

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.14573 of 2013

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in C.C.No.344 of 2013, against the petitioners, who are A1 to A5, on the file of the VIII Additional Metropolitan Sessions Judge cum Special Judge for Economic Affairs, City Criminal Courts, Nampally. The offences alleged are under Sections 628 and 629(A) of the Companies Act and Sections 109, 120 B, 191, 192, 196, 199, 405, 417, 418, 419, 429, 423, 426, 427, 465, 467, 468, 471, 149 read with Section 34 of the Indian Penal Code.

2. Heard the counsel for the petitioners and the learned Public Prosecutor, appearing for the respondent. None appears for the second respondent in spite of notice.

3. The complaint is filed by the Chairman and Managing Director of M/s. Aryabhatta Solutions Limited, which is a public limited company. The complainant holds 56.80% of the total paid up capital in the said company. A1 to A5 were holding 43.20% of the total paid up capital. The shareholdings of the complainant were transferred to the accused. The allegations now made in the complaint, against the accused, are that they are guilty of suppression and mis-managing the affairs of the company. Further shares were allotted to the accused and the complainant. An agreement was entered into by the complainant with the accused, with regard to the transfer of shares and consideration agreed was Rs.16,50,00,000/-, out of which Rs.9,90,96,000/- was paid and it was agreed between the parties that the shares agreed to

be sold will be transferred by execution of transfer deed, as required under Section 108 of the Companies Act.

While the matter stood thus, the accused illegally filed several documents with the Registrar of Companies, appointing A5 as Additional Director without any board meeting. But they stated that board meeting was held on 14.08.2010. The accused also filed Form 23, as if the Extra-Ordinary General Body Meeting was held on 01.03.2010, which, in fact, is incorrect. Even the said meeting was fraudulently held. No notice in writing was given to the complainant. The accused illegally filed Form 32, removing the complainant as Managing Director and an illegal annual return was filed for the year 2009-10, showing as if the shares of the complainant were totally transferred to A2 to A4. No consideration was received, apart from the consideration received as per the agreement. The accused illegally allotted 15,59,201 shares to A1, without the approval of the shareholders. The accused filed balance sheet and compliance certificate and annual return for the year ending 31.03.2010, as if the general body meeting was held on 30.09.2010. Based on the above allegations, the petitioners were sought to be prosecuted for the offence under Sections 628 and 629(A) of the Companies Act and Sections 109, 120 B, 191, 192, 196, 199, 405, 417, 418, 419, 429, 423, 426, 427, 465, 467, 468, 471, 149 read with Section 34 of the Indian Penal Code

4. The foremost contention of the counsel for the petitioners is that the complaint is not maintainable by the complainant, since he is no

longer a shareholder in the company. He submits that the consideration agreed between the parties was totally paid.

5. This Court is relieved from deciding the issue with regard to the complainant being the shareholder in the company or not by virtue of orders of this Court in company Appeal.No.11 of 2014 dated 11.03.2014, which is preferred against CA.No.165 of 2011 in CP.No.34 of 2011. The appeal is preferred against order dated 13.12.2013 of the Company Law Board, Chennai Bench, Chennai in CA.No.165 of 2011 in CP.No.34 of 2011 by virtue of which the company application was allowed and the company petition was dismissed. The dispute in CA.No.165 of 2011 also revolved around the agreement between the parties. The allegations made in this petition were also made therein. The petition was preferred with a prayer to declare that the allotment of shares to respondent No.2 therein as illegal and for a consequent rectification of registration of members. The order reflects that respondents 2 to 6, who are the petitioners herein, filed CA.No.165 of 2011 in CP.No.34 of 2011 to allow them to raise issue of maintainability of the company petition as preliminary issue and dismiss the company petition and to punish the appellant for suppression of material. By order dated 13.12.2013, the Company Law Board allowed CA.No.165 of 2011 and dismissed CP.No.34 of 2011.

6. The main plea on which CA.No.165 of 2011 was filed by respondents 2 to 6 is that in pursuance of the agreement dated 30.07.2006, all the shares held by the appellant were transferred in favour of the aforementioned respondents and entries in that regard were made in the Company Register and therefore, the company

petition itself was not maintainable as the same is not in conformity with the requirements of the provisions of Section 397 read with Section 399 of the Companies Act.

7. The Court, after having carefully, considered the submissions held that Section 111A (3) of the Companies Act conferred jurisdiction on the Company Law Board to entertain the application made by the depository, company, participant or investor or the Securities and Exchange Board of India and direct any depository or company to rectify its register or records if it finds that the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder. It observed that under Section 397(1) of the Companies Act, any member(s) of the company can complain if the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s).

8. The contention of the counsel for the respondents therein was that the original share transfer records contain the signatures of appellant No1. But the same was denied by appellants therein. The Court took up the discussion of the issue with regard to the appellants therein being the shareholders of the company. The Court relied on a judgment of the Supreme Court in *AMMONIA SUPPLIES CORPN. v. MODERN PLASTIC CONTAINERS (P) LTD.* [(1998) 7 SCC 105] and considering that though the language of Section 155 of the Companies Act and that the proviso to Sub-Section (2) to Section 111A or Section 111A(3) of the Companies Act is not similar, both the provisions dealt with the power of the Company Law Board to rectify

the Register of members and held that they apply to a situation where the company refuses to rectify the Register without sufficient cause and that the disputes raised by the appellants are not truly confined to mere rectification, but they fall in the realm of various disputed questions, which cannot be decided in exercise of summary jurisdiction of the Company Law Board. The Court while dismissing the petition gave liberty to the appellants therein to approach the competent Court of civil jurisdiction for appropriate relief. It held that a serious allegation such as fraud, which is made by the appellants therein, can be decided only by a civil Court. Though, on a different reasoning, the court confirmed the order of the Company law board. The order in CA.No.165 of 2011 by the Company Law Board also concludes that the transfer of shares between the parties was accomplished.

9. The contention that the whole of the consideration is not paid was also made before the Company Law Board and a categorical finding was given that the applicants have complied with the procedure as contemplated under the Companies Act, for transfer of shares. Against the order in Company Appeal No.11 of 2014 dated 11.03.2015, an appeal was preferred before this Court and a Division Bench of this Court dismissed the same on the point of maintainability. Against the said order, an SLP was preferred before the Supreme Court, but the same was dismissed as withdrawn. Hence, the *locus standi* of the second respondent herein to maintain a company petition was decided in the negative and it became final.

10. Now in this complaint, all the allegations pertain to violations by the petitioners herein with regard to the affairs of the company,

after the alleged date of transfer of shares. Section 621 of the Companies Act does not permit anyone other than the Registrar of Company, shareholders etc, to file a petition with regard to the offence under Sections 628 and 629 of the Companies Act. The other offences alleged under the Indian Penal Code also pertain to the acts of the petitioners subsequent to the transfer of shares. Hence, when the issue that the second respondent is no longer a shareholder in the company has become final, he will not have any *locus standi* to complain about the mis-happenings in the company after he ceases to be a shareholder. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioner would only result in abuse of process of law.

In the light of the above, the criminal petition is allowed and the proceedings in C.C.No.344 of 2013, against the petitioners, who are A1 to A5, on the file of the VIII Additional Metropolitan Sessions Judge cum Special Judge for Economic Affairs, City Criminal Courts, Nampally, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 4th, 2018
DSK

T. RAJANI, J