

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3125 of 2018
Crl.M.P.Nos.1326 & 1327 of 2018

1. P.Baskaran
2. V.Umapathy

.... Petitioners/Accused 1 & 2

Vs.

S.Venkatesh

....Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in C.C.No.4455 of 2017 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, and quash the same as it has no prima facie case as against the petitioners.

For Petitioners: Mr.N.Sudharshan

For Respondent : Mr.A.V.Arun

O R D E R

This petition has been filed to quash the proceedings in C.C.No.4455 of 2017 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, thereby taken cognizance for the offences under Sections 406 and 420 of IPC r/w. 34 of IPC, as against the petitioners.

2. There are two accused, in which the petitioners are arrayed as A1 and A2. The learned counsel appearing for the petitioners submitted that the petitioners and the respondent/defacto complainant are the directors of the company called V3 Techno Solutions Pvt Ltd. The equity shares are divided among the three directors and 350 shares were allotted in the name of the first petitioner and another 350 shares were allotted in the name of the respondent and remaining 300 shares were allotted in the name of M.Mery Jeyaseeli. Initially the first petitioner and the respondent running the company for a brief period and the respondent abandoned the company, since the company is situated in the building belongs to the respondent

herein. The said M.Mery Jayaseeli never visited the company and she never attended any General Body Meeting. While being so, the said M.Mery Jayaseeli submitted her resignation from the directorship and her share of 300 was remind in the company and not allotted to any of the existing directors. The company decided to increase share capital apart from the retired director's share and the second respondent was included in the directorship of the company and he was allotted a share of 50. Therefore the entire allegations made in the complaint are completely false. Even assuming that the allegations are true, no offences under Sections 406 or 420 of IPC are attracted as against the petitioners.

3. Per contra, the learned counsel appearing for the respondent submitted that without issuing notice to the respondent, in order to dislodge the respondent from the directorship, an extra ordinary general body meeting was conducted by the petitioners herein, that too without the knowledge of the respondent and consent from him. Thereafter due to the protests raised by the company auditor and the respondent herein, the petitioners acted in a hurried manner and filed the connected records of the company with the ROC with the help of two chartered accountants to suit their convenience. They also transfered 400 shares of the company and equity share of Rs.100/- each to the first petitioner, in order to make him as major share holder of the company and dislodge the respondent from the company being major share holder of the company. Therefore, they have committed the offences and prayed for dismissal of the quash petition.

4. Heard Mr.N.Sudharshan, learned counsel appearing for the petitioners and Mr.A.V.Arun, learned counsel appearing for the respondent.

5. There are totally two accused and the petitioners are arrayed as A1 and A2. The respondent filed private complaint and the same has been taken cognizance for the offences under Sections 406 and 420 of IPC, as against the petitioners. On perusal of the complaint allegations are that the petitioners without issuing any notice to the respondent conducted extra ordinary general body meeting in order to dislodge the respondent from the company. Thereafter, they themselves passed resolution and transferred 400 shares of the company, equity shares of Rs.100/- each to one P.Baskaran, in order to make him as major share holder of the company and also to dislodge the respondent/ complainant from the company being major share holder of the company.

6. The learned Magistrate have taken cognizance for the offences under Sections 406 and 420 of IPC. It is relevant to

extract the offences under Sections 406 and 420 of IPC :-

"406. Punishment for criminal breach of trust -Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

.....

420. Cheating and dishonestly inducing delivery of property -Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

7. On reading of the entire complaint, there is absolutely no ingredients or prima facie material available to attract the offences under Sections 406 and 420 of IPC as against the petitioners. The entire allegations are civil in nature and therefore the remedy is available only before the Company Law Tribunal under the Companies Act. Therefore, the present complaint is clear abuse of process of Court and it cannot be sustainable as against the petitioners herein. Further to attract the offence under Section 406 of IPC there must be an inducement and in the complaint there is no allegation about the inducement. Further to attract the offence under Section 415 of IPC, there must be clear instigation with intention. The entire allegations made in the complaint are completely different and no way attracted the offences under Sections 406 and 420 of IPC.

8. In view of the above discussions, this Criminal Original petition is allowed and the proceedings in C.C.No.4455 of 2017 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai, is hereby by quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

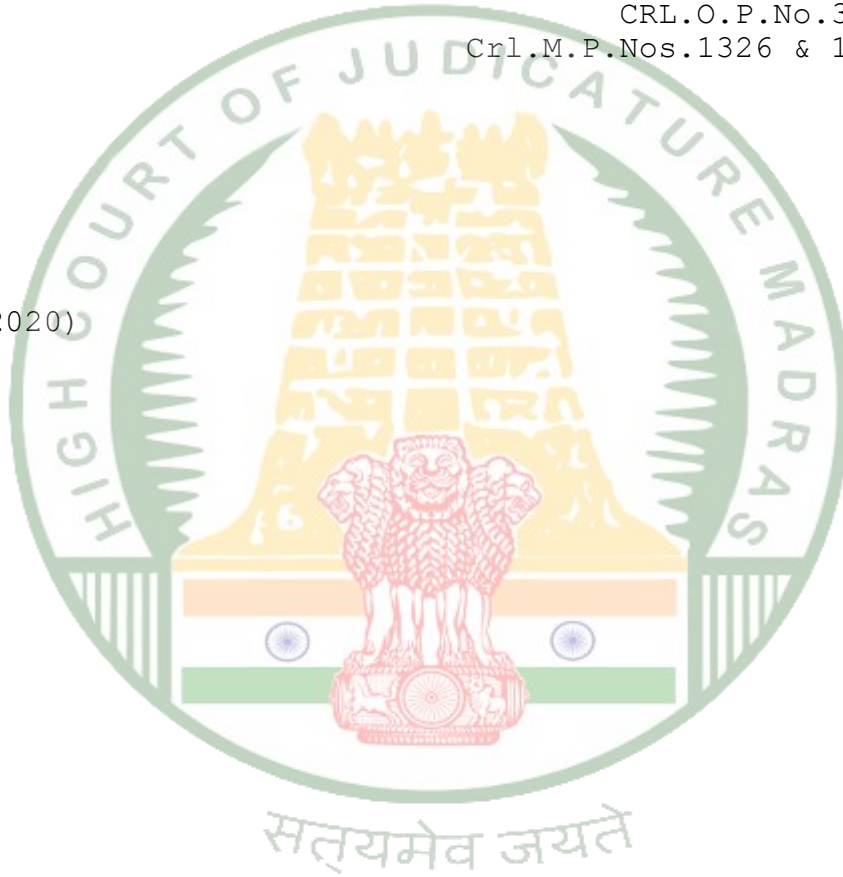
To

The Chief Metropolitan Magistrate,
Egmore, Chennai

+1cc to Mr.N.Sudharsan, Advocate, Sr.No.21602

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CA (CO)
GS (23/07/2020)



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