IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8783 of 2017 and
Crl.M.P.Nos.6286 & 6287 of 2017

Philip John ... Petitioner

Vs.

1.The state. Rep. by,
The Inspector of Police,
District Crime Branch,
The Nilgiris, Udhagamandalam,
(Formerly EOW-II/DCB
Udhagai-The Nilgiris.)
Crime No.3 of 2003)

2.Tr.V.Arumugam ... Respondents

[2nd respondent is impleaded as per the order of this Court dated 13.12.2018 made in Crl.M.P.No.17130 of 2018 in Crl.O.P.No.8783 of 2017.]

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.163 of 2009 pending on the file of the Judicial Magistrate, Coonoor and quash the same.

For Petitioner : Mr.S.Siva Sangarane

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been to quash the proceedings in C.C.No.163 of 2009 pending on the file of the Judicial Magistrate, Coonoor.

2.The learned counsel for the petitioner submitted that the petitioner/A1 was a Managing Director of M/s.TTBL Tea and Technologies Limited. The said company was engaged in the business of broking tea manufactured by various factories and brought to auction at various centres in South India. He further submitted that the defacto complainant viz., Industrial

Co-operative Tea factories shortly called as “Indco Serve” had lodged a complaint with the respondent Police alleging that the Tea sold through the petitioner's company, prompt amount not paid and misappropriated. Based on the complaint of the defacto complainant, the respondent Police filed a charge sheet before the learned Judicial Magistrate, Coonoor and the same is taken on file as C.C.No.163 of 2009 against the petitioner herein and other two Directors.

3.In sum, the accused are said to have not handed over sale proceeds in a sum of Rs.31,98,835.91/-, which came to be entrusted with them between 03.01.2003 and 11.02.2003 as result of the auction sales. The charge sheet informs that of such sum, the company of the accused has remitted with Indco Serve a sum of Rs.8,22,155.36/- and misappropriated the remaining amount to the tune of Rs.23,76,680.55/-. It is in such circumstance that offence under Section 409 IPC is alleged against the accused.

4.The learned Additional Public Prosecutor filed a counter and submitted that there are three accused in Crime No.3 of 2003 registered for the offences under Section 406 of IPC on the file of the respondent Police. After completion of the investigation, on 28.08.2008, the respondent Police filed charge sheet against the accused persons before the learned Judicial Magistrate, Coonoor and the same is taken on file as C.C.No.163 of 2009 on 21.12.2009.

5.The learned counsel for the petitioner relied upon the order of this Court in a similar proceedings initiated by TANTEA and charge sheet filed therein by the same respondent Police in C.C.No.23 of 2006 against one of the Director of the M/s.TTBL Tea and Technologies Limited viz. Vijay Swaminadhan filed Crl.O.P.No.29730 of 2007 before this Court, challenged the said proceedings on the file of the Judicial Magistrate Court, Coonoor. The entire proceedings was quashed by this Court vide its order dated 24.02.2010. The relevant portion of the Judgment is extracted here under:-

> “10. On perusal of the available material, it is seen that the disbursements of moneys alleged against the company of the accused are said to have been made towards business expansion. This by itself cannot be termed criminal. The statement of the auditor by name Renganathan clearly reflects the position that the loans granted by the company of the accused were gradually recovered, that goods were being procured by the company of the accused in keeping with rules, that payments due to Government had

been effected regularly, that no expenditure incurred by any individual was reflected in the profit and loss account and that accounts of the company were being duly maintained. In effect, that statement reveals that the affairs of the company of the accused were conducted in keeping with legal requirements.

11. In the facts and circumstance of the case, it is absolutely clear that the moneys due to the complainant are only those payable by the company of the accused in the course of business transactions. Merely because such company has been unable to effect payments to the complainant, no allegation of commission of criminal offence can be made. That the company of the accused is in dire straits, can well be appreciated from the fact that such company has been ordered to be wound up by this Honourable Court. In fact, the statement of the witnesses examined in the course of investigation also do not impute anything against the accused that could be termed criminal conduct. As rightly contended by the learned Senior Counsel as held by the Honourable Apex Court in the decision cited supra, the penal code does not contemplate any vicarious liability on the part of the party except under some provisions thereof specifically providing therefore. Again, as rightly contended by the learned Senior counsel, the very contentions of the plaint referred to show that the complainant has resorted to the complaint proceedings, as a measure of forcing payment by the company of the accused.

12. In view of the above reasoning, this Court is inclined to accept this petition. Accordingly, this Criminal Original Petition is allowed. The proceedings in C.C.No.23 of 2006 pending on the file of the learned Judicial Magistrate, Coonoor shall stand quashed. Consequently, the connected miscellaneous petition is closed."

6.The above order squarely applies to the facts and circumstances of the present case. Hence, the proceedings against the petitioner is liable to be quashed for the offences under Section 409 of IPC.

7.Accordingly, the proceedings in C.C.No.136 of 2009, on the file the Judicial Magistrate Court, Coonoor is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Coonoor.

2.The Chief Judicial Magistrate, Nilgiris.

3.The Inspector of Police,
District Crime Branch,
The Nilgiris, Udhagamandalam,
(Formerly EOW-II/DCB
Udhagai-The Nilgiris.)

4.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.8783 of 2017

AK(CO)
CSL/04.06.2019