HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.7212, 7676, 7174 & 6995 of 2008

COMMON ORDER:

The four quash petitions are filed respectively by accused Nos.1, 2, 4 & 5 of C.C.No.174 of 2003 pending on the file of Additional Chief Metropolitan Magistrate. These are outcome of crime No.310 of 1999 dated 02.12.1999 of Market Police Station, Hyderabad, registered against the Managing Director of Synergy Financial Exchange Limited and others. The said crime is outcome of private complaint of Sri S.Seshaiah, 1st respondent in all the quash petitions and the police from the private complaint referred, registered the said crime for the offences punishable under Sections 417 & 420 IPC stating the alleged offence taken place on 20.09.1999 at the Office of the accused in SD Road, Secunderabad. Pursuant to the FIR registered supra, the DA Team of Market Police Station filed the final report by showing the accused Nos.1 to 9 in abscondence and the learned Magistrate having taken cognizance for the offences punishable under Sections 409 & 420 r/w 120-B IPC by allotting C.C.No.174 of 2003, ordered NBW against the accused persons by posting the matter to 01.09.2003. The quash petitions are filed to quash the said cognizance order of the learned Magistrate in taking cognizance against them.

The factual background as per the original private complaint of the defacto complainant Sheshaiah speaks that the complainant out of his voluntary retirement benefits with anticipation to get good returns therefrom for survival from the publicity given by the accused M/s. Synergy Financial Exchange Limited, Chennai (for short 'SFEL') with Office at Begumpet, Secunderabad, that was doing finance business with attractive interest to the lenders with security to the returns even, believed and invested Rs.1,00,000/- in FD vide receipt No.081614 dated 19.05.1997 and therefrom waited 12 months expecting return by interest to the investment and after completion of one year period complainant sent the FD receipt for repayment of amount with interest, however the accused did not keep the promise and deliberately failed to their commitment and the complainant thereby could not get back the amount from the accused since accused also closed down the Branch Office at Hyderabad and from the Head Office no body is attending the customers to whom the company fallen due, which is with malafide intention to defraud the innocent depositors, the company deceived, thereby sought for action. The police final report after investigation by examination of as many as 32 witnesses including LWs.28 to 32, the investigation officers respectively of crime Nos.65 to 69 of 2000, 72 to 76, 78 to 84, 86 to 92 of 2000 besides said crime No.310 of 1999 supra and by examination of the official liquidator as LW.27 besides LWs.1 to 26 including the defacto complainants' of the respective complaints who are the victims in the hands of the company of the accused, viz., A.1-K.P. Narasimhan, Chairman of SFEL, A.2-S.Venkat Raman, Company Director, A.3-Y.G. Rajendra, Whole Time Director, A.4-V.Venkatesh, Whole Time Director, A.5-F.Dadabhoy, Director, A.6-P.K.Kurian, A.7-R.Ramesh Kannan, Director, A.8-C.Mohd. Ibrahim, Director and A.9-Sam Gold Wilson, Director of SFEL.

The gist of the police final report from the investigation by examination of those witnesses in nutshell is that SFEL was originally incorporated on 05.10.1934 under the name Kesco Minerals & Chemicals Limited (Karaikkal Electric Supply Company Limited) then changed to the present name with effect from 12.06.1991 for engaged in lease and hire purchase, consumer finance, bill discounting and trading and the company is managed by group of senior professional directors drawn by technical fields and according to ROC.No.18-1274 dated 05.10.1934, A.1 to A.9 are holding possession of the above company, they started their business at Secunderabad by giving wide publicity about the company with attractive incentives that they will provide high security and good returns likewise accused enticed public in general and attracted by their publicity, several persons deposited their hard earned amounts with the accused in the shape of fixed deposits and having induced by A.1 to A.9 about 738 persons deposited amounts to a tune of Rs.77,51,772/- and obtained FDs from accused persons, however failed to pay by misappropriated the amounts and closed the branch office and are in abscondence and mentioned that even after maturity of the bonds and FDs, the amounts not paid and misappropriated, thereby they are liable for prosecution. In the original private complaint filed against the Managing Director of SFEL, Chennai and the branch office at SD Road, Secunderabad. In the charge sheet the company was not made as accused, but the Chairman and the respective directors. The cognizance order of the learned Magistrate not even placed before the Court by the accused persons in any of the quash petitions.

In the factual background, the contentions almost common in quash petitions are that so far as A.1-K.P. Narsimhan, he claimed as joined in the company in the month of December, 1992 at the invitation of the existing board of directors through successive retirement by rotation and until he resigned in January 1999 and he was not the executive director from the beginning and during his tenure, he chaired the board meetings at the invitation of the Directors present though he was Chairman of the Board there was executive responsibility vested in him till he resigned in 1999 from 1992 when he joined in the company, operations commenced even prior in 1991 and he was not even Director of the company from 05.10.1984 as alleged in the charge sheet. It is also the contention of A.1 that till October 1992 he worked in LIC of India as Chairman and he joined in December 1992 as per invitation of his former colleagues, who were the directors of SFEL and it is his case that initially he was taken as Additional Director to perform non-executive functions though later became regular director and was designated as Chairman, he did not involve in financial dealings and no cheques signed with him by authority.

The case of the A.2 - S. Venkat Raman is that he joined Board of SFEL on 01.01.1997 as non-executive director of the company already commenced operations from 1991 and he was not Director of company from 05.10.1984 as alleged in the charge sheet. In fact he resigned on 31.12.1997 on expiry of the term and the same is intimated to the Registrar of Companies in Form No.32 on 07.01.1998 and the Annual Report of the company shows he is not a director and even during his tenure he was only non-executive director and not involved in day to day activities.

So far as A.4 – V.Venkatesh concerned, it is his claim that he joined the board of SFEL on 01.01.1997 as non-executive director of the company, which already commenced operations from 1991 and never a director from 05.10.1984 and in fact he resigned after expiry of the tenure on 31.12.1997 and the same reflects in Form No.32 submitted to the Registrar of Companies on 07.01.1998 and Annual Report of the company for the year 1997-98 shows he is no longer a director and in his tenure, he is non-executive director and not involved in day to day activities.

So far as A.5 – F.Dadabhoy concerned, it is his claim that he joined the board of SFEL on 27.06.1994 as non-executive director of the company, which already commenced operations from 1991 and never a director from 05.10.1984 and in fact he resigned on 13.08.1998 and the same reflects in Form No.32 submitted to the Registrar of Companies on 11.09.1998 and Annual Report of the company for the year 1997-98 shows he is no longer a director and in his tenure, he is non-executive director and not involved in financial dealings and day to day activities of the company.

It is also the common averment in all the 4 quash petitions of C.P.No.322 of 1999 filed for winding up of the company and by order dated 11.09.2000, the Madras High Court recognized that the persons who were running the company from 1991 were A.2 to A.4. In 1999, A.2 sold the company and its subsidiaries to one P.Rajaratnam and Associates and in the C.P.No.322 of 1999 supra Madras High Court held the company as insolvent company and ordered for its wounding up and official liquidator was directed to take charge and it was decided by the Madras High Court that A.2

to A.4 are alone responsible though A.2 and A.4 are not directly admitted that factum. It is also common contention of all that they did not commit any criminal breach of trust or cheating nor there is criminal conspiracy and the investigation officer did not properly investigate the case and showing all of them as abscondence is baseless for they are permanent residents of Chennai and the police final report with bald allegations are baseless and unsustainable. It is further averred that particularly by A.1 that as official liquidator already taken charge as decided by the Madras High Court of A.2 to A.4 alone responsible and in similar type of case registered as C.C.No.4302 of 1999 pending on the file of XXII Additional Chief Metropolitan Magistrate-cum-XXIV Small Causes Judge, Bangalore City, judgment dated 19.11.2005 was delivered and thereby sought for quashing.

Along with the quash petitions besides the private complaint registered as FIR and the charge sheet, the judgment in C.C.No.4302 of 1999 dated 19.11.2005 also filed and that was a case registered against SFEL represented by its Chairman and Managing Director, K.P. Narasimhan and S.Sundar & Ashwin Badrinath, both later deleted. It was for the offence under Section 138 of the Negotiable Instruments Act as a private complaint case, it was held that cheque in question was signed by A.3 & A.4 and not by A.2 and there is no allegation worth against A.2, thereby acquitted A.2. That judgment in fact is no way relevant or basis in deciding the quash petition.

Coming to C.P.No.322 of 1999 decided along with C.P.No.349 of 1999 of Srinivasan K. Swamy Vs. M/s. Srivari

Investments Limited, the copy of the order dated 11.09.2000 for winding up, the order of the learned Single Judge of Madras High Court reads that Venkataraman, Rajendra and Karthikeyan present and Venkataraman shall appear before the police for interrogation and furnish every document required without reservation as to the manner in which monies which belong to the company had been dealt with and its present location be traced and police shall obtained guidance of Mr. C.A. Sundaram, learned senior counsel with regard to the things in relation to which information need to be obtained. Since the counsel appearing for the Venkataraman assured cooperation for investigation for the IO to form complete and full picture of the affairs of the company and Rajendra employee of the company called as Dove Finance Limited controlled by a group known as R.K. Swamy Limited also whole time director of SFEL must be fully conversant and aware of the manner in which records maintained and places where they were kept and persons with whom the company had dealings including bankers, bank accounts and other details shall give full disclosure of information to the IO since Rajendra worked from 1992 to 1998 being director, Hire Purchase and whole time director of the board being professional with training and long experience and the company though incorporated in 1936 came under the control of Venkataraman and Rajendra in 1991 both fully involved in the affairs and it discloses the amounts due to the unsecured creditors is Rs.14.74 crores and the balance sheet of 1997-98 shows unsecured loans of Rs.31 crores and balance sheet of June 1999 shows unsecured loans as Rs.15.58 crores and the balance sheet shows secured loans of Rs.23 crores, due and debentures Rs.19

crores and others Rs.7.3 crores and unsecured loans by FD Rs.15.5 crores and the current assets of the company shows with value of stock at Rs.43 crores, bills purchased Rs.2 crores and sundry creditors at Rs.0.95 crores to say total current assets value of about Rs.45 crores. It apparently includes the amounts given to Srivari Investments Limited, which is on the verge of liquidation and there are further directions also by posting the company petition to call on 15.09.2000 that is only order filed.

In this background heard the learned counsel for the petitioners and also learned Public Prosecutor from the above material.

In view of the core of the contention of the company not made accused, leave about other contentions also with some substance of there is nothing to show the petitioners respectively were there in charge of affairs of the entity at the time of any deposits collected from any of the complainants much less as to what is and when is due and even as to at relevant time of fallen due they despite knowledge failed to pay to make liable neither for cheating nor for breach of trust; as the company was not made as accused in any of the crimes and even in the police final report much less in the cognizance order as per the expressions of the Apex Court referred and relied by this Court in **Narendra Kurangi and Others Vs. Greenmint India Agritech (P) Limited, Hyderabad and Another[1],** once the company is not made a party, the question of vicarious liability against any Managing Director or Director of the company even responsible for its day to day affairs

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[1] 2016 (1) ALD (Crl.) 177

do not arise, but for in the event of company made a party for those responsible for the day to day affairs also to be made vicariously liable.

Having regard to the above, sufficient to say the cognizance order and the prosecution against the petitioners for this technical flaw basically unsustainable from the settled legal position in **Narendra Kurangi supra**.

Accordingly and in the result, the Criminal Petitions are allowed and the proceedings are quashed.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.10.2017
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