IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NO. 1150 of 2010

Mr.Kanak Surana,
Director
ELFOTECH Electro Chemicals Ltd
.. Petitioner/Petitioner/Defacto Complainant

- Vs -

1.Mrs.Shashi Jain

2.Mr.Praveen Kumar ... Respondents/ R2 and R3/ Accused.

3.The Station House Officer,
Kirumampakkam Police Station,
Puducherry. ... Respondent3/ Respondent/ Complainant

Prayer: Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 28.05.2010 in Crl.MP.No.3614 of 2008 in Crime No.177 of 2006, passed by the learned Judicial Magistrate No.1, Pondicherry, insofar as it relates to the dismissal of complaint against the respondents 1 and 2 herein as Accused 2 and 3 in Crime NO.177 of 2006 on the file of Station House Officer, Kirumampakkam Police Station, Puducherry.

For Petitioner : Mr. A.Sasidharan

For Respondents: No appearance for R1 and R2

: Mr.D.Bharatha Chakravarthy,
Public Prosecutor (Pondicherry)
for R3

ORDER

This Criminal Revision Petition has been filed by the Revision Petitioner/ Defacto complainant, to set aside the order dated 28.05.2010 in Crl.MP.No.3614 of 2008 in Crime No.177 of 2006, passed by the learned Judicial Magistrate No.1, Pondicherry, insofar as it relates to the dismissal of complaint against the respondents 1 and 2 herein as Accused 2 and 3 in Crime No.177 of 2006 on the file of Station House Officer, Kirumampakkam Police Station, Puducherry .

2.The Brief allegation in Cr.No.177/2008 is as follows:

This Defacto complainant Mr. Kanaka Surana is the Director of the public limited company M/s Elfotech Electro Chemicals Ltd having its registered office at Mumbai and having its factory at No.84, Opposite to PIPDIC Industrial Estate, Kirumampakkam, Bahour Commune, Puducherry. Mr. Om Prakash Saraf and Mr. Rajesh Dugar are the other Directors of the company. The 1st and 2nd accused entered into a Memorandum of Understanding (hereinafter called as MOU) dated 21.03.2005 with M/s Elfotech Electro Chemicals Ltd. It was agreed to sell the shares of the company to the 1st and 2nd accused and the sale consideration was fixed at Rs.3.65 crores and it included the goodwill, lands, building and machineries. The mode of payment is set out in the said MOU. It was also agreed in the MOU that the ownership of the company, by transferring the entire shares in favour of the 1st and 2nd accused, will be done only on receipt of final installment. As per the MOU of 21.03.2005, the 1st accused was appointed as Executive Director of the company and he was entrusted with the powers to deal with all the day to day affairs including to deal with the Government departments and he was also authorized person to operate the bank account with UTI bank and signing authority on behalf of the company. He was also reappointed in the Annual General Meeting held on 30.09.2005. However, the 1st and 2nd accused deliberately failed to pay the amount as per the MOU which resulted in the closure of the factory by an order from the Puducherry Pollution Regulation Committee dated 22.11.2005 and the Electricity power was also disconnected by the electricity department, Puducherry by an order dated 29.12.2005. Hence the company sent a letter dated 13.12.2005 to the 1st accused about the proposed board meeting to be held on 19.12.2005. Subsequently, the 1st accused was removed from the post of Executive Director of the company in the Extra Ordinary General Body Meeting held on 19.12.2005 with immediate effect. A letter to this effect was also sent to him on 19.12.2005. The defacto complainant was entrusted and authorized to take charge of the company and the assets and deeds and things of the company. After knowing his removal, the 1st accused removed vital documents, records of Central Excise, account books, UTI bank cheque book containing many cheque leaves, cash and other valuable securities of the company, which were entrusted to him in the capacity of Executive Director and hid them in his personal secret place. A letter was sent to his Manager D.Karthikeyan on 27.12.2005 to return the same and he responded for the same through his reply on 29.12.2005 stating that all the records are only with the 1st accused. The removal of the 1st accused from the post of Executive Director of the company was published in the Dailies Dinamalar and The Hindu on 2.1.2006 and on 4.1.2006. The 1st and 2nd accused failed to fulfill their obligation under the MOU and, hence, the amounts paid by the 1st and 2nd accused were forfeited and the same was intimated to them through a letter dated 17.01.2006. Since the 1st accused failed to return the records, the defacto complainant was unable to run the company and also comply with the statutory compliance with the Government departments, which resulted in receipts of several notices from the Government departments like ESIC, service tax, Central Excise, etc., for enquiry, prosecution and also for penal action. Using the cheque removed from the company the 1st accused issued the same to A2 and A3 and a case under Section 138 of the NI Act came to be filed against the defacto complainant, Mr.Om Prakash Saraf and also against Mr.Bhagirathi Arya as if A2 and A3 had lent money to them. The above said cases were filed with the active connivance and also the conspiracy between the said accused, and they had adopted and conspired to commit the offence of forgery and also using the forged documents as genuine against the defacto complainant and also the said Mr. Om Prakash Saraf and Mr.Bhagirathi Arya. Hence the accused have committed offences under Sections 120 B, 380, 406, 409, 420, 437, 438, 471 r/w 34 IPC r/w 156 (3) of Cr.P.C.

3. The petitioner is the defacto complainant and he filed a compliant under Section 156 of Cr.P.C in Crl.MP.No.3614 of 2008 in Crime No.177 of 2006. While entertaining the compliant, the learned Judicial Magistrate-I, Pondicherry, directed the law enforcing agency, Station House Officer, Kirumampakkam Police, to investigate the matter. The said Station House Officer filed a Final Report referring the matter as civil in nature as against A2 and A3 therein, the respondents 2 and 3 herein and challenging the said referred final order, the revision petitioner has filed a protest petition and said protest petition was dismissed as against A2 and A3, however, it was allowed in respect of A1. As against that, the present revision petition is filed.

4. Learned counsel appearing for the petitioner submitted that the first respondent herein is the wife of the first accused namely V.K.Jain who is A1 in the said criminal compliant and A1 entered into a Memorandum of Understanding on 21.03.2005 wherein, the first respondent is also a beneficiary who had made wrongful gain along with her husband and the second respondent is the Manager of the said company owned by A1 viz., V.K.Jain Brothers Group and V.K. Corporate and both had actively participated in the day to day affairs of the company and they have sent a reply notice to the defacto complainant and further alleging that the cheque was issued by the petitioner in favour of A2, they lodged a complaint under Section 138 N.I. Act, which is pending. However, without considering the participation of respondents 1 and 2, the trial Court dismissed the protest petition in respect of the private respondents is not sustainable. Accordingly, he prays for allowing the petition.

5. Though notice was sent to the respondents, however no one appeared on behalf of them. The revision has been filed in the year 2018 and almost two years have passed. However, the respondents in spite of receipt of notice have not appeared before this Court to contest the case. Considering long time pendency of the matter, I am inclined to dispose the matter on merits and the available records.

6.Mr.D.Bharatha Chakravarthy, learned Public Prosecutor (Pondicherry) for R3 submitted that though initially the petitioner implicated the first respondents husband as A1 in the said complaint after entertaining the complaint, the trial Court issued a direction to the third respondent to enquire and file report. The third respondent filed referred report stating that the case is civil in nature and thereafter, the petitioner filed a protest petition and the protest petition was allowed only in respect of A1, but was dismissed as against A2 and A3. It is further submitted that as per section 202 of Cr.P.C. when no ground was made out as against the relevant accused persons, the learned Magistrate can dismiss the complaint. The trial Court having applied its mind to the materials available on record had entertained the complaint only against A1 and there being no perversity or illegality in the said order, no interference is called for. Accordingly he prays for dismissal of the petition.

7.This Court has considered the materials available on record and also adverted to the submissions advanced. A perusal of the impugned order, makes it clear that after elaborate discussion, the trial Court has arrived at a categoric conclusion that as regards removing of valuable securities of the company, there was a prima facie case was established. The entries into MOU between the parties is not in dispute, however, the non-compliance with the terms of the MOU has given raise to allegations and counter allegations. It is the case of the petitioner herein that a case under Section 138 of NI Act has been filed against the Bhagirathi Arya, Kanak Surana and the petitioner herein and the same was taken cognizance of by the competent Court. However, the trial parallel proceedings by the parties has put brakes on the trial Court from proceedings further in the case under Section 138 of NI Act. Further, the trial Court has observed that respondents 1 and 2, did not actively participate in the affairs of the company and hence implicating them as accused in the private complaint cannot be sustained and accordingly, dismissed the protest petition as against A2 and A3. The reasons given by the court below for assigning at the said finding is that is reasonable and this Court is of the considered view that no interference is narrated with the said order of the Courts below.

8.In respect of the allegation against A1 for removing all valuables and carrying official loss to the company, the trial Court held that there was a prima facie case established and the case against him under Section 420 IPC is made out for taking cognizance. The finding recorded by the trial Court for proceeding against A1 while dismissing the petition as against A2 and A3 is based on reasonings, which are that is reasonable.

9. In view of the above and in the absence of any material I do not find any error in the order passed by the learned Judicial Magistrate-I, Pondicherry and accordingly, the same is confirmed and this Revision petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Judicial Magistrate-I, Pondicherry.

2.The Station House Officer,
Kirumampakkam Police Station, Puducherry.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.Sasidharan, Advocate, S.R.No.8260
+1cc to the Public Prosecutor(Puducherry), S.R.No.8773

CRL. R.C. NO. 1150 of 2018

AK(CO)
CB(28/07/2020)