IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018
PRONOUNCED ON : 03.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.11819 of 2018
and Crl.M.P.No.6238 of 2018

1.Rohit Rabindranath
2.Maanik Nath
3.Reenanath
4.Rangasamy Sugumaran
5.Latha Vijayakumar
6.T.Seshadri
7.R.Kumaravel
... Petitioners/Accused

Vs.

1.State of Tamil Nadu
rep. by the Inspector of Police
Central Crime Branch
Vepery, Chennai. ..Respondent/Complainant

2.Cascade Energy Pte Ltd
with its registered office at
203, Hougang Street, No.03-73
Singapore-530 203
rep. by its Authorised Signatory
Rajiv Pradhan ... Respondents/Defacto Complainant

Prayer:- Petition filed under Section 482 Cr.P.C., to call for the records in Cr.No.424 of 2017 pending on the file of Central Crime Branch, Vepery, Chennai, for the alleged offence punishable under Sections 409 and 420 IPC and quash the same as against the petitioners.

For P1 : Mr.Satish Parasaran
Senior Counsel
for Mr.K.Gowtham Kumar

For P2 to P7 : Mr.Shankar Narayanan
Senior Counsel
for Mr.K.Gowtham Kumar

For R1 : Mrs.M.Prabhavathi
Additional Public Prosecutor

For R2 : Mr.S.Prabakaran
Senior Counsel
for Mr.MA.Gowthaman

O R D E R

This petition has been filed to call for the records in Cr.No.424 of 2017 pending on the file of Central Crime Branch, Vepery, Chennai, for the alleged offences punishable under Sections 409 and 420 IPC and quash the same as against the petitioners.

2. On the complaint lodged by Rajiv Pradhan, authorised signatory of Cascade Energy Pte Ltd. (for short "Cascade"), the first respondent police have registered a case in Cr.No.424 of 2017 on 30.11.2017 under Sections 409 and 420 IPC against the petitioners herein, for quashing which, the petitioners are before this Court.

3. Heard Mr.Satish Parasaran, learned Senior Counsel representing Mr.K.Gowtham Kumar, learned counsel on record for the first petitioner; Mr.Shankar Narayanan, learned Senior Counsel representing Mr.K.Gowtham Kumar, learned counsel on record for the petitioners 2 to 7, Mrs.M.Prabhavathi, learned Additional Public Prosecutor for the first respondent-State and Mr.S.Prabakaran, learned Senior Counsel representing Mr.MA.Gowthaman, learned counsel for the de facto complainant.

4. Before adverting to the rival submissions, it may be necessary to give a summary of the allegations in the FIR.

Cascade is a Singapore-based investment company. It is the case of Cascade that Rohit Rabindranath [A1], along with his son Maanik Nath [A2], approached them for investment in Zynergy Solar Projects and Service Private Ltd. (hereinafter would be referred to as "Zynergy"), a Company with its Headquarters in Chennai. According to Cascade, Rohit Rabindranath [A1] represented that Zynergy is a leading player in tapping solar energy in India and they have contracts worth Rs.400/- crores in India and Africa; Zynergy attached valuation reports said to have been given by Grant Thornton India LLP and Birla Capital and Financial Services Ltd. depicting the huge profits the Company had earned; believing the representation, Cascade entered into a Strategic Investment Agreement and Shareholders Agreement, dated 27.07.2015, under which, Cascade invested Rs.33/- crores with Zynergy by way of fund transfers from bank accounts; by the said investment, Cascade purchased 51% of the equity shares of Zynergy, however, the management of the affairs of Zynergy was retained by Rohit Rabindranath [A1]; for two years, Cascade did not receive any returns for the investment and when they started conducting enquiries, they learnt that Zynergy had not invested their money in any project, but, had siphoned off the money to 40 sham and Shell companies floated by them in the name of their own employees and thereby, cheated Cascade; enquiries revealed that the valuation report of Grant Thornton India LLP was a fabricated one. Hence, the complaint and the consequent FIR.

5. Mr.Satish Parasaran and Mr.Shankar Narayanan, learned Senior Advocates appearing for the accused made the following submissions:

(a) 49% of shares of Zynergy is held by Archer Power Systems Private Ltd owned by Rohit Rabindranath [A1] and his family;

(b) a purely civil transaction has been given a criminal colour;

(c) the receipt of Rs.33 crores from Cascade was never denied by the accused;

(d) the bankers of Zynergy informed Rohit Rabindranath [A1] that the Know Your Documents particulars of the Proprietors of Cascade, viz., Tej Kohli and Kohli Ventures Limited are negative and not satisfactory, inasmuch as Tej kohli was convicted in a foreign Court and was sentenced to imprisonment for a very long term.

(e) Therefore, Archer Power Systems Private Ltd. initiated proceedings before the National Company Law Tribunal (for short "the NCLT"), Chennai, to set aside the allotment of the equity shares of Cascade or inter alia for a direction to Cascade to sell the equity shares to Archer Power Systems Private Ltd. In that proceedings, Cascade entered appearance and filed their counter and did not agree to sell their shares.

(f) Cascade lodged a police complaint in Gurgaon and thereafter, filed a petition in Crl.M.No.M-28886 of 2017 before Punjab and Haryana High Court for a direction to the police to register an FIR on the complaint, in which, the High Court, by order dated 08.08.2017, had directed the Commissioner of Police, Gurgaon, to look into the complaint and pass appropriate orders. Accordingly, an enquiry was conducted on the complaint and the same was closed. Thereafter, a similar complaint was filed in Delhi, which was also not entertained by the police. After having failed there, the present complaint has been filed in Chennai and FIR has been registered, which is clearly an abuse of process of law.

6. Learned Additional Public Prosecutor submitted that after registration of the FIR, investigation began and during the course of investigation, the Investigating Officer was able to unearth how the money that was invested by Cascade with Zynergy was clandestinely routed through various shell companies of

Archer Power Systems Private Ltd and which clearly went into the kitty of Rohit Rabindranath [A1].

7. On a perusal of the case diary, it is seen that Rs.29.22 crores invested by Cascade in Zynergy has first gone into Alectrona Energy, from where, it had gone into Raha Infrastructure, a shell company purportedly floated to launder money. Raha Infrastructure had transferred the money to Esita Real Estate, another shell company linked to Rohit Rabindranath [A1]. The investigation conducted by the police so far shows that Rohit Rabindranath [A1] and his group have floated the following shell companies:

(i) Alectrona Energy
(ii) Sun Energy
(iii) Esita Real Estate
(iv) Raha Infrastructure
(v) LVC Alternative
(vi) AH Enterprises
(vii) Gold Green Technologies
(viii) TSR Sun Energy
(ix) RR Sun Power
(x) Solar Energy Equipments
(xi) SEH Solar
(xii) Green Energy
(xiii) Poora Jaya Consulting

8. In most of these Companies, T.Sheshadri and S.Ganesh, employees of Rohit Rabindranath [A1] have been shown as Directors. Huge amounts have also gone into the personal accounts of the said T.Sheshadri, S.Ganesh and Rohit Rabindranath [A1]. There is no material to show that the amounts were invested in any worthwhile solar project, but, the money trail shows that the amounts had gone into all these shell companies, from where, it had gone into the kitty of Rohit Rabindranath [A1].

9. Mr.Satish Parasaran, learned Senior Counsel drew the attention of this Court to the preamble portion of the Strategic Investment Agreement dated 27.07.2015, wherein, it is stated that the expression "Zynergy Solar Projects and Services Private Ltd." would include their legal successors, executors, administrators and group companies. He further contended that Cascade had agreed that a certain amount of money should be paid to Sun Energy and therefore, the payment of such monies cannot be misconstrued.

10. It is true that Cascade had agreed for some payment to Sun Energy, however, the materials gathered by the police so far, shows that there had not been any investment in Solar Projects, but, on the contrary, the money trail shows that these amounts have gone into the shell companies floated in the name

of the employees of Rohit Rabindranath [A1].

11. It is the further contention of Mr.Satish Parasaran that Archer Power Systems Private Ltd. had to approach the NCLT to set aside the allotment of shares, because Tej Kohli of Kohli Ventures, who holds share in Cascade, has a criminal background and the investment by Kohli Ventures in Cascade, which in turn had invested money in Zynergy, would have entailed the Banks recalling the loans.

12. Refuting this submission, Mr.Prabakaran, learned Senior Counsel contended that it is the modus operandi of Rohit Rabindranath [A1] to invite foreign investors by painting a rosy picture about his Companies and after investment is obtained, he would find some loop hole in the Strategic Investment Agreement to repudiate repayments and lock the foreign investors in fictitious litigations in India and tire them out. He further contended that Rohit Rabindranath [A1] knew Kohli very well even before the Strategic Investment Agreement was entered into and both of them had met several times abroad.

13. Mr. Prabakaran, learned Senior Counsel further submitted that Rohit Rabindranath [A1] cannot contend that out of the blues he knew about Kohli's past track record only now. In support of this submission, Mr.S.Prabakaran, produced a communication from Phoenix Solar Private Ltd., a Singapore based Company, which had invested huge amounts in Zynergy, but who were cheated by Rohit Rabindranath [A1]. The following paragraph from the said communication is worth quoting:

> "Zynergy has further frustrated attempts to collect the outstanding and well documented debt by seeking to stay the confirmation of the arbitration's award by appealing to the Indian courts. They have taken the posture that as a foreign company Phoenix Solar will eventually tire of the efforts required to get a result through the Indian courts.
>
> It is clear that Zynergy has no intention to honouring the agreement, and has gone to significant lengths to avoid meeting their obligations. They have ignored the agreement and have ignored the binding arbitration award. The agreement has no grounds for dispute. Phoenix Solar has met all requirements stipulated in the Agreement but Zynergy has steadfastly refuse to meet their obligations."
>
> (emphasis supplied)

14. He further submitted that similarly, another foreign investor by name Chingtai Michael Lee, who had invested his money was implicated by Rohit Rabindranath [A1] in a false complaint filed before the Inspector of Police, F2 Egmore Police Station, based on which, a petition enquiry was registered in CSR No.676 of 2015. He also submitted that Rohit Rabindranath [A1] lodged a police complaint dated 29.08.2017 against Cascade before the Commissioner of Police, Chennai, which was investigated and was closed as "false". Therefore, he submitted that it is the practice of Rohit Rabindranath [A1] to cheat foreign investors by locking them up in some litigation or the other in India in order to deny repayment to them.

15. There appears to be much force in the submission of Mr.S.Prabakaran, in this regard. If Rohit Rabindranath [A1] was so concerned about the antecedents of Kohli, he ought not to have entered into the Strategic Investment Agreement at all. At the most, the equity shares amounting to Rs.5 crores will be tainted and not the investment of Rs.29 crores by Cascade. Had Rohit Rabindranath [A1] been an honourable man, he should have immediately deposited the amount invested by Cascade with NCLT and should have contested the case, instead, he has launched the NCLT proceedings on the species ground that the Know Your Customer (KYC) details of Kohli appear tainted.

16. To cap it all, Rohit Rabindranath [A1] has managed to register an FIR in Cr.No.999 of 2017 dated 23.06.2017 with the Mylapore Police Station for the offences under Sections 441, 294 (b) and 506(i) IPC against the Directors of Cascade alleging that they had trespassed into his building and had threatened him. Fortunately, after the registration of the FIR, the police had not further proceeded with the investigation, perhaps, on coming to know of Rohit Rabindranath's evil design. It is true that Cascade had filed a police complaint in Gurgaon, but, on a reading of the closure report, it is seen that the complaint has been closed on two grounds, viz., that most of the transactions had taken place in Delhi and Chennai and that apart, it is also stated that the dispute appears to be civil in nature. For any common man, the present dispute would appear to be civil in nature, however, if one were to dwell deep into the investigation that has been conducted so far by the Central Crime Branch, it will be clear that an insidious attempt is being made by Rohit Rabindranath's [A1] group to cheat the de facto complainant and other foreign investors by raising species grounds for not repaying.

17. Incidentally, the Serious Fraud Investigation Office has also commenced investigation against Rohit Rabindranath's [A1] group of companies, which is, of course the subject matter of the dispute in this petition (Crl.O.P.No.11819 of 2018). While painting a rosy picture about Zynergy, Rohit Rabindranath [A1]

appears to have submitted an one page valuation report of Grant Thornton India LLP about Zynergy to Cascade. Investigation conducted by the CCB with Grant Thornton India LLP shows that they had not given an one page report, but, had given a 43 page Valuation Report about Zynergy. This prima facie shows that there was deception at inception, inasmuch as a truncated Valuation Report favourable to Rohit Rabindranath [A1] has been shown to Cascade in order to convince them to invest. After obtaining the investment of Rs.33 crores, Rohit Rabindranath [A1] has been playing every trick under the sun denying Cascade the fruits of their investment. The material collected by the police so far thus shows the commission of a cognizable offence and on account of the stay granted by this Court, further progress in investigation had come to a grinding halt. Applying the test laid down in State of Haryana v. Bhajan Lal [AIR 1992 SC 604] and State of Bihar Vs. P.P.Sharma [AIR 1991 SC 1260], the impugned FIR cannot be quashed at the threshold.

In the result, this petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gms
To
1.The Inspector of Police
Central Crime Branch
Vepery, Chennai.

2.The Public Prosecutor
High Court, Madras.

+1 CC to Mr.K. Gowtham Kumar, Advocate sr 60706.
+1 CC to Mr.MA. Goothaman, Advocate sr 61432
+1 CC to Mr.V. Venkatesan, advocate sr 61432

SP(06/09/2018)