

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.Nos.56/2020 and 125/2020

and

Crl.MP Nos.297/2020 and 901/2020 in Crl.RC.No.56/2020 and

Crl.MP.No.842/2020 in Crl.RC No.125/2020

Crl.RC No.56/2020

Dhanraj Kochar

... Petitioner

Vs

1.M/s.D.R. Foundations and Estate Private Limited.
Represented by its Managing Director,
Ramesh Veeraraghavan

2.Inderchand D.Kochar

3.D.Suresh Kumar Kochar

4.Ramesh Kumar Kochar

5.Jitheshkumar

6.Rajkumari

7.Anitha

8.Sarala

9.The State

rep.by Inspector of Police,

CCB, Chennai - 600 007.

... Respondents

Crl.RC No.125/2020

M/s.D.R. Foundations and Estate Private Limited.

Represented by its Managing Director,

Ramesh Veeraraghavan

... Petitioner

Vs

1.N.Dhanraj Kochar

2.Inderchand D.Kochar

3.D.Suresh Kumar Kochar

4.Ramesh Kumar Kochar

5.Jitheshkumar
6.Rajkumari
7.Anitha
8.Sarala
9.The State
rep.by the Inspector of Police,
Thuraipakkam Police Station,
Chennai.

... Respondents

Crl.RC.No.56 of 2020: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the order dated 15.11.2019 in Crl.MP.No.3657 of 2018 in Crl.A.No.82 of 2017 on the file of the Principal Sessions Judge, Kancheepuram District at Chengalpattu.

Crl.RC.No.125 of 2020: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the entire records of the proceedings relating to the impugned order dated 15.11.2019 passed in Crl.MP.No.3657 of 2018 in CA.No.82 of 2017 on the file of the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu and to set aside the same.

For Petitioner : Mr.T.P.Manoharan, SC for
in Crl.RC.56/2020 Mr.C.Prabhakar

For Petitioner : Mr.R.Murali
in Crl.RC.125/2020

For R9 : Mr.K.Prabakar, APP

For Petitioner in : Mr.S.Doraiswamy
Crl.MP.No.901/2020

COMMON ORDER

Both the Criminal Revision cases arise out of the one and the same order dated 15.11.2019 passed by the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu in Crl.MP.No.3657 of 2018 in CA.No.82 of 2017 and hence, they were heard together and are decided by this common order.

2.Succinctly, stated facts are as follows:

2.1 The petitioner in Crl.RC.No.125 of 2020, which is the first respondent in Crl.RC.No.56 of 2020, is a registered company under the Companies Act and its erstwhile Director viz., M.S.Hameed filed a private complaint under Section 190(1)(b) Cr.P.C before the learned Judicial Magistrate, Alandur, alleging that the respondents 1 to 3 in Crl.RC.No.125/2020, who are the petitioner and respondents 2 and 3 respectively in Crl.RC.No.56 of 2020 and others, misappropriated the company funds and

purchased the lands in their names and thereby cheated the company. The said complaint was forwarded to the Assistant Commissioner of Police, Thuraipakkam Range to conduct the investigation, who intturn, directed the 9th respondent in both the Criminal Revisions to register a case.

2.2 Accordingly, the 9th respondent registered a case in Crime No.815 of 2006 for the offences punishable under Sections 408, 420, 468 and 120B IPC against the respondents 1 to 8 in CrI.RC.No.125 of 2020, who are the petitioner and respondents 2 to 8 respectively in CrI.RC.No.56 of 2020, and two other persons. After investigation, final report was altered into one under Sections 409 r/w 109 and 120B IPC, which was taken cognizance by the learned Judicial Magistrate, Alandur in CC.No.530 of 2007.

2.3 The petitioner in CrI.RC.No.125 of 2020 filed CMP.No.4096 of 2015 in CC No.530 of 2007 to assist the prosecution, which was allowed by order dated 23.06.2015. As per the order of this Court passed in CrI.RC.Nos.684 and 922 of 2015, one Sathak Ahmed Sha, who is the petitioner in CrI.MP.No.901 of 2020, claiming himself as a legal heir of the deceased M.S.Hameed, filed his written arguments in CC No.530 of 2007.

2.4 After contest, the trial Court by judgment dated 01.11.2017, convicted the first respondent in CrI.RC.No.125 of 2020/ petitioner in CrI.RC.No.56/2020 under Section 409 IPC and sentenced him to undergo three years simple imprisonment and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a further period of three months, convicted the respondents 2 to 8 under section 409 r/w 109 IPC and sentenced them to undergo simple imprisonment for three years and to pay a fine of Rs.10,000/- each, in default to undergo simple imprisonment for a further period of three months and also convicted the respondents 1 to 8 in CrI.RC No.125/2020 under Section 120B IPC and sentenced them to undergo simple imprisonment for three years and to pay a fine of Rs.10,000/- each in default to undergo simple imprisonment for a further period of three months. The trial Court ordered to run the sentences continuously.

2.5 Challenging the aforesaid conviction and sentence, the respondents 1 to 8 in CrI.RC.No.125/2020 preferred an appeal in CA.No.82 of 2017 before the learned Principal Sessions Judge, Kancheepuram. Pending the same, the petitioner in CrI.MP.No.901 of 2020 filed a petition in CMP.No.1390 of 2019 seeking permission to assist the prosecution in CA.No.82 of 2017, which was allowed by the Appellate Court.

2.6 In the aforesaid factual scenario, the petitioner in CrI.RC.No.125/2020 filed a petition in CMP.No.3657 of 2018 seeking permission to assist the prosecution in CA.No.82 of 2017, which was dismissed by the Appellate Court, vide order dated 15.11.2019, which is impugned in CrI.RC.No.125/2020.

3.The first respondent in Crl.RC.No.125 of 2020 has also challenged the aforesaid order dated 15.11.2019 by filing Crl.RC.No.56 of 2020, stating that during trial, the prosecution/investigating officer has not followed the required procedure and not produced the relevant documentary evidence. According to him, the dispute /case arose purely on the statement of accounts, company procedures, investment details, consequential withdrawal related issues and its documents. However, the prosecution did not examine the company representative as witness nor marked the required documents before the trial Court, which resulted in improper investigation, based on which, the findings rendered by the trial Court against the respondents 1 to 8 in Crl.RC.No.125/2020 are vitiated in law. Hence, this Criminal Revision in Crl.RC.No.56 of 2020.

4.Mr.R.Murali, learned counsel for the petitioner in Crl.RC.No.125/2020 submitted that the petitioner being a proper and necessary party for adjudication of the appeal, preferred CMP.No.3657 of 2018 seeking permission to assist the prosecution in CA.No.82 of 2017 and the respondents 1 to 8 have also expressed their willingness for the same. However, without considering the same in a proper perspective, the Appellate Court has rejected the said request. The learned counsel further submitted that when the Appellate Court has permitted the petitioner in Crl.MP.No.901 of 2020 to assist the prosecution, it ought to have extended the same benefit to the petitioner as well. It is also his contention that the Appellate Court, while passing orders in Crl.MP.No.3657 of 2018 in Crl.A.No.82 of 2017, has observed that he is a real victim and aggrieved party, whereas the petitioner company is not an aggrieved party, which is unnecessary and insignificant at this juncture. The learned counsel also submitted that the petitioner company was defunct only recently and was very much alive during the alleged commission of offence and also during trial and hence, there is no bar for the petitioner to represent itself so as to protect its interest.

5.Mr.T.P.Manoharan, learned Senior Counsel appearing for the petitioner in Crl.RC.No.56 of 2020 submitted that the prosecution has not adduced the company representative as witness nor marked any document before the trial Court, which led to great prejudice to the accused. According to the learned Senior Counsel, the company side evidence is very essential and necessary to arrive at a just conclusion in respect of the allegation raised against the accused. He further submitted that the observations made by the Appellate Court in the impugned order that 'the legal heir of the original defacto complainant is the real victim and the petitioner in Crl.RC.No.125/2020

could not be deemed in any way to be a victim as he is not aware of the affairs of the company and he has not invested any money in the company', are predetermined the issue and beyond the scope of Section 301 Cr.P.C and the same caused serious prejudice to the petitioner. In support of the same, he placed reliance on the decision of the Supreme Court in *Satishchandra Ratanlal Shah v. State of Gujarat* and another [(2019) 9 SCC 148], wherein, at paras 15 and 16, it was held as follows:

"15.However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein.

16.In our considered opinion, the High Court should have maintained judicial restraint and desisted from making such general observations at this stage of the criminal proceeding, as they may have had a bearing on the adjudication of the trial. Therefore, the observations made in paragraphs 43 and 44 of the impugned judgment stand expunged."

Stating so, the learned Senior Counsel prayed to set aside the order impugned herein.

6.Per contra, Mr.S.Doraiswamy, learned counsel for the petitioner in CrI.MP.No.901 of 2020 submitted that originally, the complaint was lodged by the father of the petitioner, which culminated in CC No.530 of 2007; after his death, the case was contested by the petitioner; and the case ended in conviction against the accused. The learned counsel further submitted that the petitioner filed CrI.OP.No.20519 of 2019, which was disposed of by this Court, by order dated 31.07.2019, directing the Appellate Court to dispose of the appeal in CA.No.82/2017 preferred by the accused within a period of three months. However, with an intention to drag on the proceedings, the petitioners in the criminal revisions filed respective petitions. According to the learned counsel, the petitioner in CrI.RC.No.56/2020 being an accused, has no locus standi to file the petition to assist the prosecution; and due to non-filing of balance sheet, the name of the company was removed from the list of companies with the Registrar of Companies and the Director was suspended and was declared as disqualified director; and

hence, the criminal revisions are not maintainable and are liable to be dismissed.

7.The learned Additional Public Prosecutor appearing for the 9th respondent submitted that this Court had already directed the Appellate Court to dispose of the appeal within a period of three months; and the subsequent petition filed seeking extension of time to dispose of the appeal, came to be dismissed by this Court; however, to prolong the proceedings, the present Criminal revisions have been filed by the petitioners.

8.Heard all and perused the materials placed before this Court.

9.Concededly, the complaint lodged by the father of the petitioner in Crl.MP.No.901 of 2020 was taken cognizance by the trial Court in CC No.530 of 2007, which ended in conviction against the respondents 1 to 8/ petitioner and respondents 2 to 8 in Crl.RC No.56 of 2020 for the offences as stated supra, by judgment dated 01.11.2017. Challenging the same, the accused preferred an appeal in CA.No.82 of 2017 before the Appellate Court and the same is pending.

10.It is the specific contention of Mr.T.P.Manoharan, learned Senior Counsel for the petitioner in Crl.RC No.56 of 2020 that by the impugned order, the Appellate Court has rejected the request made by the company to assist the prosecution in the appeal, which caused serious prejudice to the petitioner, as the prosecution has not examined any witness belonging to the company nor marked any document relating to the affairs of the company at the time of the alleged commission of offence. It is his further contention that the Appellate Court has also made unnecessary and unwanted observation with regard to the petitioner in Crl.MP.No.901 of 2020, which is beyond the scope of Section 301 Cr.P.C. The learned counsel for the petitioner in Crl.RC.No.125/2020 has also made his submissions in similar lines.

11.The contentions so made on the side of the revision petitioners have been resisted by the learned counsel for the petitioner in Crl.MP.No.901 of 2020 and the learned Additional Public Prosecutor appearing for the 9th respondent, stating that the revision petitioners have preferred repeated petitions before the Appellate Court as well as this Court, only with an intention to prolong the litigation and the prosecution has taken effective steps to place all the materials before Court below and there is no requirement to seek assistance from the petitioner company.

12.This Court is of the view that the submissions so made on the side of the revision petitioners are nothing but apprehension and the same cannot be gone into at this stage, having regard to the fact that this Court, vide order dated 31.07.2019, disposed of the petition in Crl.OP.No.20519 of 2019 filed by the petitioner in Crl.MP.No.901/2020, directing the Appellate Court to dispose of the appeal in CA.No.82 of 2017 within a period of three months from the date of receipt of a copy of the order and pursuant to the said direction, the Appellate Court has proceeded with the appeal and heard the parties and now, the final hearing is taken place. Hence, it is for the Appellate Court to pass orders, on merits, after considering the arguments and on the basis of the materials placed before it.

13.In such view of the matter, the Criminal Revisions cases deserve to be dismissed.

14.Though it is contended that the petitioner in Crl.MP.No.901/2020, who is the son of the original defacto complainant, is a necessary party to the present criminal revisions, which has been seriously opposed on the side of the revision petitioners stating that the petition filed by the said proposed party was allowed by the Appellate Court, permitting him to assist the prosecution and hence, there is no necessity to implead him in the present criminal revisions, the learned counsel for the petitioner in Crl.MP.No.901/2020 ultimately sought permission of this Court to withdraw this miscellaneous petition and he has also made an endorsement to that effect. In view of the same, Crl.MP.No.901 of 2020 is dismissed as withdrawn.

15.In fine, both the Criminal Revision Cases are dismissed, with a direction to the Appellate Court to pass orders in CA.No.82/2017 pending on its file, on merits and in accordance with law and also on the basis of the materials placed before it, without causing any further delay. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Principal Sessions Judge, Kancheepuram District
Chengalpet.

2.The Judicial Magistrate, Alandur.

3.The Inspector of Police
Thuraipakkam Police Station
Chennai.

4.The Public Prosecutor
High Court, Madras 104.

5.The Inspector of Police
CCB, Chennai 600 007

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+1 Cc to Mr.G. Prabakaran, Advocate sr 15256.

+1 CC to Mr.R.Murali, Advocate sr 13940.

Cr1.R.C.Nos.56/2020 and 125/2020
and Cr1.MP Nos.297/2020 and 901/2020
in Cr1.RC.No.56/2020 and Cr1.MP.No.842/2020
in Cr1.RC No.125/2020

JP(CO)
SP(13/03/2020)

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