

COMP. A. No.948 of 2014
in
C.P. No.75 of 2014

S.MANIKUMAR, J.

Company Petition No.948 of 2014 has been filed by (1) M/s.Zash Investments and Trading Company Pvt. Ltd., represented by its authorised representative Mr.Deepak Gupta, Bangalore and (2) Mr.Sambasivan Kailasam s/o.Sri Ayalur Samban Kailasam, Bangalore against (1) M/s.Subhiksha Trading Services Ltd, represented by its Managing Director R.Subramanian, Chennai - 600 028 and (2) R.Subramanian, s/o.S.G.Ramaswami, Chennai - 600 015, for the following reliefs:

a) declare that the proceedings in Criminal Complaint No.189 of 2012 renumbered as EOCC No.114 of 2013 (Crl. M.P. No.616 of 2013) pending on the file of the learned Additional Chief Metropolitan Magistrate - EOW-1, Egmore, Chennai and/or any other criminal complaint arising out of C.P. No.239 of 2008 and the various interlocutory applications filed therein and appeals thereof, are nonest, null and void, vexatious and contrary to the provisions of Section 456 of the Companies Act, 2013; corresponding to Section 653-A of

the Companies Act, 1956 and consequently quash the same; and

b) award exemplary costs against the 2nd respondent.

2. Pending disposal of the company petition, the petitioners have also filed two interlocutory applications, viz. Comp. A. No.225 of 2014, to dispense with the appearance of the applicants/petitioners in C.C. No.114 of 2013, pending on the file of Additional Chief Metropolitan Magistrate (EOI) Egmore, Chennai and Comp. A. No.226 of 2014, to stay all further proceedings in C.C. No.114 of 2013 pending on the file of the Additional Chief Metropolitan Magistrate (EOI) Egmore, Chennai.

3. When the company petition and the connected interlocutory applications, namely Comp. A. Nos.225 & 226 of 2014, came up for admission, company court has passed the following order:

"Notice returnable by three weeks. Private Notice permitted. Interim stay of all further proceedings in C.C. No.114 of 2013 pending on the file of the Additional Chief Metropolitan Magistrate (EOI), Egmore, Chennai, in the meantime. The

*personal appearance of the petitioners is dispensed
with in the meantime."*

4. The second respondent in the company petition, namely R.Subramanian, has filed Comp. A. No.948 of 2014, to dismiss the company petition as not maintainable. The said application has been filed on 9.4.2014, as a countermand to the company petition, with the following averments:

1. The company petition is filed by the petitioners to declare that the prosecutions launched in C.C. No.114 of 2013 pending on the file of the Hon'ble Addl. Chief Metropolitan Magistrate (EO - I), Egmore, Chennai and/or any other criminal complaint arising out of C.P. No.239 of 2008 and the various interlocutory applications filed therein and appeals thereof are nonest null and void and contrary to the provisions of Sec 456 of the Companies Act 2013 corresponding to Section 653-A of the Companies Act 1956 Act.

2. Section 456 of the Act of 2013 corresponds to the provisions of Sec 653-A of the Companies Act 1956, is only in respect of Government officers and such persons, who while not Government Officers are doing works of such nature that would be done by Government Officer. The said provisions do not cover and are not intended to cover acts of persons such as the petitioners herein who are only pursuing their private litigation under the provisions of the Companies Act and are not in any manner enforcing the statute or compliance of the laws and rules thereunder.

3. Sec 456 of the Act reads thus:

a. No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

4. It is settled law that in understanding the meaning that is sought to be given by the legislature in respect of terms not specifically defined the principles of ejusdem generis would have to be invoked and the said terms invoked in context.

5. The entire petition is filed on a false basis as though the complaints filed by the Applicant herein are not maintainable in view of the claim that the acts complained of by the petitioners are committed by them in good faith and further that the prosecution is not maintainable as per Sec 465 of the Act as the Petitioners are within the gamut of persons covered under Sec 456 of the Act as "other persons".

6. The offences complained of by the applicant herein are in no manner in respect of acts done by them in good faith as the pre requisite to claim good faith action would be the need to show that the act was done honestly which is in no manner the case in respect of the acts of the petitioners in respect of which the complaints are filed and in respect of which the Petition is filed by the petitioners. However the same is not required in any manner to be got into as the Petition is itself not maintainable

7. It is submitted that the Petition as filed for the reliefs set out therein is not maintainable on law itself for multiple reasons and the Petition is liable to be dismissed in limine for each of the said reasons

of law apart from the fact that the Petition is wholly without merit on facts which are not traversed into in this Application.

8. It is submitted that the Petition is filed seeking the relief that various complaints filed by the Applicant herein under Sec 200 Cr.P.C. for offences committed by the petitioners are to be declared as nonest in view of the provisions of Sec 456 of the 2013 Act, which is the equivalent provision of Sec 635-A of the 1956 Act.

9. It needs to be submitted that the provisions of Sec 456 do not apply in any manner to the Petitioners herein as they are not within the scope of persons, who are entitled to protection under the Section which is only in respect of the category of persons such as officers of Government seeking to enforce the provisions of the Companies Act.

10. Before traversing into why the petitioners are not persons covered by protection under Sec 456 of the Act even in respect of their acts if any in good faith, which of course the acts leading to the offences complained of by the Applicant herein are not that even if the petitioners were persons of the class of persons covered by provisions of Sec 456 of the Act and even if the acts done by them were done in good faith, the Petition as filed would in no manner be maintainable as the relief sought is not within the scope of the Act and in is any event not a power vested on the Company Court.

11. The provisions of Sec 456 of the Act merely set out that no suit prosecution or other legal proceeding shall lie against the class of persons set out therein for acts done pursuant to the Act and rules or orders made thereunder by such persons in good faith.

12. Evidently, if a suit is filed against such a person covered under Sec 456 of the Act in a Civil Court, the recourse of such a person is to seek dismissal of the proceeding by a application to the court

where the Civil Suit is filed under Sec 151 CPC or under Order 7 Rule 11 CPC seeking that the suit be dismissed as not maintainable as it is barred by law. In such circumstances no proceeding in this regard can be moved before the Company Court seeking any direction in this regard. Unlike the provisions of Sec 633 where the Company Court has been granted specific powers to relieve a person from liability arising out of honest and reasonable acts there is no power granted to the Company Court under Sec 456 to interfere in such proceedings. The Defendant in such a suit filed despite his being covered by such protection can only move the concerned Civil Court for relief in this regard as the said Court can decide on the issue and dismiss the suit if the contentions are tenable. The Company Court would have no power or entitlement to grant any relief to any Defendant in exercise of powers under Sec 456 of the Act in respect of a Civil suit pending in a civil court as no such role is contemplated for the Company Court in this regard.

13. A person holding himself covered by protection under Sec 456 of the Act and holding that any suit against him is barred can only approach a competent Civil Court for declaratory relief if he seeks anti suit injunction and can move the Civil Court where there are any pending proceedings for dismissal of the suit in so far as he is concerned if the suit is already filed.

14. Company Court has no role whatsoever in respect of suits if any filed against persons who are entitled to protection under Sec 456 of the Act as such persons can only move the concerned civil court for dismissal of the suit in so far as they are concerned. The petitioners have falsely tried to hold as though the Company Court exercises powers under Sec 456 of the Act similar to that under Sec 463 of the Act

omitting to set out that under Sec 463(2) the power in this regard to relieve the officer is directly vested on the Company Court whereas the provisions of Sec 456 of the Act merely set out a ban on such proceedings against the class of persons and do not in any manner confer any powers on the Company Court to terminate such proceedings.

15. That analogous to civil suits, in respect of pending criminal prosecutions if any levied against persons covered by protection under Sec 456 of the Act the only option open to the Accused therein is to either seek to invoke the powers of the High Court under Sec 482 Cr.P.C. to quash the complaint holding it as barred by law and hence holding the issuance of process as a abuse of the process of law or to prove to the trial Court at the stage of framing charges, if the case is a warrant case, or during the trial that the complaint is liable to be dismissed against the Accused in view of it being so barred by law. In such circumstances the Petitioners herein, even if they were to be in the class of persons covered by Sec 456 of the Act and even if their actions were to be in good faith notwithstanding that neither is true in the present case of the Petitioners, having received summons in the case of the impugned complaints filed by the Applicant herein on the said complaints having been found to make a prima facie case can in no manner approach this court for any relief of declaration too hold the complaints as non est, null and void as prayed for nor can any relief of quash of such complaints taken on file by the Trial Court be sought from the Company Court as the Company Court is not vested with any such power in this regard.

16. If any relief of declaration is sought by the Petitioners that their acts in C.P.239 of 2008 and the various interlocutory applications

filed therein and appeals thereof are in good faith and further that they are persons within the class of persons covered under the scope of Sec 456 of the Act such relief can be sought only from a competent Civil Court.

17. In similar form if any relief is sought by the petitioners in respect of quashing the complaints the same can only be granted by the High Court in exercise of its extra ordinary jurisdiction under Sec 482 Cr.P.C. if the Petitioners are able to set out that the complaints are not maintainable as they are persons within the class of persons covered by Sec 456 of the Act and further that their acts complained of are in good faith. 19. Even in exercise of the power under Sec 463(2) of the 2013 Act the company court can quash a complaint only in view of it being entitled to relieve the officer of the liability for his offences in certain circumstances and when the liability for the offence is relieved, the complaint becomes infructuous thereafter. As there is no provision in Sec 456 of the Act entitling the Company Court to offer any such relief in respect of even complaints or suits or proceedings barred by Sec 456 of the Act the Petitioners cannot maintain this CP in any manner whatsoever.

18. It is further submitted that as per Rule 11(a) of the Company Court Rules, there is no provision for filing any application for relief under Sec 635-A of the 1956 Act, corresponding to Sec 456 in the new Act, by way of Petition and the petition is liable to be dismissed as not maintainable for this single reason as well. In fact, the very reason that no procedure is set out for filing any Petition under Sec 635-A is itself only in view of there being no role for the Company Court in respect of the said provision.

19. Petitioners have filed the company petition wholly in abuse

of the process of law. The petition is neither maintainable in law as no such petition can at all be filed for the reliefs sought herein under Sec 456 and in any event the Company Court is in no manner entitled to quash criminal complaints filed in violation of a bar in law even if the bar arises from the provisions of the Companies Act.

20. The case of the petitioners is that the complaints are barred by law as they being persons within the class of persons set out under Sec 456 of the Act have acted in good faith in respect of the offences in respect of which the trial Court has taken cognizance of the Complaints and as such the Complaints ought to be quashed by the Company Court.

21. The Company Petition is in no manner maintainable in view of the Company Court not being entitled to quash criminal complaints taken cognizance of by a Trial Court, even if, without admitting the same in any manner, such complaint is filed in violation of a bar under the Companies Act, as such quashing of a complaint filed in violation of a bar in law being exercise of a power vested on the High Court under Sec 482 Cr.P.C cannot be exercised by the Company Court in its original jurisdiction. It is further submitted that there is no power whatsoever vested on the Company Court to either quash cognizance of complaints on the ground that it is filed in violation of a bar under Companies Act or to declare such complaints non est as neither of these are powers vested on the Company Court either under Sec 456 of the Act or any under any other provision of law. It is further submitted that the Petitioners who have in similar circumstances filed Crl.O.P's for relief have chosen to file the CP wholly in abuse of the process of law.

22. In view of the fact that the petition is itself per se not maintainable in law and the reliefs sought therein are not even within the scope of law or within the powers of the Company Court, I am not

even traversing into the issues of why the provisions of Sec 456 of the Act are not even applicable as neither have the petitioners acted in good faith nor are they persons comprised in the class of persons entitled to protection under Sec 456 of the Act. I am also not traversing into the issue that the Petition averments does not even disclose a cause of action in respect of the reliefs sought by the petitioners and the petition is liable to be dismissed for this reason as well.

5. Based on the above averments, the learned counsel for the applicant in Comp. A. No.948 of 2014 has prayed for the dismissal of the company petition as not maintainable. In support of his contention, learned counsel for the petitioner has relied on the following judgments

i) *Decision of Gujarat High Court in Sureh Kumar Srivastav vs. State of Gujrat & Another made in Crl. Application No.1289 of 2012 dated 9.5.2012;*

ii) *Rangech Sharma and Another vs. State of Uttar Pradesh and another reported in 1990 Crl. Law Journal (Allahabad High Court);*

iii) *Nand lal vs. Shri Prithvi Singh and Ors. 1966 Crl. law Journal (Rajasthan High Court); and*

iv) *Narayan Diwakar vs. CBI reported in 129 (2006) DLT 258 (Delhi High Court).*

6. I have gone through the provisions and the material on record and find that the applicant has not made out a case for dismissal of the Company petition as not maintainable. Comp.A.No. 948 of 2014 is dismissed. However, there shall be no order as to cost.

30.09.2019

Asr

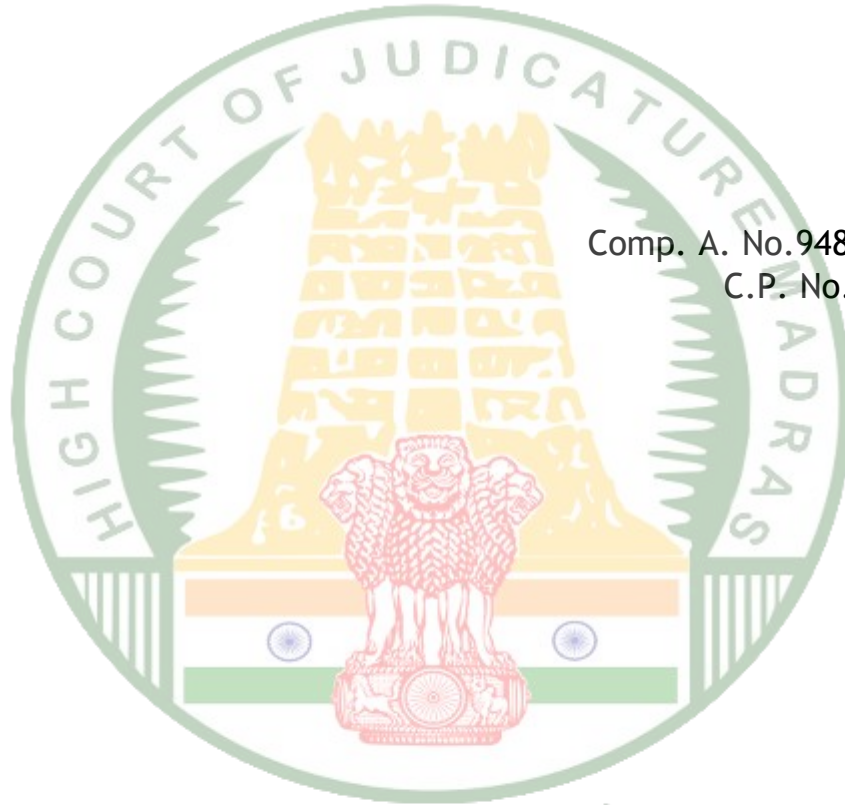


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Date :30.09.2019

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