IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2020
PRONOUNCED ON : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.13021 of of 2020
and
CRL.M.P.Nos.5074 & 5075 of 2020

Sterling Infotech Limited
Represented through its
Managing Director,
A.Subramanian
D2, Sri Kalki 21 Bazulla Road,
T.Nagar, Chennai – 600 017
presently residing at
2A, Arihant Vedant,
42, Malony Road, T.Nagar,
Chennai – 600 017 ... Petitioner

Vs.

Inspector of Police,
SPE/ CBI/ ACB / Chennai
Haddows Road,
Shastri Bhavan
Chennai ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to Call for the records relating to the impugned order passed in Memo S.R.No.5132 of 2019 in C.C.No.29 of 2006 dated 16.07.2020 on the file of the Learned XIV Additional Special Judge for CBI cases at Chennai and set aside the same.

For Petitioner : Mr. N.P.Vijay Kumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI cases

ORDER

This Criminal Original Petition has been filed praying to call for the records relating to the impugned order passed in Memo S.R.No.5132 of 2019 in C.C.No.29 of 2006 dated 16.07.2020, on the file of the Learned XIV Additional Special Judge for CBI cases at Chennai and set aside the same.

2.The learned counsel appearing for the petitioner would submit that the Sterling Infotech Ltd (hereinafter referred as Company) is arrayed as Accused No.5, in the charge sheet. A5-Company incorporated under the Laws of Companies Act, 1956. The Company represented by one Subramanian, who was the Director of the Company and his resignation was accepted by A5 Company on 14.12.2007, under Form 32, which is a public document. The respondent having arrayed 5th Accused as a party in the Charge Sheet, ought to have served summons at Registered Office of 5th Accused Company. Instead, the respondent chosen to serve petitioner in person. The Lower Court took cognizance of the offences, as per report filed by the respondent under Section 173 Cr.P.C., after superannuation of petitioner. At no point of time, the petitioner was the Managing Director of the 5th Accused company and he is only an employee and not a controlling or decision making authority of 5th Accused company. In the

Charge Sheet that 5th Accused shown to be represented by the petitioner as Managing Director, which is incorrect. Petitioner having superannuated and resigned from the Board of Directors does not have Authority to represent the A5-Company. The petitioner does not have any power to act for or on behalf of the 5th Accused Company. The respondent served the summons on the petitioner only on the ground that petitioner represents A5-Company, as he was a then Director of the Company.

3.It was further contended by the learned counsel for the petitioner that the petitioner in his individual capacity had no powers in the operation and managing the affairs of the 5th Accused Company. It is the Group Chairman, who gives direction to the Board of Directors. The said Board of Directors had only all the powers with regard to the Operation of A5 Company. The act by respondent in serving Summons on the petitioner is bad in law, *mala fide*, and illegal. The petitioner had filed a petition in Crl.M.P.No.6057 of 2017, under Section 305 of Cr.P.C., stating that the petitioner is not an authorized person of A5 Company, which was dismissed by this Court on 22.05.2019. Against which, the petitioner preferred a Revision before this Court in Cr.R.C.No.704 of 2019.

4.It is his further submission that the petitioner, during the course of the proceedings came across certain information from "mca.gov.in" which is the official web site of Ministry of Corporate Affairs, which is public domine, that A-5 Company's name has been changed from "STERLING INFOTECH LIMITED" to "SIVA INDUSTRIES AND HOLDINGS LIMITED". This fact was brought to the notice of this Hon'ble Court by Memo dated 12.09.2019 and the Lower Court by Memo dated 06.11.2019. This Court, by its order dated 17.12.2019, closed the Crl.R.C.No.704 of 2019, giving liberty to the petitioner to take all the necessary grounds before the Lower Court. Thereafter the petitioner filed a memo in Sr.No.5132 of 2019 and the prosecution filed its reply to the memo stating that M/s.Sterling Infotech was in existence when evidence collected and the charge sheet filed and the case is now under trial. As regards to the new fact mentioned in the memo, it has to be verified.

5.Adding further, the learned counsel for the petitioner submitted that the lower Court failed to consider the factual aspect of the reply filed by the prosecution, but directed the petitioner to answer certain questions which information is not available with the petitioner. The Lower Court failed to direct the prosecution to take necessary action to summon the appropriate party to the proceedings. The petitioner is made as a scape-goat in the entire proceedings.

In the present case, the lower Court mechanically issued summons to the petitioner to his residential address, when A5 Company had its own registered office. The lower Court failed to consider the information provided by the petitioner through the Memo Sr.No.5132 of 2019, which is taken from Public Domine. The Lower Court erred in coming to a conclusion that because the petitioner filed the Memo Sr.No.5132 of 2019 about the change of name of the 5th Accused, the petitioner would be having all the documents and information. The petitioner's reply to questions raised by the Lower Court is rejected without any due consideration. The Lower Court ought to have directed the prosecution to obtain all the information from the Ministry of Corporate Affairs under whom the Registrar of Companies functions and not to petitioner. The Impugned order is not in accordance with law and beyond jurisdiction and therefore, the learned counsel for the petitioner prays to quash the proceedings.

6.*Per contra,* the learned Special Public Prosecutor, appearing for the respondent would submit that after investigation the respondent filed the final report against one Kalpagam Bhaskaran(A1) and 5 others for the offences under Sections 120-B r/w 420 of IPC., and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. The accused by fraudulent transfer, wrongful loss to the Government of Tamil Nadu by reduction of stamp duty during the period 2001-2002. Now, the Memo for the name change of the 5th Accused Company is filed before the learned XIV Additional CBI Court, Chennai, by M/s.Sterling Infotech Ltd., the petitioner/A5. One A.Subramanian, Managing Director of M/s. Sterling Info-tech Ltd.,(A5) participated in the entire transaction for the company and also in his individual capacity as whole time Director in this case on behalf of A5-Company. During the period 2001-02 the said Subramanian entered into a criminal conspiracy with the other accused, created fraudulent documents, suppressed the facts, and registered the land alone without showing the building constructed thereon, in order to evade payment of stamp duty and to evade Income Tax. The said Subramanian signed in all the related documents and applications dishonestly in his personal as well as in the capacity as whole time Director of M/s. Sterling Info-Techn Ltd. The prosecution has now arrayed the petitioner in its individual capacity as A7.

7.I have considered the rival contentions and perused the materials available on record.

8.On perusal of the records, it is seen that Sterling Infotech Ltd., is arrayed as Accused No.5, in the charge sheet, petitioner has been arrayed as a person representing the A-5 Company. The respondent filed the final report against one Kalpagam Bhaskaran(A1) and 5 others for the offences under Sections 120-B r/w 420 of IPC., and Sec.13(2) r/w 13(1)(d) of Prevention of

Corruption Act, 1988. The accused involved in fraudulent transfer and wrongful loss to the Government of Tamil Nadu to the tune of Rs.2,10,20,635/- by reduction of stamp duty, during the period 2001-02. Now, the Memo for the name change of the 5th Accused Company is filed before the learned XIV Additional CBI Court, Chennai, by M/s.Sterling Infotech Ltd., the petitioner/A5. The said Subramanian, had participated in the entire transaction in his individual capacity as whole time Director, in this case on behalf of A5-Company. During the period 2001-02 the said Subramanian entered into a criminal conspiracy with the other accused, created fraudulent documents, suppressed the facts, and registered the land alone without showing the building constructed thereon, in order to evade payment of stamp duty and to evade Income Tax. The said Subramanian signed in all the related documents and applications dishonestly in his personal as well as in the capacity as whole time Director of M/s. Sterling Info-Tech Ltd. On filing of the charge sheet by the Investigating Agency, the learned XIV Additional Special Judge for CBI Cases, Chennai, took cognizance of the offence in C.C.No.29 of 2006 and the trial is in progress.

9.Earlier, the petitioner has filed a petition under Section 305 Cr.P.C., in C.M.P.No.6057 of 2017 before the trial Court, which came to be dismissed on 22.05.2019. Challenging the same, he filed the criminal revision before this Court in Crl.R.C.No.704 of 2019 and this court, by order, dated 17.12.2019 disposed the revision, granting liberty to raise all the grounds before the trial Court. Thereafter, the petitioner has filed a Memo in Sr.No.5132 of 2019 informing the trial Court that he retired from A5 company way back on 14.12.2007 and produced Form-32 to that effect.

10.On perusal of the Form-32, it is seen that the petitioner was the whole time Director of A5 company and he admitted the same in his letter dated 13.12.2007 which was addressed to the Board of Directors. On 14.12.2007, one D.Ram Prasad was consented to act as Director of M/s.Sterling Infotech Limited. These are the documents which are filed before registering the case. Now the petitioner is contending, he came to know on browsing the "mca.gov.in" (Official Website of Ministry of Corporate Affairs) that M/s.Sterling Infortech Limited was incorporated on 23.02.1994 and the name of said company has been changed to M/s.Siva Industries and Holdings Limited from 23.09.2009, in the year 2019 is not sustainable.

11.In this case, the offence had taken place in the year 2001-2002. Admittedly, during that period, the petitioner was the whole time Director of A5 Company. Representing A5 company, he filed applications to the appropriate authority for NOCs and entered into an agreement with A4 and represented to appropriate authority including A1 to A3 and also presented the sale deed to A6.

Thus, the complicity of the petitioner in the offence was through and through and these acts were committed by the petitioner much before he resigning A5 company as whole time Director. Hence, the name change of A5 company would no way affect the right of the petitioner or the case in any manner. The prosecution in paragraph No.5 in the reply, to the Memo, has stated that *"In this circumstances, it is therefore humbly submitted that this Honourable Court may be pleased to permit some time to investigate the same and till such time, the trial proceedings may be stayed in the interest of justice"* is unwarranted on the above facts. Thus, the trial Court had rightly rejected the Memo filed by the petitioner.

12.The petitioner has committed the offence during the year 2001-2002, at that time, he was the whole time Director till his resignation on 14.12.2007. Further, the investigation in this case has been completed and charge sheet filed before the trial Court in the year 2006 and the same taken on file as C.C.No.29 of 2006. The change of name of A5 company from M/s.Sterling Infotect Limited to M/s.Siva Industries and Holdings Limited on 23.09.2009 has no bearing in this case.

13. view of the above, this Court does not find any illegality or infirmity in the order dated 16.07.2020 in SR.No.5132 of 2019 in C.C.No.29 of 2006

passed by the learned XIV Additional Special Judge for CBI Cases, Chennai and the Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

01.04.2021

Index : Yes/No
Internet : Yes/No

MPK
To

1.The XIV Additional Special Judge for CBI cases,
Chennai

2.The Inspector of Police,
SPE/ CBI/ ACB / Chennai
Haddows Road,
Shastri Bhavan
Chennai

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

MPK

PRE-DELIVERY ORDER MADE IN

Crl.O.P.No.13021 of 2020

01.04.2021