IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2020
PRONOUNCED ON : 15.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.32223 of 2014 and
Crl.M.P.Nos.1 & 2 of 2014

1. M/s.Aidees Electronics Pvt Ltd.,
Rep. by its Directors,
a)Mrs.Sakunthala Gopalan,
b)Mr.Sarath Gopalan.

2. Mrs.Sakunthala Gopalan,
Directors,
M/s.Aidees Electronics Pvt Ltd.,

3) Mr.Sarath Gopalan,
Directors,
M/s.Aidees Electronics Pvt Ltd.,
All having office at,
No.456, R.K.Shanmugham Salai,
K.K.Nagar, Chennai-600 078. ... Petitioners/ Accused No. 1 to 3

Vs.

Dr.P.Rajagopalan ... Respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.5351 of 2014 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet and to quash the same in sofar as it relates to the petitioners.

For Petitioner : Mr.P.Palaninathan
For Respondent : Mr.R.Nandhakumar, Legal Aid Counsel

ORDER

The petitioners, who are the accused on a private complaint filed by the respondent in C.C.No.5351 of 2014, before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, have filed the quash petition.

2.Notice was ordered to the respondent on 26.02.2020 and the same was returned as 'Left'. Hence, this Court by order dated 24.07.2020 appointed Mr.R.Nandhakumar as Legal Aid Counsel for the respondent.

3.The gist of the case is that the 1st petitioner/M/s.Aidees Electronics Private Limited (hereinafter called as 'Company') represented by its Managing Directors/2nd and 3rd petitioners and the respondent entered into Memorandum of Understanding (hereinafter called as 'MOU') on 25.07.2007. As per the terms and conditions of MOU, the respondent invested a sum of Rs.13,00,000/- towards equity share capital for the Company, for the purpose of construction of factory on the plots allotted by the Government of Tamil Nadu in the Electrical Industrial Estate at Kakkalur, Thiruvallur District. As per the MOU, the respondent was conferred with the post of Chairman and the Director of the Company with a power to sign the cheques and exercise powers under the Companies Act, 1956. Further, it was agreed that the Company to pay monthly remuneration and allot equity shares to the respondent. The Company was carrying on the business on the strength of the money received from the respondent for some time. Thereafter, the Company was running on loss and its Managing Director late Mr.P.Gopalan passed away on 23.11.2010. After the demise of Mr.P.Gopalan, the 2nd and 3rd petitioners became Managing Director and Director of the 1st petitioner company. The respondent was under the impression that the 2nd and 3rd petitioners, who took over the company will honour the MOU and repay the money advanced. On the contrary, the 2nd and 3rd petitioners evaded to get in touch with the respondent. Thereafter, the respondent called for board meeting to resolve the issue on 05.03.2011 and issued notice to the 2nd and 3rd petitioners. The 2nd and 3rd petitioners failed to attend the meeting and they stated that the respondent is not Chairman and not even a Director of the Company and he was only a shareholder. Hence, the respondent lodged a private complaint before the learned XVIII Metropolitan Magistrate, Saidapet in C.C.No.5351 of 2014, against which the present petition.

4.The learned counsel for the petitioners filed typed set of papers and submitted that the respondent had entered into MOU with the late Mr.P.Gopalan, Managing Director of the Company on his individual capacity. The learned counsel further submitted that no records are available in the Company to show the respondent invested Rs.13,00,000/- towards equity share capital and no resolution was passed to the effect that the respondent was appointed as Chairman and Director of the Company. The said Mr.P.Gopalan passed away on 23.11.2010. The contention of the respondent is that in violation of MOU dated 25.07.2007, the 2nd and 3rd petitioners cheated and misappropriated a sum of

Rs.13,00,000/- of the respondent, hence the above complaint came to be filed. For the same relief, the respondent already filed Company Petition in C.P.No.139 of 2011 on 07.03.2012 before this Court for winding up the Company. Further, the respondent as shareholder filed a complaint before the learned Additional Chief Metropolitan Magistrate, Egmore in E.O.C.C No.143 of 2013 under Sections 621 and 623 of Companies Act, 1956.

5.The learned counsel for the petitioners further submitted that the respondent is not a Director and Chairman of the Company, which the was admitted by the respondent in the private complaint filed before the learned Additional Chief Metropolitan Magistrate, Egmore in E.O.C.C No.143 of 2013 and projected him as shareholder. Likewise in the Company Petition, the respondent has not ascribed him as Director or Chairman of the Company and he stated that he gave Rs.13,00,000/- to the Company, but the same was not repaid and further contention that the Company has become sick and is not functioning and he had no chance to recover the invested amount, has filed the winding up petition before this Court.

6.The admitted case of the respondent is that the respondent invested an amount of Rs.13,00,000/- on 25.06.2007 in the Company. On perusal of MOU, it is seen that the respondent-Mr.P.Rajagopalan had entered into MOU in his individual capacity and no corresponding resolution are found in the records of the Company. From the records of the company, it is seen that the respondent was allotted 6000 equity shares at the value of Rs.100/- per share and a sum of Rs.63,000/- as unallotted money in the balance sheet of the Company in the year 2008-2009. From the statement of accounts of the bank, it is seen that the respondent was paid a sum of Rs.6,37,000/- by way of cheque by the Company on 07.09.2007 and the same was debited from the account of the Company in Bank of India, K.K.Nagar Branch, Chennai. The said transaction had taken place through cheque No.320893. The said cheque has been deposited in the account of the respondent with the State Bank of India, Mylapore Branch in account number 10436630924 and the amount of Rs.6,37,000/- had been credited to the account of the respondent. Further, from the records, it is seen that the Company had returned a sum of Rs.6,37,000/- to the respondent on 07.09.2007 and allotted shares worth of Rs.6,00,000/-, which is reflected in the balance sheet of the Company from the year 2009. It is also admitted that the 2nd and 3rd petitioners were not Directors, when the alleged MOU was executed in the year 2007. The 2nd and 3rd petitioners became Directors of the Company after the demise of Mr.P.Gopalan, in the year 2010. The respondent suppressed the vital fact of filing winding up petition before this Court in C.P.No.139 of 2011 as well the private complaint in E.O.C.C No.143 of 2013 before the learned Additional Chief Metropolitan

Magistrate, Egmore and projected as though the 2nd and 3rd petitioners were received amount of Rs.13,00,000/- and failed to repay the same and cheated and misappropriated.

7.He further submitted that the respondent clearly suppressed the above facts and did not approach the trial Court with clean hands. The undisputed document such as bank statement and balance sheet of the Company, winding up petition in C.P.No.139 of 2011 and the private complaint filed before the Additional Chief Metropolitan Magistrate, Egmore in E.O.C.C No.143 of 2013 would prove the contention of the respondent as false. The respondent with an ulterior motive to brook vengeance, has filed the above private complaint and hence, prayed for quashing of the proceedings.

8.The learned counsel for the respondent submitted that the respondent is a close relative of late Mr.R.Gopalan, Managing Director of the Company through his wife. The Company was promoted and incorporated in the year 1990 by one late Mr.P.Gopalan and his two brothers Kannan and Aravamudhan. The Company was formed for carrying on business of manufacturer, distribution and trade of Electronic Systems and Units. Thereafter, the Company decided to set up its own manufacturing unit to manufacture Electronics items. For this purpose, they approached the Government of Tamil Nadu for allotments of plots in the Electrical Industrial Estate at Kakkalur in Thiruvallur District. The Government of Tamil Nadu allotted plots 4 and 5 in the Electrical Industrial Estate in the year 1992, on the prime condition that the Company to construct the factory in the said plots within a reasonable time and commence manufacturing process. The Company had no sufficient funds to construct the factory in the said plots and the Government contemplated to take back the allotted plots. At that time, late Mr.P.Gopalan, Managing Director of the Company approached the respondent for financial help in the year 2007.

9.The late Mr.P.Gopalan, on earlier occasion in the year 2004 availed financial assistance from the respondent. Thereafter, on the request of late Mr.P.Gopalan, the respondent invested Rs.13,00,000/- and the same to be received towards the share capital of the Company. The respondent was made as Chairman and head of the Company and the Company has to pay Rs.20,000/- per month to the respondent. Thereafter, MOU was entered between the respondent and the late Mr.P.Gopalan on 25.07.2007. With the money received from the respondent, a factory was constructed and the Government of Tamil Nadu by sale deed dated 30.04.2009, registered the said plots at Kakkalur to the Company. Till September 2008, the respondent was receiving the amount of Rs.20,000/- per month. Thereafter, the late Mr.P.Gopalan informed the respondent that the Company finance was in the bad condition and he is unable to pay the amount of

Rs.20,000/-. On 23.11.2010, the said Mr.P.Gopalan passed away and the bank officials had approached the respondent for recovery of dues.

10.The learned counsel for the respondent further submitted that the respondent being the Chairman had called the 2nd and 3rd petitioners for Board Meeting on 05.03.2011. The 2nd and 3rd petitioners were sent a reply stating that the respondent was not Chairman or Director of the Company and he was only a shareholder. The respondent, on verification of the records of the company, found that he was cheated and misappropriated by the petitioners and he was not made as a Chairman or Director as promised by the late Mr.P.Gopalan, when the amount of Rs. 13,00,000/- was received during June 2007. For the deception and misappropriation, the respondent has filed the above private complaint before the trial Court. The respondent approached the learned Additional Chief Metropolitan Magistrate, Egmore by way of filing a private complaint in E.O.C.C No.143 of 2013 as per provisions of the Companies Act, 1956. Further, the respondent has filed a winding up petition before this Court in C.P.No.139 of 2012. The Company Petition as well as the private complaint in E.O.C.C No.143 of 2013 will no way be a bar for filing the above criminal complaint. The respondent approached the Company Court and Economic Offence Court for violation of the provisions of Companies Act, 1956 and approached the learned XVIII Metropolitan Magistrate, Egmore is for commission of offence under Indian Penal Code. Both the complaint can coexists.

11.The respondent was cheated to the tune of Rs.40,00,000/-, including repayment of Rs.13 lakhs with interest of 25% and non payment of remuneration as Chairman of the Company. Further, the petitioners on receipt of summons, immediately rushed to this Court, filed the above petition and stalled the progress of the trial. The trial Court on considering the contention of the respondent and on the materials produced, had taken cognizance of the offence. Thus, the points raised by the petitioners are to be decided during trial and not in this petition.

12.This Court considered the rival submissions and perused the materials available on records.

13.It is seen that the 1st petitioner company was incorporated in the year 1990 by late Mr.P.Gopalan and his brothers. The Company was formed for the purpose of carrying on business of manufacture, distribution and trade of Electronic Systems and Units. In the year 1992, the Company approached the Government of Tamil Nadu, seeking allotment of plots in Electrical Industrial Estate at Kakalur. The Company was allotted plots 4 and 5 on 19.08.1992 and one of the condition was that the construction of the factory to be completed within a stipulated time. Thereafter, the Company had put up construction and the sale deed for the plots was executed by the Government of Tamil Nadu in document No.5218 of 2009 on 30.04.2009 in Sub Registrar Office, Thiruvallur.

14.It is not in dispute that the MOU dated 25.07.2007 was entered into between the respondent and the late Mr.P.Gopalan. From the MOU, it is seen that an amount of Rs.13,00,000/- has been received from the respondent towards 25% interest, in which Rs.6,66,660/- to be paid towards equity share capital and Rs.6,33,340/- to be considered as share premium. From the bank statements of the Company, it is seen that on 07.09.2007 an amount of Rs.6,37,000/- had been debited from the Company account and credited to the respondent's bank account. Hence, the petitioners investment of Rs.13,00,000/- had been account for.

15.Further, there is no materials to show that the respondent was made as Chairman or Director of the Company. It is admitted and found that the respondent is only a shareholder, that is the reason, the respondent prosecuted the petitioners before the learned Additional Chief Metropolitan Magistrate, Egmore in E.O.C.C No.143 of 2013 under Sections 621 and 628 of the Companies Act, 1956 as Shareholder and not as Chairman or Director of the Company. Likewise, for the debts of the Company, winding up petition was filed by the respondent in C.P.No.139 of 2012. In both petitions, the admitted case of the respondent is that he is only a Shareholder and not a Director or Chairman of the Company.

16.From the bank account and also the balance sheet of the Company, it is seen that the amount received from the respondent has been properly account for. The contention of the 2nd and 3rd petitioners that the respondent is not a Chairman or Director of the Company, for that reason, they refused to respond for the notice of the respondent calling for Board Meeting on 05.03.2011, is proper. Further, it is admitted that the late Mr.P.Gopalan passed away on 23.11.2010 and the 2nd and 3rd petitioners were not Directors of the Company during that time. The 2nd and 3rd petitioners became directors later.

17.The contention of the respondent that the 2nd and 3rd petitioners failed to act as per MOU dated 25.07.2007 and hence they committed the offence of cheating and misappropriation cannot be attributed against them. As could be seen from the evidence of the respondent in E.O.C.C No.143 of 2013, it is admitted by the respondent that till the death of Mr.P.Gopalan, he was alone carrying on business of the Company. Further, he admitted that he was neither Director nor a Shareholder of the Company as seen in the 20th Annual Report for the year financial year 2010, it was the late Mr.P.Gopalan the only Managing Director of the Company. The 2nd petitioner becomes signing authority of the Company after the death of her husband Mr.P.Gopalan. The respondent admitted receipt of Rs.6,37,000/- from the Company and also allotment of shares.

18.In view of the above, by no stretch of imagination, it could be said that the petitioners have committed the offence of Section 406 and 420 IPC, much less any offence. Hence, the continuation of proceedings against the petitioners would amount to abuse of process of law. Accordingly, the proceedings in C.C.No.5351 of 2014 pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, is hereby, quashed. This Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

19.This Court places appreciations to Mr.R.Nandhakumar, Legal Aid Counsel for the respondent for thorough preparation and effective arguments made in this case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

Crl.O.P.No.32223 of 2014

NRJK(CO)
RMP(24/11/2020)