

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3305 of 2018

Arising Out of PS.Case No. -3936 Year- 2016 Thana -GOVERNMENT OFFICIAL
COMP. District- PATNA

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Jasmit Singh Gujral S/o Lakhmir Singh Gujral , Currently residing
at Unit No.503, 5th Floor, Signia Isles, G-Block, Bandra -Kurla
Complex, Bandra East , Mumbai, Maharashtra.

.... Petitioner

Versus

1. The State of Bihar.
2. Rameshwar Nath Pandey S/o Shri Ram Suresh Pandey, R/o L 58
Shrikrishna Nagar, P.S.- Budhha Colony, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi

For the Opposite Party/s : Mr. Sri Ram Sevak Choudhary

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 10-09-2018

This application has been preferred seeking
quashing of the order taking cognizance and issuance of
summons to the petitioner dated 11.05.2017 passed in
Complaint Case No. 3936(C) of 2016 for the offences under
Section 406 of the Indian Penal Code.

2. Learned counsel for the petitioner submits that
a bare perusal of the complaint petition giving rise to the
instant case would show that in fact no offence at all is made
out against the present petitioner. It is stated that the
petitioner was the Chief Executive Officer and Managing
Director of the Shriram Transport Finance Company Limited
which has come in existence by virtue of approval of
amalgamation scheme approved by the Hon'ble Madras High
Court in Company Petition No. 191-192/2005. Under the



scheme of amalgamation the two companies namely Shriram Investments Limited and Shriram Transport Financial Company Limited have been amalgamated and with effect from the cut-off date i.e. 1st April, 2005 Shriram Investments Limited stood dissolved without being wound up and Shriram Transport Finance Company Limited is in existence as a Transferee company.

3. Learned counsel submits that according to the complainant he purchased 300 equity shares of Shriram Investments Limited (hereinafter referred to as the 'dissolved company') through his stock broker M/s Shivam Securities, Patna (not made accused in the complaint), the said stock broker delivered share certificates bearing Certificate No. 309529/30530 and 500533. The share certificates were in the name of Shriram Investments Limited and M/s Philip Jose (accused no. 3) of Kottayam Kerala and he was introduced in the stock market by M/s Geojit Securities i.e. accused no. 2. The complainant lodged 300 shares to the company Shriram Investment Limited for transfer in his name but Shriram Investment Limited informed the complainant vide letter dated 11.03.2006 that the Company has retained the original share certificate as well as the transfer deed lodged by the complainant. He was also informed that pursuant to the scheme of amalgamation sanctioned by the Hon'ble High Court of Madras share of Shriram Transport Company Limited (the



transferee company) had been allotted to the shareholder of the dissolved company whose names appear in the register of member on the record date i.e. 23rd December, 2005 in the ratio of 1:1 and new share certificates of the transferee company had already been issued in the name of the shareholder which was dispatched to him vide registered letter no. 7157 dated 17.02.2006. The complainant has brought on record the copy of the letter dated 11.03.2006 received from the dissolved company.

4. It is alleged that after receipt of the letter dated 11.03.2006, he served a legal notice dated 24.04.2006 upon Mr. Philip Jose (shareholder) seeking immediate delivery of 300 shares to the complainant because he had already received full consideration amount of the said share but the efforts made by the complainant in this regard went in vein. A legal notice dated 04.04.2008 was served on the Board of Directors of the transferee company seeking cancellation of the said 300 shares and further requested them to initiate the proceeding under Section 108 of the Companies Act for issuance of certificates in the name of the complainant. The said legal notice was replied by the transferee company through its senior Manager who informed the complainant to take up the matter with Mr. Philip Jose or with the introducing broker. The complainant alleged that he sent an e-mail dated 1st August, 2008 intimating the transferee company that *"it is admitted by you vide your letter*



dated 11th July 2008 that shares of Shriram Investment was lodged with the company on 13th February, 2006 whereas new share certificates of STFC was dispatched to Mr. Philip Jose on 17th February 2006 and the company was mute expectator and did not take any measure to protect the interest of my client and acted in utter violation of the merger clause 13.3 approved by Hon'ble High Court Madras."

5. It is further stated that the complainant again sent an e-mail dated 9th July 2009 to the Board of Directors of Geojit Securities Limited to resolve the grievance of the complainant because they are the introducing broker of the 300 shares of Shriram investment. Then Geojit vide e-mail dated 22.07.2009 requested for scanned copy of transfer deeds which was provided to him vide e-mail dated 08.08.2009. Again reminder was sent but instead of resolving the issue Geojit reverted to take up the matter directly with the transferor.

6. It is alleged that the complainant lodged complaint before SEBI and Paharedar for redressal of his grievances but all went in vein. He also made a complaint before National Stock Exchange, Kolkata but that also went unnoticed.

7. Learned counsel has taken this court through the statements made in the complaint petition and submits that, in paragraph-14 of the complaint petition, the complaint



has himself stated the contents of the merger clause 13.3 approved by the Hon'ble High Court Madras which states that *"the share holder shall be liable for any claim arising in the future for the shares allotted in the company against Shriram Investment Limited shares"*. It is contended that in paragraph-15 of the complaint petition it is only vaguely stated that the accused Company and its Directors are acting in utter violation of law and protecting the illegal retention of property by Mr. Philip Jose and not only that they continue to pay him the unlawful benefits of dividends and further allowed him dematerialization of said shares despite knowing fully well by the company and its accused director and company registrar that accused Mr. Philip Jose has already got the full sale proceeds of the said shares but is illegally retaining the alleged shares in question.

8. Learned counsel submits that from a bare reading of the complaint petition it is crystal clear that the alleged transaction had taken place about more than 10 years before the date of filing of the complaint petition. So far as the present petitioner is concerned, in the entire complaint petition there is not even a whisper of allegation against him. The petitioner has brought on record the complete copy of the scheme of merger which has not been controverted by the complainant-Opposite Party No. 2. The petitioner has also brought on record Form No. DIR 12 as Annexure-P/5 showing



that this petitioner ceased to be the Managing Director of the transferee company w.e.f. 26.10.2016 by virtue of his resignation, moreover, being Managing Director of the transferee company, he had no role to play in the nature of the grievance of the complainant, because as per the scheme of merger whosoever was the recorded share holder of the dissolved company on the cut-off date, was eligible to get share of the transferee company in 1:1 ratio.

9. It is submitted that the transfer forms which were lodged with the dissolved company bears the seal showing issued by the office of the Registrar of Companies, Kerala on 16.11.1999 which was got revalidated from the office of the Registrar of Companies, Bihar and Jharkhand on 28th February, 2006. The transfer form bears the date of execution as 13th December 2000. The seal of Geojit Securities Limited is also dated 06.01.2000, but then as per seal present on the transfer form itself it was lodged for transfer with the dissolved company on 6th March, 2006, all these are apparent on the face of the record and are not disputed by complainant.

10. It is submitted that the petitioner has brought the complaint case by incorporating misleading facts and by referring to a typographical error in the reply of the Senior Manager of the transferee company wherein it is stated that the share certificates were lodged for effecting transfer on February 13, 2006, i.e., after record date of December 21,



2005. It is being cited by the complainant to show that he had lodged the share certificates on 13th February, 2006, i.e., four days before dispatch of the fresh share certificates to the recorded shareholder, but from the share transfer form and his own statement in the complaint petition, it is crystal clear that the share transfer forms were lodged with the dissolved company on 6th March, 2006. Finally, it is submitted that in the nature of the allegations this petitioner need not be prosecuted and continuation of the prosecution of the petitioner without there being any allegation against him is an abuse of the process of court. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** since reported in **(1992) Supp (1) SCC 335**.

11. No one appears for the Opposite Party No. 2 even today as the matter is posted under the heading "For Judgment". No one had appeared for opposing the application on 07.09.2018 when the matter was heard under the heading for "Admission".

12. Having heard learned counsel for the petitioner and on perusal of the record, this court finds that admittedly in the present case the scheme of amalgamation contains a cut-off date of April 1st, 2005 and the date of allotment of shares of the transferee company is December 23, 2005, meaning thereby that those who were recorded shareholders of the dissolved company as on December 23,



2005 shall be entitled to get equal share of the transferee company. The complainant lodged the transfer form after about several years of transaction, after expiry of the cut-off date. The date 13th February make no difference. The seal appearing on the transfer form shows that it was received for transfer on 6th March, 2016. The transferee company had by that time already issued the share certificates to the recorded shareholder and those had already been dispatched on 17th February 2006. The scheme of merger particularly clause 13.3 clearly provides that *“The share certificates issued by Shriram Investments Limited stand cancelled/and withdrawn and effect and they need not be surrendered for exchanges of the new share certificate. The shareholder(s) shall be liable for any claim arising in future for the shares allotted in the Company against Shriram Investments Limited shares.”* In fact, it is the complaint of Opposite Party No. 2 that Mr. Philip Jose is unlawfully retaining the shares and is getting dividend against the same. So far as the present petitioner is concerned, there is no whisper of allegation against him in the complaint petitioner. He seems to have been made an accused in the complaint petition only because he happened to be the Managing Director of the transferee company.

13. The complainant could not appreciate that under the scheme of merger it was not the duty of the transferee company to effect transfer of shares in the name of



the purchasers of the shares of the dissolved company. The transferee company had to do only one exercise which was to issue equal share in the name of the recorded shareholders of the dissolved company in the register of shareholders maintained by the dissolved company as on the recorded date for allotment of shares. Admittedly, on the recorded date the complainant was not a share holder of the dissolved company and in fact by said date he had not even lodged the share transfer form. Under what circumstances the complainant could not lodge his share transfer form which seems to have been executed much earlier can be explained only by the complainant. In any case, this court finds that so far as the present petitioner is concerned, there is neither any allegation against him in the complaint petition nor the company in which he happened to be the Managing Director is an accused and furthermore in the nature of allegations made by the complainant, this court finds that none of the ingredients of the offence under Section 409 of the Indian Penal Code is available against the present petitioner. This case is, therefore, covered under one of the exceptions laid down by the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal (supra)***.

14. The impugned order dated 11.05.2017 passed in Complaint Case No. 3936(C) of 2016, in so far as it directs issuance of summons against the present petitioner is



concerned, the same stands quashed. This court has considered only the case of the present petitioner and therefore any observation made in the judgment hereinabove shall not be taken as an observation for or against the other two accused who have been summoned by the learned Magistrate vide the same order.

15. This application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.09.2018
Transmission Date	10.09.2018

