

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.07.2018

Pronounced on : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.10124 of 2010

and

M.P.No.1 of 2010

1.V.Rajendran,
S/o.P.N.Vallinayagam.

2.R.Sathish Raj,
S/o.Rajendran.

3.R.Ganesh Raj,
S/o.V.Rajendran.

4.Padma Rajendran,
W/o.V.Rajendran.

... Petitioners/Accused

Vs.

Citrex Products Limited,
Rep. by its Director,
M.Rathinakumar,
W-125, 3rd Avenue,
Anna Nagar,
Chennai-600 040.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.53 of 2010 now pending trial on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, quash the same.

For Petitioners : Mr.Karthick Seshadri for
M/s.Iyer Thomas

For Respondent : Mr.Prakash Goklaney

O R D E R

The petitioners, who are the accused on a private complaint filed by the respondent/complainant for the offence under Section 630 of the Companies Act and under Section 409 r/w Section 34 of the Indian Penal Code which is pending before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.53 of 2010 have filed the above quash petition.

2.The gist of the case is that the respondent/complainant is a Public Limited Company incorporated under the Companies Act in the year 1992. The petitioners were inducted as the Directors in the Board of the said company and that the possession of the assets of the company were to be handed over to the petitioners. The original promoters of the company had borrowed certain sums of money and were unable to repay the same, thereafter, at the instance of the first petitioner, the assets and liabilities of the respondent/complainant were transferred to the first petitioner. As per the arrangement, the petitioners became the Directors of the company and the earlier persons named as Original Directors ceased to be the Directors of the company.

3.The petitioners are all members of one family, the petitioner interest in the company was only to retain 5 acres of company's property for a company being promoted by the petitioners in the name of Meta Films (India) Limited and as the company needed money to repay the loans of the lenders various arrangement were entered into by the company. There was pressure from the Tamil Nadu Industrial Investment Corporation (TIIC) and the lenders, the money from scrap sales could not be realized till the charges were cleared by repayment of loan for which the petitioners borrowed a sum of Rs.125 lakh from Custodial Services India Private Limited and had executed promissory notes and by pledging entire shares. In view of the pledge of the shares seven representatives of the lenders including the respondent herein were to be inducted as the Directors of the company along with the petitioners. Apart from the pledging of the shares a registered power of attorney was executed. The company's board formulated rules for conduct of board meeting as per which no board meet would be validly constituted without the presence of the lenders' representatives, who were on the board and the documents for co-option of the seven Directors as Additional Directors and subsequent re-election were all filed as required at the Registrar of Companies Act by the first accused on behalf of the company. Thus from June 1997 itself the company was in the majority control of the lender M/s.Custodial Services India Private Limited.

4.A revised agreement was entered into by the company during June of 1997 for the sale of the property which was vested with M/s.Thamiraparani Investments Private Limited. Out of the money received from the sale agreement with the said Thamiraparani Investments Private Limited, the petitioner had repaid the loans of TIIC and other banks availed substantial waivers on a one time settlement and the scrap was sold for valuable consideration. Despite this the loans of the lender were not repaid by the first accused and in view of this default the 100% of the shares of the company were taken over by the lender and transferred into the name of its representatives in April 2000.

5.At the Annual General Meeting of the company held in September 2000 and 2001, the petitioners and one other person associated with them as Director and retired by rotation as per the provisions of the Company Act and were duly notified to the Registrar of Companies. Since, the exit of the petitioners from the Board of the company, the representatives of the lenders with 100 percent shareholding of the company has been in sole control of the Board and has been managing the affairs of the company.

6.Further, the company from the year 1997 was only in the control of the lender company representative, though the petitioners were the Directors in the board of the company. The petitioners failed to deliver the minutes book of the company upto June 1997 prior to the induction of the seven new Directors, original vouchers and accounts records including for all and any cash transactions which were maintained on behalf of the company by the petitioners till April 2000, all bank records pertaining to the company and cheque books which were maintained by the petitioners on behalf of the company till April 2000; all records pertaining to the statutory filings on behalf of the company, which was being done by the petitioners till August 2000; Patta and other records relating to the lands originally owned by the company as these were being sought by Thamiraparani Investments Limited, which were in the custody of the petitioners; all cash and bank balances held on behalf of the company; and the original of the agreement of sale dated 21.06.1996 entered into with M/s. Metafilms (India) Limited for sale of the five acres.

7.Despite repeated follow up the said records have not been made over to the Company resulting in a situation where the present Directors had to belatedly complete the audit of accounts of the company for the succeeding years from March 2000 as there was no handover of the records sought.

8.Further, the respondent was shocked to receive a notice from M/s.Thamiraparani Investments Private Limited claiming that the company had fraudulently acted and cheated them and encroached into their possession for the 25.8 acres of the land which were handed over to them.

9.Apart from these there are lease of lands in favour of M/s. Best Boards and M/s. Paharpur Industries Limited which though claimed to be done in the personal capacity of the petitioners and sold to various reasons and also received the compensation amount from the Government for the acquisition of lands. On coming to know about the facts the company demanded the petitioners to render accounts in respect of these transactions. The petitioners claimedly acting on behalf of the company had lodged a complaint to the Central Crime Branch against the Directors of the respondent and a case in Crime No.404 of 2004 was registered against them. M/s.Thamiraparani Investments Private Limited has filed a Suit in O.S.No.57 of 2004 before the Subordinate Court, Ponneri.

10.The respondent had filed a suit in O.S.No.64 of 2004 for declaration declaring that the respondent are the only Directors of the respondent company and restraining the petitioners from any manner dealing or interfering with the affairs of the respondent and other sequential claims. The petitioners had filed a suit in C.S.No.51 of 2005 before this Court seeking various reliefs including injuncting the representatives of the lender company from dealing with the affairs of the respondent company.

11.The learned single Judge of this Court in C.S.No.51 of 2005 had rejected the claim of the petitioner which was taken in appeal before the Division Bench in O.S.A.No.202 of 2005. Further, it is contented that the lender company are in control of the respondent company constituting the majority on the Board and the petitioners claimed that they are in the Board of the respondent company are only minority Directors and their claim of any property of the company received even till date retained by them are all offences attracting prosecution under Section 630 of the companies act and petitioners are wrongly and dishonestly retained the portion of the properties of the respondent company and hence for the offences under Section 409 of the Indian Penal Code r/w 34 of the Indian Penal Code the complaint has been filed.

12.The learned counsel for the petitioner has contended that

the alleged transaction of shares was done without any consideration and it is opposed to Section 176 of the contract Act. The respondent is acting as a stooge in the hands of the Thamiraparani Investments Private Limited, (Custodial Services India Private Limited) Vishwapriya Financial Services & Securities Limited. These companies created documents surreptitiously and fraudulently and for which complaint initiated for their misdeeds with the Central Crime Branch of Police. This case is a counter blast. After the complaint to the Central Crime Branch of Police by the petitioner, the respondent had filed the complaint before the learned Additional Metropolitan Magistrate, Egmore, Chennai in E.O.C.C.No.53 of 2010. Further, started instituting various litigations against the petitioners initially interim order was granted in favour of the respondent later the orders were modified. By order dated 02.11.2004 both the petitioner and the lending company were directed not to enter the said properties and not to disturb. This order has not been challenged by either of the parties in the High Court and thus, it has become final.

13. Further, the respondent had filed a suit in O.S.No.64 of 2004 for the declaration that they are only the directors of the respondent and a declaration that the sale deed dated 01.09.2004 is void and further seeking direction to the petitioners to render accounts for the amounts received by them in respect of the transaction related to the period of 02.06.1997 onwards on the ground that they were in possession of the properties. Status quo has to be maintained as per the orders of the Subordinate Court, Ponneri.

14. The petitioners filed C.S.No.51 of 2005 before this Court it is a comprehensive suit for declaration that the pledged 900 shares belonging to the petitioners in favour of the petitioners, since charges stand discharged and consequently, the Custodial Services India Limited to return the shares pledged by the petitioners and in the alternative declaration that the transfer of shareholds belonging to the petitioners and others in favour of the Custodial Services India Limited has null and void. Further, the learned Single Judge by order dated 25.01.2005 granted an interim injunction, subsequently, the respondent had filed an application seeking vacating the injunction. The learned single Judge vacated the injunction by order dated 30.08.2005, against which the petitioners preferred an appeal in O.S.A.No.202 of 2005 and by order dated 05.09.2005, the Division Bench of this Court modified the order of the learned single Judge to protect the interest of the company by issuing directions by restraining the parties both petitioners and respondent not to act adversely without permission of the

Court nominating the second petitioner as receiver for collecting loans and restraining the parties for withdrawing any amount without permission of the learned Single Judge of this Court in C.S.No.51 of 2005 the Division Bench has also directed the expenses for Board maintenance of properties could be withdrawn under the joint signature of the respondents and the 2nd petitioner, thus the directions of the Division Bench by the order dated 05.09.2005 is that neither parties that is the petitioner nor the respondents have been confirmed rights to have in the day to day affairs of the company. S.L.P was preferred against the order of the Division Bench in S.L.P.No.948 of 2006, which came to be disposed by the Hon'ble Supreme Court of India and now the Division Bench of the order dated 05.09.2005 is in force the 2nd petitioner has been recognized as receiver of the property along with one M.Rathinakumar, the respondent authorized Director. Thus, the ownership of the respondent is subject matter of adjudication before this Court in C.S.No.51 of 2005.

15.Further, it is contended that while adjudication of the C.S.No.51 of 2005 is still pending. In the meanwhile, the respondent has filed a private complaint alleging offence under Section 630 of the companies Act and r/w 498 of the Indian Penal Code against the petitioners is not maintainable.

16.Further, it is submitted that the complaint does not disclosed any ingredients warranting cognizance of offence under Section 630 of the Company Act and the complaint is filed to take control of the respondent company by all means. In view of the procedures pending before the C.S.No.51 of 2005 and the 2nd petitioner being appointed has receiver, and status of the parties have not been determined and there is no case warranting to hold that the 2nd petitioner is in possession of the property belonging to the respondent. The 2nd petitioner on being appointed as receiver by this Court and thereafter, the possession of the 2nd petitioner of the properties cannot be said to be unlawful. Further, the competent Court has taken cognizance and cases are pending with regard to ownership and control of the company, which is a prerequisite for determining, who is in control of the affairs of the respondent company, only after the Civil Court and the Competent Court decision that the status and rival claims of the petitioner and the respondent could be confirmed.

17.The learned Counsel for the respondent reiterating the averments made in the complaint had submitted that the complaint

is legally sustainable ones. The petitioner have to be directors and they are liable to render accounts and to handover the properties of the company, in any case the petitioners are directors in minority, since, June 1997, with seven new directors all belonging to one group are in the board of the respondent company. The effect of induction of the seven new directors are entered in the records of registry of companies. Further 100 percent of the share of the respondent company was transferred in April 2000 on behalf of the petitioners by a power of attorney and as such, the petitioners hold any share in the company. In any event the petitioners have no right to hold the companies property and failure of the petitioners to render accounts and handing over the documents to the respondent had made the respondent to file a private complaint against the petitioners. Further a detailed counter retreating what is stated in the complaint has been filed.

18.The respondent had filed the following citations in support of his contention. This Court finds that there citations are not applicable and relevant to the facts of this above case.

- 1) Rajasthan High Court 1987 (61) Comp Cas 744 in the case of Beguram Versus Jaipur Udhog Limited.
- 2) Madras High Court 1988 (2) Comp L.J 181 in the case of K.Narayanan Versus K.V.Subramaniam.
- 3) Supreme Court of India 1990 (68) Comp Cas 324 in the case of Atul Mathu Versus Atul Kalra and another.
- 4) Supreme Court of India (1991) 2 SCC 141 in the case of Gokul Patel Volkart Limited Versus Dundayya Gurushiddaiah Hiremath and others.
- 5) Supreme Court of India AIR 1995 SC 1592 in the case of Smt.Abilash Vinodkumar Jain Versus Cox and Kings (India) Limited and others.
- 6) Supreme Court of India (AIR 2003 SC 3157) in the case of Lalita Jalan and another versus Bombay Gas Company Limited and others.

19.It is not in dispute, there are civil Cases pending between the petitioners and the respondent and this Court is ceased of the matter in C.S.No.51 of 2005 and the Division Bench of this Court has formulated a scheme and the scheme is still in force, wherein one of the petitioner has been made as a receiver, despite the same, the petitioner along with the respondent had been made as joint signatories make payments to keep and maintain the properties of the company. Hence, the rival claim of both the petitioners and respondent are evenly

balanced and Civil Court's decision would have a bearing on the above case.

20.Considering the rival submissions and the Civil proceedings pending before the Civil Court and before this Court to decide with regard to the directorship and share holding between the petitioner and respondent. This Court feels of the filling of the criminal complaint at this stage is a premature one. In view of the Civil Court categorically finding with regard to the properties of the company holdings and to maintain status quo. The initiation of the Criminal complaint would be an abuse of process of law.

21.Accordingly, this Criminal Original Petition stands allowed and the continuation of the proceedings as against the petitioners in E.O.C.C.No.53 of 2010 pending on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai

2.The Public Prosecutor,
High Court, Madras.

+2 cc's to H.Karthik Seshadri, Advocate Sr.No.73546

+2 cc's to Mr.Prakash Goklaney, Advocate Sr.No.73747

JP(CO)
CSL/06.12.2018

ORDER IN
Crl.O.P.No.10124 of 2010