IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2018

Pronounced on : 14.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28950 of 2010
and
M.P.Nos.1 & 2 of 2010

A.Vijayalakshmi,
W/o.A.Ramesh Prasad. ... Petitioner/Accused No.5

Vs.

A.Manohar Prasad,
S/o. Late A.Anand Rao. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the summons issued on the petitioner vide order dated 07.10.2010 passed in Crl.M.P.No.6719 of 2009 in C.C.No.9722 of 2003 pending on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.N.R.Elango, Senior Counsel for Mr.K.R.Ramesh Kumar

O R D E R

The petitioner has filed the above quash petition to quash the summons issued on the petitioner vide order dated 07.10.2010 passed in Crl.M.P.No.6719 of 2009 in C.C.No.9722 of 2003 pending on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai arraying the petitioner as an accused invoking the provision under Section 319 of the Code of Criminal Procedure.

2.The respondent has filed a private complaint under Section 200 of the Code of Criminal Procedure for the offences under Section 406 and 420 of the Indian Penal Code against A1 to A5 namely A1-M/s. Prasad Production Private Limited, A2-A.Ramesh, A3-Saiprasad, A4-M.P.Rao and A5-N.Srikrishna, of whom A4-M.P.Rao was reported dead on 16.06.2010, hence the proceedings against him has been dropped.

3.The case of the respondent/complainant is that the first accused viz., M/s.Prasad Production Private Limited was a company incorporated on 06.09.1956 by the grandfather of the complainant. Subsequently after his death, his share holding in the company got transferred to the other accused namely A2 to A4, who are the Directors of the Company, who are in charge of its day-to-day affairs and the fifth accused is the Chartered Accountant of the first accused company.

4.The complaint is that the respondent/complainant and his family members owned 27% of the total shares of the first accused company. The second accused is the Chairman and the Managing Director of the first accused company. By resolution dated 06.06.2002 passed at the Annual General Meeting of the company, the authorised share capital was increased from Rs.20,00,000/- (Rupees Twenty Lakhs only) to Rs.2,00,00,000/- (Rupees Two Crores only).

5.Pursuant to the resolution, the respondent/complainant received a letter dated 13.08.2002, from the second accused i.e. the Chairman and the Managing Director, for the allotment of 23,216 shares of Rs.100/- each as against payment of the value of shares amounting to Rs.23,21,600/- (Rupees Twenty three lakhs twenty one thousand six hundred only) consistent with his share of holding. The letter dated 13.08.2002 was accompanied by an application form the Chairman and Managing Director, the second accused. The respondent/complainant replied on 19.08.2002 accepting the offer of shares for allotment. He complied with the terms of offer of allotment of shares and duly filled up the application form. He also requested the second accused to adjust the sum of Rs.23,21,600/- payable towards the value of the share capital, from and out of the amount standing to the credit of Sai Sivajothi his sister-in-law, who had also authorized the said adjustment of the amount from her current account.

6.Further, the said Sai Sivajothi had made a specific request to the first accused company in writing asking them to allot 23,216 shares to the respondent/complainant. The said letter was accompanied by a covering letter from the respondent/complainant and it was sent to the company under Certificate of posting dated 26.08.2002.

7.Further, the contention of the respondent is that having complied with all the requirements, the respondent/complainant was expecting that he would be allotted 23,216 shares as per the terms of offer, which he had accepted to be allotted to him.

8.In contra, the respondent/complainant learnt that the first accused company by letter dated 20.03.2003 has sent a total sum of Rs.57,05,542/- by cheque to Sai Sivajothi which is against the said letter of the said Sai Sivajothi dated 26.08.2002. The said cheque was not acceptable to the said Sai Sivajothi, hence, was not presented. Thereafter, the respondent/complainant made a search in the office of the Registrar of Companies and found to his utter shock and dismay that the shares was not allotted to the respondent. On the other hand, the second and fourth accused had allotted 52,405 shares to their group in the name of the second accused, of which 51,450 shares to the second accused and 1000 shares to his wife A.Vijayalakshmi, the petitioner herein.

9.This allotment of the shares is pursuant to a bald resolution of the Board of Directors of the company dated 29.02.2003, which was attended by A2, A3 and A4. This allotment of 52,405 shares includes of shares offered 23,216, which was offered to the respondent/complainant and his group by letter dated 13.08.2002.

10.Further, the contention of the respondent/complainant is that the allotment of 52,405 shares to the second respondent and his wife, the petitioner herein was in view to reduce the holding of the respondent/complainant and his family members from the present holding of 27% to 2.5%, thereby to reduce their holding below the statutory minimum of 10% of share holding. This was made with an intention to cripple, disable and thereby extinguishing the respondent/complainant completely and to remove him from the scene of M/s. Prasad Productions Private Limited, the first accused company. Aggrieved against the act of the accused, the respondent/complainant had filed the private complaint against the above mentioned A1 to A5 for the offences under Sections 420, 409 and 109 of the Indian Penal Code.

11.In pursuant to the private complaint, the respondent/complainant had examined himself as PW1 and the said Sai Sivajothi as PW2 and had marked Ex.P1 to P15. Thereafter, filed the petition under Section 319 of the Code of Criminal Procedure to array the petitioner as an accused in Crl.M.P.No.6719 of 2009. The Lower Court by its order dated 07.10.2010 had allowed this petition arraying the petitioner as one of the accused and summoned her, challenging the same, the present petition has been filed.

12.On perusal of the order of the Lower Court, it is seen that the contention putforth by the petitioner and the respondent and on the materials available it has given a finding that the second accused viz., the husband of the petitioner being the custodian of the first accused company failed to protect the interest of share holders and to the disadvantage of the respondent/complainant, the accused had fraudulently allotted the shares to himself and to his wife A.Vijayalakshmi, the petitioner herein. In order to reduce the shares of the respondent/complainant and his family members. The Lower Court deemed fit and arrayed the petitioner as an accused and summoned her.

13.On perusal of the Lower Court order, it is seen that the Lower Court had placed much of its reliance on Company Law Board order dated 01.09.2005 directing the second accused being the Chairman and the Managing Director of the first accused company to transfer the shares to the respondent/complainant and his family members. On perusal of the evidences of PW1 and PW2 found in the typed set of papers, it is seen that the order of the Company Law Board dated 01.09.2005 has not been marked as Exhibit and it is not found in the list of Exhibits annexed to the complaint as it is natural, since the complaint has been filed in the year 2003 and the order of the Company Law Board is dated 01.09.2005.

14.The learned Senior Counsel for the respondent/complainant relying on the Judgments of the Hon'ble Apex Court of India reported in 2014 3 Supreme Court Cases 92 in the case of Hardeep Singh Vs. State of Punjab and Others and reported in 2014 3 Supreme Court Cases 306 in the case of Dharam Pal and Others Vs. State of Haryana and Another had justified the order of the Lower Court in arraying the petitioner as an accused.

15.Further, the learned Senior Counsel for the respondent/complainant submitted that for a person to be arrayed as an accused under Section 319 of the Code of Criminal Procedure, the Hon'ble Apex Court of India had held in Hardeep Singh case as follows:

> "117.1. In Dharam Pal case[2], the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused."

In view of the above position the word "evidence" in Section 319 of the Code of Criminal Procedure has to be broadly understood and not literally.

16.Further, the learned Senior Counsel for the respondent/complainant contended that since there have been reference in the complaint with regard to the allotment of 1000 shares to the proposed accused and not arraying her as an accused in the complaint is akin to add an accused "whose name has been shown in Column 2 of the charge sheet" and placed reliance of the above two citations of the Hon'ble Apex Court of India.

17.The learned Counsel appearing for the petitioner had relied upon the following citations:

1.1995 (2) MWN (Cr) 260 in the case of N.V.Arunachellam Vs. R. Palaniyappan;
2.2001 Cri. LJ. 3426 in the case of Baskar Vs. State;
3.MANU/TN/2652/2009 in the case of Nandagopal Vs. State;
4.AIR 2009 SC 2792 in the case of Sarabjit Singh & Another Vs. State of Punjab;
5.(2015) 3 SCC (Cri) 756 in the case of Jogendra Yadav and Others Vs. State of Bihar and Another.

18.The contention of the learned Counsel appearing for the petitioner is that the petitioner being recipient of the 1000 allotted shares in her name and to that effect necessary forms have been filed with the Registrar of Companies and thereby caused wrongful gain to herself and wrongful loss to the respondent/complainant is not sustainable both on law and facts.

19.The learned Counsel appearing for the petitioner further contended that the Lower Court placing heavy reliance on the Company Court order dated 01.09.2005 is not correct. Further, the Lower Court failed to look into the fact that the said order is pending adjudication in appeal before this Court. Further, he contended that merely 1000 shares have been allotted to the petitioner will not justify the contention of the respondent and the order of the Lower Court arraying the petitioner as an accused and causing summons is contrary to Law. Further, from the Lower Court order nothing could be seen, what is the complicity of the petitioner in commission of any offence and what are the offences has not been mentioned.

20.The petitioner has been summoned under Section 319 of the Code of Criminal Procedure, merely because the petitioner happens to be the wife of the second accused and the Lower Court failed to look into the fact that there have been a long pending family feud between the respondent/complainant and the other accused for decades, as it could be seen from the complaint. Further, on the available materials, there is nothing to indicate or connect to the petitioner's complicity with the commission of any offence. Further, the Lower Court without reasonable satisfaction and without any reason had arrayed the petitioner as an accused.

21.The learned counsel for the petitioner contended that the discretionary power to the Lower Court ought to be exercised only to achieve criminal justice. The Lower Court should not turn against other persons in the absence of any connecting evidence that such person also with the offence and a judicial exercise ought to have been exercised keeping a conspectus of the case and the stage at which the trial is proceeding. Further, what is the reasonable prospect of the case against the newly brought accused ending in being convicted of the offence concerned. In the absence of any materials, the summoning of the petitioner is contrary to the law and facts and hence, prayed that the order of the Lower Court to be quashed.

22.Considering the rival submissions and on the materials, this Court finds that to array a person as an accused there must be proper and cogent evidences, in this case no such evidence are available. The only contention is that the petitioner being the wife of the second accused who had been allotted 1000 shares and paid for the same will not justify a person to be made as an accused. Further none of the deliberations and proceedings, as well as on the documents before the Registrar of Companies, there is any iota of evidence against this petitioner. The necessary finding of the Court to arrive at a satisfaction that the evidence adduced if unrebutted may lead to conviction of the petitioner is not found. In the absence of such finding the order of the Lower Court is not sustainable and to be quashed.

23.The Lower Court failed to look into the fact that the above complaint is proceeded under chapter XIX, the trial of warrant cases by a Magistrate - cases instituted other than on a police report. In this case though there have been eight witnesses cited, only two witnesses have been examined so far and Section 244 of the Code of Criminal Procedure is yet to be complied and completed. Thereafter, only the stage of the complicity of any other persons other than the persons in the complaint will be known and provision under Section 319 of the Code of Criminal Procedure can be invoked. As far as Dharam Pal case, it is the case wherein the powers with regard to the Court of Sessions under Section 193 of the Code of Criminal Procedure on taking cognizance invoking Section 319 of the Code of Criminal Procedure has been detailed.

24.The Hon'ble Apex Court of India had held in Hardeep Singh case as follows:

> "117.2.Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the Court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge sheet."

25.In the case on hand, there is no material to indicate any complicity to connect the petitioner with the commission of the above offence from the materials presented by the respondent/complainant. It has been further held that the trial of warrant cases by the Magistrate shall be treated to have commenced when the charges are framed against the accused concerned under Section 246 of the Code of Criminal Procedure.

26.Further, from the Lower Court Order, there is no semblance of observation about the involvement of the petitioner, to be arrayed for the offence. In the absence of any categorical evidence on record, that the proposed accused have committed an offence, and arraying the petitioner as proposed accused along with other accused would be justifiable. Further, in the absence of any material to connect the proposed accused except for she being the wife of the second accused. In the absence of any reasoning by the Lower Court on arrival of a satisfaction that there exists a possibility that the accused so summoned in all likelyhood would be convicted. The finding of the Lower Court is perverse and is liable to be set aside.

27.In fine, the quash petition filed by the petitioner is allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Thiru K.R.Rameshkumar, Advocate Sr.63863

Crl.O.P.No.28950 of 2010

mr[co]
srg 05/10/2018