



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.04.2019	Pronounced on: 25.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Original Petition No.10969 of 2017
& Crl.M.P.No.7221 of 2017
& Crl.M.P.No.794 of 2018

1. Mr.Doraisamy,
S/o.Ramasamy Gounder,
Kulivayal Thottam,
Kullengoounderpudur,
Andipalayam, Tiruppur-641 687.
2. Mr.Ramaraj,
S/o.Sambasivam,
Sunrise Knitting Mills (P) Ltd Compound,
No.133, Gobipalayam Road,
Alukkuli Post-638 453,
Gobichettipalayam- Tk, Erode District.
3. Mrs.Dhanalakshmi,
W/o.Doraisamy,
Kulivayal Thottam, Kullengoounderpudur,
Andipalayam, Tiruppur-641 687.
4. Mr.Mahesh,
S/o.Ramasamy,
440-443, SBI Colony,
Gandhi Nagar-Post,
Tiruppur- 641 603.
5. Mr.Shanmugavadivel,
S/o.Balasubramaniam,
Saralai Thottam Kosavampalayam Road,
Palladam-641 664.
6. Mr.Narendra Kumar,
S/o.Kumarasamy,
5/2, Selvapuram,
Thennampalayam Extension,
Cotton Market Post,
Tiruppur-641 664.

... Petitioners/Accused

/versus/

1. The State rep by:-
The Inspector of Police,
CCB, Coimbatore.

2. C.Subramaniam,
S/o.Chinna Gounder,
Gowtham Centre,
New No.750/34, Old No.1055/36,
Avinashi Road,
Coimbatore-641 018. ... 2nd Respondent/defacto complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to quash the F.I.R in Crime No.29 of 2017, on the file of the 1st respondent/police.

For Petitioners : Mr.Sunder Mohan
For R1 : Mrs.Kritika Kamal.P
Government Advocate
For R2 : Mr.T.Saikrishnan

O R D E R

The petitioners herein are shown as accused in the case registered by the 1st respondent police based on the complaint given by the 2nd respondent, alleging fraud, misappropriation, falsification of records and conspiracy. A private complaint under Section 156(3) of Cr.P.C was presented before the Judicial Magistrate No.III, Coimbatore, same was referred to the 1st respondent by the Court to investigate and file final report.

Accordingly, the 1st respondent has registered the complaint in Crime No.29 of 2017 on 23.04.2017. The said complaint is sought to be quashed through this Criminal Original Petition.

2. Allegation made in the complaint.

The complainant Mr.C.Subramaniam claiming himself as one of the Director of M/s.M.C.Spinners Pvt. Ltd., in his complaint has stated that he and his family members are holders of 50% shares in the said company. Rest of the shares are owned by Mr.R.Doraisamy/1st petitioner, Mrs.Dhanalakshmi/3rd petitioner and their family members to an extent of 25.67%. One Mr.Venkatachalam is holding 9.66% of shares and Mr.Sivaram is holding 14.67% of the shares. The said company was incorporated in the year 2011-2012. The administration of the company was left to the 1st petitioner/Mr.R.Doraisamy who is one of the

Directors of the company, from the year 2014. Thereafter, Mr.C.Subramaniam, has indulged in maladministration of the company. Taking advantage of the fact that other Directors are busy involved in their personal business, the 1st petitioner in connivance with the 2nd petitioner/Mr.Ramaraj, Financial Officer, Mr.Dhanalakshmi/3rd petitioner and son-in-law petitioners 4 to 6 have indulged in forgery, criminal breach of trust and cheating. Only when State Bank of India, Commercial Branch, Coimbatore informed the complainant and others Directors about the non-payment of loan, they came to know about the offence committed by the petitioners. It is alleged in the complaint that the fabric stocks worth about Rs.8,32,14,000/- hypothecated to the State Bank of India was removed by the petitioners between 2014 to November 2016, without the knowledge and permission of the bank and other Directors. Based on the said hypotheca, the Bank had advanced Cash Credit Loan Facilities to a tune of Rs.15 crores. By stealthy removing the hypothecated goods, the petitioners have committed breach of trust. Various machineries of M/s.M.C.Spinners Pvt. Ltd worth about Rs.1,89,15,625/- was removed from the mill premises. The Auto Corner machines and 2 numbers of carding machines worth about Rs.1,33,52,888/- were removed by the petitioners and installed in the premises of M/s.Vigneshkumar Spinners (P) Ltd, Palladam owned by Shanmugavadivel/5th petitioner herein. The Transformer worth Rs.17 Lakhs removed from the mill premises and installed in the premises of M/s.Sunrise Knitting Mills (P) Ltd owned by Mr.R.Mahesh/4th petitioner and Mr.Shanmugavadivel/5th respondent. The machineries were hypothecated to the bank. Without the permission of the bank and the Board of Directors, petitioners have removal of machineries and got transferred vehicles in others name by the 1st petitioner in connivance with other petitioners. A duster car, Eicher bus and Eicher goods van which were in the name of M/s.M.C Spinners (P) Ltd, was transferred to the name of Mrs.Dhanalakshmi and M/s.Sunrise Knitting Mills (P) Ltd. Forgery been alleged in transferring the vehicles owned by M/s.M.C.Spinners (P) Ltd. Further, misappropriation of money received for the job work also being alleged against the petitioners. Thus, due to the fraudulent activities of the petitioners, the Company has lost its reputation and goodwill in the business.

3. By calculative manner, the petitioners have conspired and committed offence of cheating, forgery, causing loss to the complaint and other Directors to a sum of Rs.18 crores. Since, his complaint to the Inspector of Police, Siruvalur Police Station, Gopichettipalaym, Inspector of Police, Race Course Police Station, Coimbatore and Inspector General, West Zone, Coimbatore were not been considered by these Police Authorities. A written complaint to the Judicial Magistrate

under Section 156 (3) of Cr.P.C, requesting the Magistrate to forward the complaint to the Assistant Commissioner of Police, District Crime Branch, Coimbatore and to direct him to appoint appropriate Officer to register the case and to investigate into the matter and report before the Court. Thus, the petition dated 11.04.2007, as per the order of the Judicial Magistrate has been taken for investigation.

4. In the petition to quash the said complaint, the petitioners have submitted that the complaint of the 2nd respondent do not disclose any cognizable offence. It has been filed with a view to wreak vengeance on the 1st petitioner and his family members. The allegations made in the complaint are false and baseless. The 1st petitioner and 2nd respondent were friends for long time and individually running several Companies. Later, they decided to jointly run their Companies and pursuant to that Carona group of companies run by the petitioners and Mehala group of companies run by the 2nd respondent, started operation jointly in the name and style of M/s.Mehala Carona Textile (P) Ltd. Later, misunderstanding cropped up between them and in the presence of well-wishes mediation took place and memorandum of understanding between them was arrived on 12.11.2014. The Mehala groups of companies was exclusively given to the administration of the 2nd respondent. M/s.Sunrise Group of companies were given to the exclusively administration of the 1st petitioner. The Management of the M/s.M.C.Spinners (P) Ltd., was taken over by the 1st petitioner as per the memorandum of understanding. Suppressing the factum of memorandum of understanding entered between the 2nd respondent and 1st petitioner and with false allegations, a complaint has been filed before the Magistrate with a prayer to direct the 1st respondent/police to investigate the complaint.

5. Further, it is contended in the petition that even after the execution of the memorandum of understanding, the dispute continued between two groups of Companies. As the group of companies run by the 2nd respondent viz. M/s.Mehala group of companies were liable to pay a sum of Rs.7.24 crores to M/s.M.C.Spinners Pvt. Limited, the petitioners issued notice dated 11.03.2015 and 16.03.2015 to all sister concerns of M/s.Mehala group of companies. The 2nd respondent did not make payments but he had adjusted the book debts due to M/s.M.C.Spinners Pvt Ltd., from M/s.Maxwell Industries Ltd. A debt of Rs.2.95 crores remains due and payable by Mehala group of Companies to M/s.M.C.Spinners Pvt Ltd. Thereafter, the 2nd respondent has taken over the possession of M/s.M.C.Spinners (P) Ltd., in November 2016, forcibly.

6. Further, it is contended that proceedings has been initiated before the Company Law Board and DRT, in respect of mismanagement of the sister group of companies. Suppressing all these facts, with an ulterior motive to harass the 1st petitioner and his family members the complaint was filed before the Judicial Magistrate and forced the 1st respondent to arrest the 1st petitioner, when anticipatory bail petition was heard and reserved for orders.

7. In fact, after Companies Act 2013 came into force, the investigation of any mismanagement of a company has to be conducted as per procedures contemplated under the Companies Act 2013. The investigation has to be done by Serious Fraud Investigation Organisation-SFIO, as per the Section 212 of the Companies Act. The Special Court constituted under this Act is the Competent Court to try the offence. Under chapter XIV of the Companies Act-2013, a comprehensive procedure, power and Court has been enumerated. While so, without resorting to that procedure, the 2nd respondent has adopted the method of arm-twisting through local police and given a criminal colour to a dispute, which is essentially civil in nature.

8. The learned counsel for the 2nd respondent defending the action of initiating criminal prosecution through complaint before Magistrate would submit that after the dispute between 1st petitioner and the 2nd respondent arose, they entered into a compromise and executed memorandum of understanding dated 12.11.2014. However, the terms of the MOU was not honoured. The 1st petitioner himself wrote a letter to Board of Directors to M/s.Mehala Carona Textile Pvt Ltd., on 19.01.2015 recording his stand about the Memorandum of understanding. In the said letter, he has specifically stated that memorandum of understanding dated 12.11.2014 is invalid. While so, it is incorrect to say that in the complaint, the 2nd respondent has suppressed the MOU. The complaint has provided material facts and evidence to prove that after the Management of M/s.M.C.Spinner (P) Ltd., took over by the 1st petitioner, the assets of the Company had diminished. Most of the machineries were removed and sold for pittance to the Companies held by the petitioners. The forgery in the RC book of the vehicles also prima facie established from the information collected from the Regional Transport Authority. While so, the 1st respondent is fully competent to investigate the offence alleged in the complaint. The provisions of Companies Act does not denude the powers of police to investigate. Further, the learned counsel would contend that investigation by SFIO and by the Registrar of the Companies Act-2013, as contemplated under Section 210 and 212 are procedures supplementing the general-rule and not

alternate procedure in substitution of the general rule. Therefore, the petition is liable to be dismissed.

9. The learned counsel for the 2nd respondent would submit that due to the mismanagement of the 1st petitioner, the bank had initiated recovery proceedings and to save the reputation of the companies as well as the property given by the 2nd respondent as security, they entered into one time settlement with the bank and saved the property.

10. Pointing out the balance sheet for the year 2014-2015, 2015-2016, the learned counsel would submit that at the end of the Financial year 2015, the value of the inventories of M/s.M.C.Spinners (P) Ltd., was Rs.7.17 crores. Whereas, at the end of 31.03.2016, it has fallen to Rs.19.90 lakhs, which would clearly show that the assets of the properties are removed.

11. Relying upon the judgment of this Court rendered in Sengol and others Vs. State rep. by the Inspector of Police, R.S.Mangalam reported in 2012 (2) CTC 369. The learned counsel would submit that when the offence under Indian Penal Code is made out, which may also be an offence in different enactment, prosecuting a person under the I.P.C is not barred. When there is prima facie disclosure of commission of offence, leading to calculated monetary injury to the complainant while managing the affairs of the Company as a shareholders and, the complainant as one of the Directors is entitled to lodge a police complaint and seek for investigation.

12. The learned Government Advocate appearing for the 1st respondent would submit that pursuant to the direction of the Judicial Magistrate, the case has been registered and was under investigation. When the complaint discloses ingredient of I.P.C offences, prosecution under those offences cannot be restricted. The 1st respondent is empowered to investigate the case of this nature, though it may touch upon the affairs of the companies Management. The provisions of Companies Act which is a special enactment empowers SFIO to investigate the cases under special circumstances. At the same time, the Act also provides for investigation by other agencies apart from SFIO and sharing of information. This would clearly indicate that, there is no legal impediment for the 1st respondent to investigate the complaint. If the petition is allowed, the perpetrator of the crime will go free. Merely because the special enactment also provides for investigation and prosecution, it does not take away the powers of the

1st respondent to investigate the offences of cheating, misrepresentation, misappropriation and conspiracy.

13. Before advertng to the legal submissions, few facts which are necessary to decide this application is stated below:-

M/s.M.C.Spinners Pvt Ltd., was registered at ROC in the year 2012. The shares of the company has been held by Mr.C.Subramaniam and his family 50%, Mr.Doraisamy/1st petitioner and his family 26.67%, Venkatachalam 9.66% and Mr.M.Sivaraman 14.67%.

14. In the complaint, it is contended that during the month of April-2014, Mr.Doraisamy took over the absolute administration of M/s.M.C.Spinners Pvt Limited. He was submitting reports to the other Board of Directors with false information, which the other Board of Directors believed till they received notice from the bank for non-payment of instalments. Further, allegations is that the assets of the properties were removed without the knowledge of Board of Directors and the bank to which the properties were hypothecated. The Board of Directors meetings was not properly connived. Making very grave allegations of mismanagement, fraud and misappropriation, the impugned complaint has been lodged by one of the Directors against the other Directors.

15. In this context, it is relevant to refer chapter XVI of the Companies Act-2013, wherein, the Act provides for Prevention of Oppression and Mismanagement. Section 241 of the Companies Act reads as below:-

241. Application to Tribunal for relief in cases of oppression, etc.,

(1) Any member of a company who complains that-

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an

alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

16. From the complaint, it is obviously clear that one of the shareholder and also the member of the Board of Directors has serious grievance against the other shareholder and the member of the Board of Directors regarding the management of M/s.M.C.Spinners Pvt Limited. This is not the only company incorporated and dealt by the 1st petitioner and 2nd respondent. There are several other sister concerns which are broadly classified as M/s.Mehala group of Companies and M/s.Sunrise group of Companies. M/s.M.C.Spinners (P) Ltd is one among them, which is classified under the M/s.Sunrise group of Companies.

In all these sister concerns admittedly both the 1st petitioner and the 2nd respondent are shareholders either they and their family members are major shareholders or minor shareholders.

17. Admittedly, there is a dispute between them regarding the management which has culminated into MOU, later not honoured by both the parties. The 1st petitioner has made a specific declaration that it has become invalid. In the said circumstances, when any member of the company has any grievance or complaint about oppression or mismanagement, he should have resorted to an application to the tribunal as contemplated under Section 241 of the Companies Act-2013. In this case, Mr.C.Subramaiaam, the complaint besides mismanagement had grievance against the co-director that he and his family members have connived together to misappropriate the assets of M/s.M.C.Spinners Pvt Ltd. In such circumstances, Chapter XIV of the Companies Act-2013, provides for remedy. Under Section 206 of the Companies Act-2013, the Registrar of the Company, based on the information received by him can seek for explanation, production of document and conduct enquires. If the Registrar is satisfied on the basis of information available with him or

furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act, he can proceed with inquiry. The second proviso to sub-section (4) of Section 206 of the Companies Act-2013 reads as below:

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

18. Under Section 447 of the Companies Act 2013- Punishment for fraud is explained as below:-

447. Punishment for fraud: Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved

in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

19. Thus, it is very clear that while dealing with the affairs of a company, if any person abuse the position with intend to deceive, to gain undue advantage from, or to injure the interests of, company or its shareholders or its creditors or any other person, he deemed to have committed fraud.

20. From the reading of the complaint, it is alleged that the petitioners herein have committed Act of omission and commission and concealment to deceive the complainant/2nd respondent who is one of the shareholders. In such circumstances, the Act provides for him to inform the matter to the Registrar under Section 206 of the Companies Act-2013 who in turn will conduct enquiry. If the enquiry conducted by the Registrar discloses material for further investigation, he under Section 210 of the Companies Act-2013, can report to the Central Government to conduct investigation into the affairs of the Company.

Section 210 of the Companies Act reads as below:

Investigation into affairs of Company.—

(1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,-

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(c) in public interest, it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

21. In the complaint, it is not only alleged that by his act of commission and omission the petitioners had caused loss to the 2nd respondent but also it is alleged that the bank has declared the company as NPA [Non Performing Asset]. It is alleged that the mismanagement has caused loss of several crores, therefore interest of the bank is also involved. If the allegations are true, the gravity of the offence is grave and fit to be investigated by the Serious Fraud Investigation Organisation which is empowered to investigate offence of this nature, as per Section 212 of the Companies Act. Further, the offence of this nature, which requires better investigation skill in Forensic auditing, Corporate Affairs and Capital Market, can be conducted only by the SFIO. From the complaint, as well as the petition, there is enough material to infer that the mismanagement does not stop with one company namely M/s.M.C.Spinner Pvt Ltd., but also all other sister concern, in which the 1st petitioner and 2nd respondent, their family members are involved. The forgery alleged in the transfer of vehicles also not confined to the petitioners and M/s.M.C.Spinner Pvt Ltd.

22. Across the bar, the learned counsel appearing for the petitioners submit some documents and alleged that it is 2nd respondent who has committed forgery and transferred the vehicles in his name and in the name of other Company, without the consent of the owners namely M/s.M.C.Spinners Pvt Ltd.

23. Under Chapter XXVIII of the Companies Act-2013 establishment of Special Court and the offence triable by Special Courts are prescribed under Sections 435 and 436 of the Companies Act. When the complaint of complex nature in the administration of the Company to be investigated, the Act gives a comprehensive procedure and powers as well as forum. A specialized investigating agency is also established empowered to investigate.

24. If the complainant really aggrieved and need redressal in the manner know to law, he should have resorted to the procedures, which has been explained above. Contrarily, he has chosen only the affairs of M/s.M.C.Spinners Pvt Ltd and alleged certain offences, which in isolation cannot be investigated. Unless a comprehensive investigation into the affairs of all the companies held and managed by the petitioners as well as the 2nd respondent and his family members are scrutinized and probed truth will not come out. The Registrar of the Companies is competent person to conduct such inspection he can call for records and arrive at an opinion. If the materials are available, he can submit report to the Government for investigation by SFIO. If SFIO is able to collect materials sufficient to prosecute, it can proceed against offenders.

25. In such circumstances, this Court of the opinion that the complaint under Section 156(3) of the Cr.P.C before the Judicial Magistrate and seeking registration of the complaint by the Inspector of Police, CCB, Coimbatore, itself an come out of malafide intention to pressurize the petitioners to part away their right of Managing the Company. Having resorted to the provisions of Companies Act and filed a C.P.Nos.27 and 28 of 2015, before the Company Law Board, Chennai, it is clear that the 2nd respondent and his sons, who are the shareholders and Directors of sister concern are aware of the new enactment and the redressal procedures contemplated under the new Act.

26. It is improper to chose one Company alone which was given to the exclusively Management of the petitioners as alleged in the complaint, though, on record it is not so. It is pertinent to note that, the person who is holding 50% of the shares in the Company, making allegation against the person who is holding 26.67% of the shares. None other shareholders have not made any complaint and the bank which has advanced money has not restored to any action for alleged fraud. It is only the 2nd

respondent has made out some allegations of fraud, cheating and misappropriation.

27. Even assuming, there is material in his allegation, it is open for him to resort to the provisions of Companies Act-2013 and place before the Registrar of Companies or lodge a private complaint before the Special Court, as contemplated under Section 436 of the Companies Act-2013. The complaint on the file of the 1st respondent cannot be probed effectively since it involves intricate facts on accountancy and auditing. Except forensic audit conducted into the affairs of these Companies held by the 1st petitioner and the 2nd respondent, the truth will not come to light. Ultimately, the Financial Institutions which has lent money to these warring groups will be the sufferer, which in turn will be loss to the public. Therefore, in the interest of public also, the matter has to be referred to Registrar of Company to enquiry and proceed in accordance with law.

28. Accordingly, while quashing the complaint in C.C.No.29 of 2017 on the file of the 1st respondent police, this Court directs the Registrar of Companies to take note of the complaint and cause inquiry, not only the affairs of M/s.M.C.Spinners Pvt Ltd., but also all the other sister concern, in which the 1st petitioner and 2nd respondent are involved and file its report to the Central Government for further action.

29. Accordingly, the Criminal Original Petition is Allowed. The F.I.R in Crime No.29 of 2017 on the file of the 1st respondent/police is quashed, with the above said direction. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

bsm

To,

1.The Inspector of Police, Central Crime Branch, Coimbatore.

2.The Ministry of Corporate Affairs - Registrar of Companies, Chennai.

3.The Section Officer, Criminal Section (Records), High Court,
Madras.

+1 CC to Mr.Sundar Mohan, Advocate sr 40043.

+2 Ccs to Mr.T.Saikrishnan, Advocate sr 39705 & 32671.

Criminal Original Petition No.10969 of 2017
& CrI.M.P.No.7221 of 2017
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GP (CO)
SP(31/05/2019)



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