IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 15.03.2019

CORAM:
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.666 of 2018

Dr.A.Jawahar Palanippan ...Petitioner/Petitioner/ Defacto Complainant

Vs

1.The State,
Rep. By Inspector of Police,
CCB-Team I, Egmore,
Chennai. ...1st Respondent/ 1st Respondent Complainant

2.P.Varadarajan ... 2nd Respondent/2nd Respondent/ Accused

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code to set aside the order dated 03.10.2017 passed in Crl.M.P.No.2543 of 2016 by the Metropolitan Magistrate, for exclusive Trial of CCB cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai and to reject the Closure Report dated 02.02.2016 and consequently be pleased to direct the CBCID, Metro Cases, Chennai, to do further investigation into this matter or to take cognizance of this instant case u/s.200 r/w.190 (1) (b) of Cr.P.C., in Cr.No.196 of 2010 on the file of the 1st respondent.

For Petitioner : Mr.V.Karthik, Standing Counsel For K.P.Ananthakrishnan

For Respondents: Mr.R.Ravindran, Government Advocate (Crl.Side)for R1
Mr.N.R.Elango, Standing Counsel For R.Amizhdhu for R2

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 03.10.2017 passed in Crl.M.P.No.2543 of 2016 by the Metropolitan Magistrate, for exclusive Trial of CCB cases (relating to cheating cases in Chennai) and CBCID Metro Cases, Chennai and to reject the Closure Report dated 02.02.2016 and to direct the CBCID, Metro Cases, Chennai, to further investigate into the matter or to take cognizance of this instant case u/s.200 r/w.190 (1) (b) of Cr.P.C., in Cr.No.196 of 2010 on the file of the 1st respondent. After hearing both sides, the learned Metropolitan Magistrate, dismissed the petition, by an order dated 03.10.2017. The said order is put under challenge in the present Criminal Revision Case.

2. It is seen from the complaint filed by the petitioner that the petitioner herein is the son of the S.A.P. Annamalai Chettiar, who originally started/promoted the popular Tamil Magazine "Kumudam". The Second respondent/Accused was a management trainee of the Company and gradually grew to the position of a Managing Director after the demise of S.A.P. Annamalai Chettiar, the petitioner who entrusted the 2nd Respondent/Accused with management of the Company in bonafide belief that the 2nd respondent would protect the interests of the petitioner and the company.

3. Further it is seen that the 2nd respondent is the Managing Director of Kumudam Publication Pvt. Ltd., a company that publishes "Kumudam". By virtue of this position of the 2nd Respondent yields significant political and social power/influence in Tamil Nadu. Further, it is seen that he was entrusted with the management of the company by the petitioner, the second respondent/Accused forged the signature of the petitioner in the below mentioned Resolutions, by which he increased his remuneration to 95% within 6 months. Further, the 2nd respondent/Accused also played a fraud in the purchase of LED panel Boards for M/s.Kumudham Publications Pvt. Ltd., by increasing its value, thereby forged, misappropriated and cheated to the tune of Rs.25 crores belonging to M/s.Kumudham, Publications. These illegal acts of the 2nd respondent/accused constrained the petitioner to lodge the complainant dated 21.04.2010. The 1st respondent registered a case in F.I.R.No.196/2010, against the 2nd respondent/accused.

4. After investigation the 1st respondent closed the case as "Mistake of Fact" vide Closure report dated 23.05.2012. It is seen that the petitioner has alleged that the 2nd respondent/accused has used his influence to close the case in FIR.No.196/2010. Therefore, he filed the protest petition in Crl.M.P.No.4063 of 2012 against the closure report dated 23.05.2012, before the learned Metropolitan Magistrate, for exclusive Trial of CCB cases. After inordinate delay caused by the 2nd respondent, the learned judge vide order dated 11.10.2013, dismissed the protest petition. As against the said order, he preferred a Revision case in Crl.R.C.No.1483 of 2013, before this Court. This Court, had set aside the order dated 11.10.2013, made in Crl.O.P.No.4063 of 2012, directed for further investigation.

5. Pursuant to the direction of this Court dated 21.04.2014, the 1st respondent once again investigated the issue and filed a final report dated 02.02.2016 as "Mistake of fact". Thereafter, the petitioner once again filed the protest petition before the learned Metropolitan Magistrate, in Crl.M.P.No.2543 of 2016, the said petition was also dismissed on 03.10.2017 for the delay caused by the second respondent. Therefore, the petitioner has filed the present Criminal Revision case against the said order, before this Court.

6. The learned Senior counsel for the petitioner would submit that the complaint filed as against the second respondent/Accused that he forged the signature of the petitioner in the Resolutions, by which he increased his remuneration to 95% within 6 months. Further, the 2nd respondent/Accused also played a fraud in purchasing LED panel Boards for M/s.Kumudham Publications Pvt. Ltd., by increasing its value, thereby forged, misappropriated and cheated the funds to the tune of Rs.25 cores belonging to M/s.Kumudham Publications. Though the first respondent has registered a case but after investigation filed closer report. Subsequently, as per the direction of this Court, first respondent conducted further investigation. Again filed closer report as mistake of facts.

7. Case of the petitioner is that M/s.Kumudam Publications Private Limited was founded as HUF in 1947 by Shri S.A.P.Annamalai and his wife Smt.A.Kothai. Shri S.A.P.Annamalai was the Kartha and was controlling the business. The promoters converted HUF to Private Limited Company in 1971. The First share holders were Shri S.A.P.Annamalai (MD) and his wife Smt. A.Kothai (Director) holding all the 100% equity. By virtue of the Articles of Association(AOA) founder directors were permanent and Smt.A.Kothai (mother of Dr.A.Jawahar Palaniappan) has since been in the board. One Mr.P.V.Parthasarathy was the publisher and secretary of the Company. Dr.A.Jawahar Palaniappan (Complainant) is a heart surgeon in USA. Upon demise of Shri S.A.P.Annamalai in 1994 Dr.A.Jawahar Palaniappan inherited the shares held by his father. Smt.A.Kothai was made the Managing Director & Shri P.V.Parthasarathy and his family handled the day to day affairs of the Company. Also 33.39% shares were given to Mr.P.V.Parthasarathy's family through a company named M/s.Imprint Tech(India) Private Limited. Presently P.Varadarajan (Accused) second respondent herein and P.Srinivasan (brother of accused) are Directors of this company M/s.Imprint Tech Pvt. Ltd. Thus, the shareholding pattern of Kumudam became 64.73% (Complainant), 1.88% (Mrs.Kothai) and 33.39% M/s.Imprint Tech India Private Limited. In 2001, the second respondent/ accused was made the Managing Director of the Company. In 2008-2009, disputes arose over unauthorized withdrawal of salary by the

second respondent/accused to the tune of 3 cores while the company was at loss besides other financial offences committed by the second respondent/accused.

8. The learned Magistrate dismissed the protest petition (impugned order) before this Court. The protest petition was filed on the following grounds: This Court has specifically directed that the investigation should be conducted by different teams, but only one team has investigated. The reports of Handwriting expert and valuation expert opinion given by the defacto complainant were refused to be accepted by the IO. Six witnesses examined including defacto complainant, his mother and sister and three others. Witness engaged by the accused submitted report regarding LED. None of the employees of the company have been examined to ascertain the genuineness of the alleged Board resolutions or any other fact because the prosecution has not investigated the matter in accordance with law. Therefore, he prayed this Court, to allow the Revision case and in effect to that order for further investigation by a competent, fair and impartial officer.

9. The learned Senior counsel for the petitioner would submit that the first respondent after receiving the direction of this Court has not chosen to examine except the witnesses, the family members, even he has not examined the second respondent and also the then employees, the first respondent seized all the records from the office and examined all the witnesses to find out the truth. After collecting all the materials and reading of the entire evidences, the first respondent/Police filed the final report and thereafter, the second respondent approached this Court for quashing the charge sheet. The learned senior counsel for the petitioner has further submitted that for three resolutions dated (i) 10.01.2017 regarding the so called insertion of ten lakhs, (ii) 25.04.2007 to enhance the remuneration of the accused by 35% from the existing gross remuneration and (iii) 24.12.2007 to enhance the remuneration of the accused by 60% from the existing gross remuneration, already pointed out that the signature in the said resolution have been denied by the Defacto Complainant, it had to be determined by sending the same to the handwriting expert and expert opinion has to be obtained and thereafter, the amount received by the second respondent towards remuneration has to be determined.

10. The learned senior counsel for the second respondent would submit that the petitioner has not specified accurate amount of consideration and number of shares and the mode by which the share allotted to the second respondent was not disclosed by producing concrete evidence or documents and also it is the contention of the prosecution that, why the petitioner

has not raised this point in time and kept quiet for a long time and kept silent was also not explained in the complaint and statement by the petitioner. No particulars of that transactions were produced by the petitioner as evidence. The IO's conclusion in this aspect is rightly decided and the petitioner did not make out the case by producing evidence and records.

11. In the order passed by this Court in Crl.RC.1483 of 2013 dated 21.04.2014, though further investigation was ordered, but it was limited to only two other issues and not with regard to the alleged cheating of non payment of consideration for shares. The Defacto Complainant did not prefer any further appeal as against this order and the order of learned Chief Metropolitan Magistrate dated 11.10.2013 that the Defacto Complainant did not make out the case by producing evidence and records with regard to cheating by non payment of consideration of shares attains finality.

12. If there is no increase in the remuneration payable to second respondent then there shall not be any necessity to convene a Board Meeting or it is not the case of the petitioner/Defacto complainant that the Board had decided not to increase the gross remuneration payable to second respondent. The only allegation leveled against the second respondent was that he had filled up the quantum of remuneration to ten lakhs with effect from 01.01.2007. Having passed the accounts for the financial year ended 31.03.2007, the petitioner is not justified in claiming that he was unaware of the enhancement of salary to the second respondent. When he has not disputed the signature found in the above said resolution.

13. Thus, there is no forgery of the Board's Resolution dated 10.01.2007 as stated in the Complaint. Though, the petitioner disputed his signature in the Board Resolutions dated 25.04.2007 and 24.12.2007 for further increasing the salary of second respondent. The hand writing expert opinion was that the signature in both these resolution were that of the petitioner. It is now open to the petitioner to workout his remedy in the manner known to law but not by way of lodging criminal complainant against the second respondent.

14. Four board meetings (Two Board Meetings & Two General Meetings) dated 01.02.2004, 12.06.2004 & 11.02.2004, 19.06.2004 were chaired by the petitioner and his mother A.Kothai was present and resolved to purchase the LED board immediately for a consideration of Rs.3 Crores and agreement was signed on 01.07.2004 between A.Kothai Mother of Defacto Complainant (for Kumudam) and Tricom Vision. The petitioner registered the case before the first respondent and on earlier occasion, this Court also given the guidelines to the investigation agency for further investigation.

15. Having proposed and agreed on the consideration it is not open to the petitioner to now make allegations in this regard. Thus, there is no irregularity or misappropriation of funds in the purchase of LED as falsely alleged by the petitioner/defacto complainant. Further in support of his contentions he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Kerala vs. Putthumana Illath Jathavedan Namboodiri, reported in AIR 1999 SC 981 held as follows:

> " ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice..."

The petitioner is not able to justify any of the grounds stated above by the Hon'ble Supreme Court. The Respondent No.2 herein highlighted the allegations, the contradictory stands taken by the petitioner while at the time of investigation, the conclusion arrived by the Respondent No.1 and the Order passed by the Learned Magistrate after considering all the aspects.

16.Heard the rival submissions made on both sides and perused the materials available on record.

17. Admittedly this Court, while allowing the criminal revision in Crl.R.C.No.1483 of 2013 by order dated 21.04.2014, directed the first respondent police to conduct further investigation. But on a perusal of the negative final report filed by the first respondent shows that six witnesses examined in the second investigation. Neither the Auditors nor any employee of the Account Department of the company were examined.

The learned Metropolitan Magistrate failed to consider the allegation levelled by the revision petitioner/defacto complainant in his complainant and also observations made by this Court in the order dated 21.04.2014. on a perusal of the entire material this Court finds that the first respondent has not done investigation in the second time also properly in the manner known to law. The citation referred to above by the learned senior counsel for the respondent on record is not applicable to the present case on hand. In that case after the trial proceedings both the Court below considered the entire evidence and discussed elaborately then decided, where as in this case only at the stage of investigation the first respondent filed closer report the Metropolitan Magistrate without examining any witness based on the negative final report filed by the first respondent dismissed the protest petition. Therefore the decision supra referred to by the learned senior counsel for the respondent is not made applicable to the present case on hand.

18. In view of the discussion held above, the Criminal Revision is allowed by setting aside the order passed by the learned Metropolitan Magistrate in Crl.M.P.2543 of 2016 dated 03.10.2017 by directing the first respondent/ police to conduct further investigation in this matter thoroughly in accordance with the law and to submit a final report as expeditiously as possible.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Metropolitan Magistrate for Exclusive Trial of
CCB Case (relating to cheating cases in Chennai)
and CBCID Metro Cases, Chennai.
Chennai.

2. The Public Prosecutor,
High Court of Madras.

3.The Inspector of Police,
CCB -Team I,
Egmore,
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.P.Ananthakrishnan, Advocate, S.R.No.24864
+4ccs to Mr.R.Amizhdhu, Advocate, S.R.No.24892

Crl.R.C.No.666 of 2018

MR(CO)

RRS(25/04/2019)