IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM

THE HON`BLE MR.JUSTICE **A.D. JAGADISH CHANDIRA**

Crl.O.P.No.16310 of 2012 and M.P.No.1 of 2012

1.P.Venkatesh (A-2)
2.P.Karunakaran(A-3)
3.P.Narayanan (A-4)
4.P.Sridhar (A-5) ... Petitioners/Accused 2 to 5

Vs

1. State by
The Inspector of Police,
Central Crime Branch,
Egmore, Chennai-600 008. ... 1st Respondent/Complainant

2. V.Rangarajan ... 2nd Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in C.C.No.1180 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Mohammed Rafi

For Respondent-1 : Mr. B.Ramesh Babu,
Government Advocate (Crl. Side)

For Respondent-2 : Mr.R.Gowthaman

O R D E R

This quash petition has been filed by the Petitioners/Accused No. 2 to 5 who are the sons of A1, charsheeted in C.C.No.1180 of 2011 pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai for the offence under Section 420, 120(b), 465, 468, 471 read with 468 IPC and 468 read with 109 IPC.

2. The facts of the case are : on a complaint given by the defacto-complainant/ respondent No.2, a case in Crime No.706/2007 was registered under Sections 406 and 420 IPC. The first respondent after completion of investigation filed a final report which was taken C.C.No.1180 of 2011 for the alleged offences. The charge against the petitioners as per the charge sheet is extracted hereunder in verbatim:-

> *"The first accused one T.Parthasarathy claiming himself as Chairman of International Finance Control Corporation, Chennai, a fictitious entity offered the complainant and witnesses Tr.S.Varadharajan as Deputy Chairman to assist the liaison officer at New Delhi, thereby made the witnesses to collect Security Deposits ranging from Rs.15,000/- to Rs.2 lakhs, besides making the complainant to invest Rs.16 lakhs as Security Deposits and that the enquiry discloses that A-1 being the father, A2 to A5 being the sons, hatched out a criminal conspiracy, to enrich themselves by sponsored by luring the witnesses of job opportunities for the candidates sponsored by them for which requiring security deposits which the*

accused never intended to secure jobs or return the amount and in their acts of commissions and omission, the accused 1 to 5 availed the services of complainant and witness Varadharajan projecting them as Deputy Chairman in International Finance Control Corporation in order to collect the amount from candidates in all amounting to 94 lakhs and thus A1 to A5 appear to have committed an offencce of Criminal Conspiracy which they carried with a community purpose, continuity of action and unity of will, thus liable for punishable under Section 120(b) IPC and that the enquiry further disclosed that the complainant and witness Tr.Varadharan were to select 30 officees to be absorbed under their control and that as a company as International Financial Corporation was in existence at any time and the accused along with his 4 sons projected to witnesses as it was in existing one to lure them into a belief of job opportunity to retired personnels basing their experience and thus cheated them for the unlawful gain of the accused to the tune of Rs.94 lakhs, thus making liable for an offence punishable under Section 420 IPC read with 120(b) IPC. In the course of the same transaction the accused caused false document as if issued by R.Smith as Controller, IFC & IFCC, Chennai and also forged an endorsement in a letter purported to be sent by R.Smith, Controller IFC & IFCC, Chennai informing the witness Tr.Sreenivasan *to join duty at New Delhi, thus the first accused committed offence punishable under Section 465, 468 and 471 r/w 468 IPC, while A2 to A5 abetted the offences, thereby making themselves liable for offences punishable under Section 465, 468, 471 r/w 468 r/w 109 IPC."*

3. As per the charge sheet 30 witnesses have been cited by the Investigating Officer and it was taken on file in C.C.No.1180 of 2011 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. The petitioners who are arrayed as Accused No. 2 to 5 have filed the present petition seeking to quash the proceedings in C.C.No.1180 of 2011 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

4. The contention raised by the learned counsel for the petitioner is that though all of them are the sons of A-1 who is residing at Srirangam, Trichy, they are all employed at various places throughout India and that they are all not connected with the offences alleged against them and that none of the witnesses examined by the police have spoken anything about their involvement or the overt act attributed to them and that they have been only implicated based on a letter of undertaking given by A-1 in the form of a letter of confession

stating that in case of his failure to settle the amount to the persons from whom he had collected the amount, he would hold his four sons responsible for settling the dues to everyone and that he is writing this letter after getting concurrence of his sons. It is further contended that the first petitioner is working as an Assistant in SPG Special Protection Group, New Delhi and is presently working with the Ministry of Defence and is residing at New Delhi, the second petitioner is working as a Bank Manager and is residing at Coimbatore, the third petitioner was working with Spice Jet from 2003 to 2008 and since 2008 is working in a private firm in Mumbai and is residing at Mumbai and the fourth petitioner is working with GE Health care from 2003 to 2010 and presently employed with Time Medicals (South Asia) and is residing at Bangalore. It was further contended that though several witnesses have been examined by the first respondent none of them has spoken to anything about having met the petitioners or that the petitioners are also involved with A1 in his criminal activities and that the petitioners have been implicated only based on the alleged letter of undertaking in the form of a confession stating that in the event of his failure to repay the money to the defacto complainant and others who had parted with the money that his sons would pay the amount and as such submitted that vicarious liability cannot be fastened upon them and they cannot be charged for the offence committed by their father and the undertaking given by their father to repay the amount.

5. Mr.R.Gowthaman, learned counsel appearing for the second respondent/defacto complainant submitted that several persons have been cheated by A-1 and that A-1 is the person who had given a letter stating that his sons would be responsible for making payments and that their involvement could be proved only by a full fledged trial. Other than that he was unable to convince the court with regard to the statements given by any of the witnesses in respect of the role played by the petitioners who are the sons of the first accused who have been implicated only on the basis of the alleged letter of undertaking/confession by A-1.

6. Heard Mr.B.Ramesh Babu, learned Government Advocate for the first respondent, he also would submit that excepting the letter written by A-1 who is the father of the petitioners who have been arrayed as A2 to A5 no other material is there to implicate the petitioners to the crime.

7. This Court has also gone through the records, the charge sheet and the statements recorded from the witnesses examined by the respondent. None of the witness has spoken anything about the involvement of the petitioners in respect of the offence alleged against

them and none of the witnesses have spoken to about either meeting the petitioners or that they have either colluded or conspired with the first accused in committing the offences alleged.

8. The only material which is available is the letter purported to have been written by A-1 in which he has stated about his involvement in the offence and in the concluding paragraph of the letter A-1 had stated "In case of my failure to settle the amount. I hold my four sons responsible for settling these dues to everyone I am writing this after getting the concurrence of my sons I shall arrange to settle all the dues with interest before 31st March, 2006. I agree that action may be taken on me and my sons for our failure to settle the dues before 31st March, 2006 in any manner." Other than the letter written by A-1, there is no other material that the petitioners either committed acts of cheating or forgery or that they abetted A-1. Now, what has to be seen is whether the sons of A-1 who have no role to play in offences, be fastened with criminal liability and compelled to undergo the ordeal and agony of trial without there being any legal and material evidence against them.

9. In the judgment reported in MANU/SC/8183/2008 (R.Kalyani vs. Janak C.Mehta), the Hon'ble Apex Court has held as follows:- (paragraphs 23 to 26)

"23. In the aforementioned factual backdrop, we although do not agree with the approach of the High Court, concur with its conclusion. The allegations contained in the First Information Report, therefore, do not disclose an offence against the respondent Nos 1 and 2. They have in their individual capacity been charged for commission of offences of cheating, criminal breach of trust and forgery.

24. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Indian Penal Code, did not and could not arise.

25. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust. So far as allegations in regard to commission of the offence of forgery are concerned, the same had been made only against the respondent No.3 and not against the respondent No.2. Sending a copy thereof to the National Stock Exchange without there being anything further to show that the respondent No.2 had any knowledge of the fact that the same was a forged and fabricated document cannot constitute offence. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by *reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in- charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :*

"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

Yet again, in Radhey Shyam Khemka & Anr. v. State of Bihar [(1993) 3 SCC 54], the law has been laid down by this Court, thus :

"6. But, at the same time, while taking cognizance of alleged offences in connection with the registration, issuance of prospectus, collection of moneys from the investors and the misappropriation of the fund collected from the share-holders which constitute one offence or other under the Penal Code, court must be satisfied that prima facie and offence under the Penal

Code has been disclosed on the materials produced before the court. If the screening on this question is not done properly at the stage of initiation of the criminal proceeding, in many cases, some disgruntled share-holders may launch prosecutions against the promotors, directors and those in charge of the management of the company concerned and can paralyse the functioning of such company. It need not be impressed that for prosecution for offences under the Penal Code the complainant has to make out a prima fade case against the individuals concerned, regarding their acts and omissions which constitute the different ingredients of the offences under the Penal Code. It cannot be overlooked that there is a basic difference between the offences under the Penal Code and acts and omissions which have been made punishable under different Acts and statutes which are in nature of social welfare legislations. For framing charges in respect of those acts and omissions, in many cases, mens rea is not an essential ingredient; the concerned statue imposes a duty on those who are in charge of the management, to follow the statutory provisions and once there is a breach or contravention, such persons become liable to be punished. But for framing a charge for an offence under the Penal Code, the traditional rule of existence of mens rea is to be followed."

In Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2003) 5 SCC 257], it has been held :

"32. Likewise the ingredients of Section 420 of the Indian Penal Code are also not made out. There is no reason as to why the appellants must be made to undergo the agony of a criminal trial as has been held by this Court in the case of G. Sagar Suri and Anr. v. State of U.P. and Ors. [(2000) 2 SCC 636]. In this, this Court held that.

"Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter."

39. It is settled law, by catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise of representation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed."

{[See also Vir Prakash Sharma v. Anil Kumar Agarwal & Anr. [(2007) 7 SCC 373]}.

26. Although the legal principle that a penal statute must receive strict construction, it is not in doubt or dispute, we may notice some authorities in this behalf. In Section 263 of the Francis Bennion's Statutory Interpretation it is stated :

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The Court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

Maxwell in The Interpretation of Statutes (12th Edn) says:

"The strict construction of penal statutes seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfillment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

In Craies and Statute Law (7th Edn. At p. 529) it is said that penal statutes must be construed strictly. At page 530 of the said treatise, referring to U.S. v. Wiltberger, [(1820) 2 Wheat (US) 76], it is observed, thus :

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

In Tuck v. Priester, [(1887)] 19 QBD 629] which is followed in London and County Commercial Properties Investments v. Attn Gen., [(1953) 1 WLR 312], it is stated:

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not enforceable. Also where various interpretations of

a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

Blackburn, J. in Wills v. Thorp said [(1875) LR 10 QB 383]:

"When the Legislature imposes a penalty, the words imposing it must be clear and distinct."

10. Taking into consideration the above facts and circumstances, and the discussions made above when there is absolutely no material against the petitioners connecting them to the crime and the offences alleged against them, the further continuation of the prosecution against them would be an abuse of process of law and thereby this Court holds that the proceedings pending in C.C.No.1180 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, has to be quashed in respect of the petitioners alone, and accordingly quashed. However, the learned Chief Metropolitan Magistrate is directed to complete the trial in respect of the other accused namely A-1, within a period of six months from the date of receipt of copy of the order from this Court. Consequently, M.P.No.1 of 2012 is closed.

20.09.2017

gr.
Index : Yes
Internet: Yes

A.D.JAGADISH CHANDIRA, J

gr.

To

1.The Chief Metropolitan Magistrate, Egmore, Chennai-8
2.The Public Prosecutor, High Court, Chennai.
3.The Inspector of Police,Central Crime Branch,
Egmore, Chennai-600 008

Crl.O.P.No.16310 of 2012

20.09.2017