.

For Petitioners : Mr.C.Prakasam
For Respondents : Mr.R.Sekar,
Govt. Advocate (Crl. Side) for R1
Mr.S.Kolandasamy for R2

ORDER

This Criminal Revision case has been filed against the order passed by the learned Chief Judicial Magistrate, Namakkal, Namakkal District in CMP. No.1029 of 2015 in CC. No.1 of 2015 by order dated 10.02.2016.

2. Before the Court below, the petitioners had filed a petition under Section 239 of the Code of Criminal Procedure(in short, "the Code") to discharge them from C.C. No.1 of 2015.

3. The case of the petitioners before the court below is that they are also Directors of the company viz., Sri Arthanareswara Paper and Boards (P) Ltd., Veppadai, Tiruchengode Taluk along with the defacto complainants. Further case of the petitioners is that since the petitioners are also Directors of the company, no complaint can be made by some of the other Directors, that too for the offences

punishable under Sections 147 and 380 read with 34 IPC.

4. The said petition was considered by the court below and by the impugned order, the petition was rejected on the ground that the property admittedly belongs to the company and it is not a personal property of any of the Directors. Therefore, it is to be seen whether all the Directors have given their consent to remove machineries or there is any resolution to that effect. Such examination could be done only based on the documents to be produced by both sides and this is a matter for trial and unless and until the trial is completed, these issues cannot be resolved. Challenging the said order, the present revision has been filed.

5. I have heard the learned counsel for the petitioners and the contesting respondents who have been impleaded as party respondent as per the order of this Court dated 08.06.2017, and also, Mr.R.Sekar, learned Government Advocate(Crl. side) appearing for the State.

6. Mr.C.Prakasam, learned counsel for the petitioners submitted that since the petitioners also in charge of the company in their capacity as Directors, they have every right to deal with the company properties. Since the petitioners were not given back the amount, they

invested in the company, they were forced to sell a few machineries over which they have absolute right, as Directors of the company.

7. In this regard, the learned counsel has relied upon the following two decisions of the Hon'ble Supreme Court and the learned single Judge of this Court:-

1. 2006(4)CTC 60 in the matter of Indian Oil Corporation Vs. NEPC India Ltd., and others

2. 2006(2)CTC 642 in the matter of Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd., and others Vs. Inspector of Police, Team-IV, Central Crime Branch, Chennai and another.

8. By citing the above said decisions, the learned counsel would submit that a dispute between the Directors i.e. the petitioners as well as the defacto complainants can be resolved only under the Company's Act and instead of resorting to the said remedy, the defacto complainants have chosen to make a complaint, by falsely implicating the petitioners. Therefore, in view of the judgments cited above, the petitioners are entitled to get discharged.

9. However Mr.S.Kolandasamy, learned counsel appearing for the contesting private respondent would submit that the petitioners are no more Directors of the company and if at all the petitioners are aggrieved, they can very well agitate the issue before the appropriate forum by invoking the provisions of the Companies Act.

10. The learned counsel would further submit that only because they were Directors of the company for some time, they cannot take a stand that the machineries and other belongings of the company are the personal properties of the Directors and based on which they can be taken away by some of the Directors on their own, by treating them as personal belongings.

11. Whenever any cognizable offence is committed by any one of the Directors of the company, it affects the smooth running of the company and in this regard any other Director has a right to make a police complaint about the theft of such machineries. In this case the private respondent has given a complaint to the police stating that worthy machineries were clandestinely removed by the petitioners. On the basis of the said complaint, the respondent police have taken cognizance of the offence and after investigation, they filed charge

sheet before the trial court. The learned counsel, therefore, submit that if at all the petitioners want to prove their innocence, they could do so at the time of the trial. At this stage, they are not entitled to seek for discharge from the charges framed against them.

12. Mr.R.Sekar, learned Government Advocate would submit that the offences alleged against the petitioners punishable under section 147 and 380 read with 34 IPC are prima facie, made out. It is for the trial court to ascertain the truth or otherwise of the charges made against the petitioners, after completion of trial. At this stage, the petitioners cannot seek for discharge. The learned Government Advocate further submits that the impugned order passed by the trial court does not suffer from any infirmity and no interference need be made in the same.

13. Mr.R.Sekar, learned Government Advocate (Crl. side) would also submit that charge sheet has been filed implicating the petitioners for offence under sections 147, 380 read with 34 IPC. Therefore, it is for the trial court to ascertain whether the petitioners have committed these offences after completing the trial. At this stage, the petitioners cannot seek for discharge and the petition seeking for discharge was

rightly dismissed by the learned Judge of the Trial court.

14. I have considered by the rival submission made by both sides. It is an admitted fact that the properties said to have been removed by the petitioners belong to the company where the petitioners claimed to be the Directors. However, this fact has been disputed by the learned counsel for the private respondent to the extent that the petitioners are no more the Directors of the company.

15. Whether they have committed theft or not, the petitioners cannot take a defence that they have a right to take away the belongings of the company. The main charge against the petitioners is that they have removed the machineries in a clandestine manner. In this context, charge has been laid, of course, pursuant to the complaint made by the defacto complainants.

16. In this regard, the citation of two judgments cited by the learned counsel for the petitioner would not help the petitioners as the principles laid down in those cases are different from the issue involved in this case. There is no quarrel with regard to the principles laid down in those cases. However, those judgments, in the opinion of

this Court, are not applicable to the facts of this case as admittedly the petitioners have clandestinely taken away the machineries and belongings of the company.

17. This position has in fact been raised as one of the ground in this revision. Ground No.4 can be usefully reproduced hereunder:

"The court below failed to consider that the alleged properties said to have been stolen by the petitioners are belonging to Sri Arthanareswara Paper and Boards (P) Ltd., in which the petitioners having ownership over the said properties their own properties cannot be stolen as alleged by the complainant and the Apex Court time and again held that even in the partners cannot lodge police complaint for theft of firm properties against the another partner, hence the complaint itself non-est in law."

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18. Only in this context, the learned Judge of the trial court has rejected the petition by observing that whether the machineries and belongings are of the company or the personal belongings and whether

the petitioners were authorized legally to take away those machineries are the matter for trial. Unless and until, the trial is completed, these question cannot be resolved. Therefore, at this stage, the petitioners cannot be discharged.

19. Whether the petitioners have a right to clandestinely remove the properties from the premises of the company without any prior approval of all the Directors and resolution passed by the Directors to the company, is a matter to be decided only after trial, the learned Judge further observed that the present stage is premature to take decision in this regard. On these grounds, the discharge petition was rejected by the learned trial Judge.

20. This Court, considering the judgments, cited by the learned counsel for the petitioner is of the considered view that there is no infirmity or illegality in the order passed by the trial Court, warranting interference by this Court. Accordingly, this revision fails and the same is dismissed. Connected , miscellaneous petition is closed.

18.07.2017

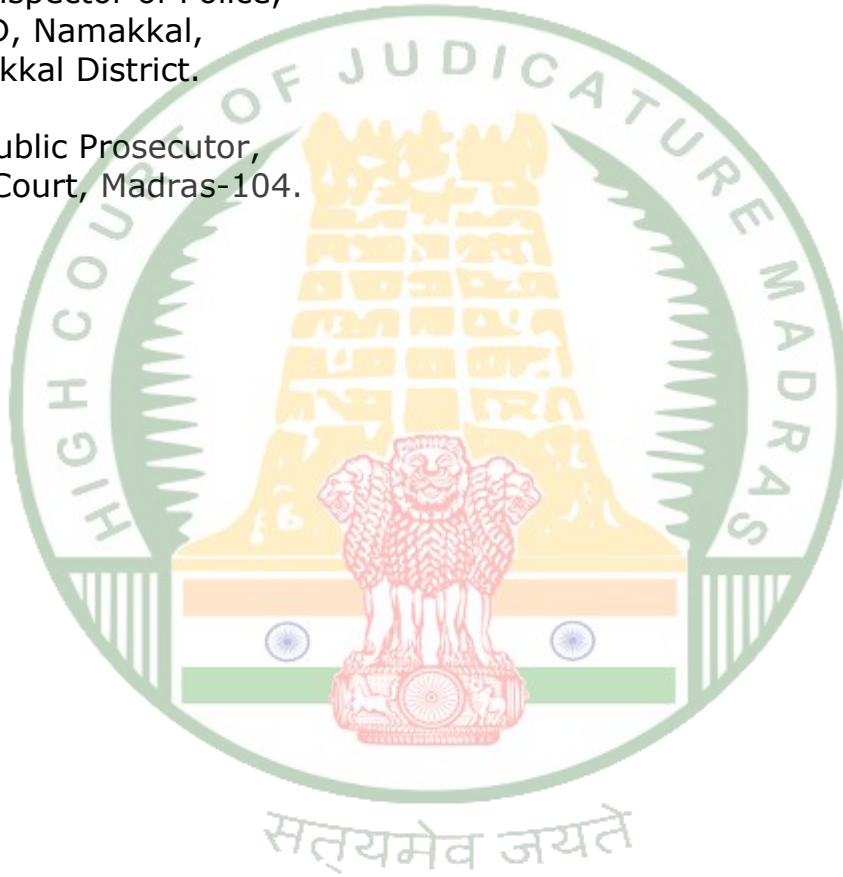
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Index: Yes/No

Internet:Yes/No

To

1. The learned Chief Judicial Magistrate,
Namakkal District.
2. The Inspector of Police,
CBCID, Namakkal,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras-104.



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R.SURESH KUMAR, J.

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