

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2020

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.NO.32893 OF 2019

AND

W.M.P.NOS.33321 & 33322 OF 2019

M.Thiagarajan

... Petitioner

Vs.

State represented by,
The Sub-Inspector of Police,
CBI, AC-VI/SIT/New Delhi.
(FIR No.RC2202016 E0004)

... Respondent

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the respondent in C.C.No.239 of 2019 (pending on the file of the Chief Metropolitan Magistrate, Rouse Avenue Courts, New Delhi), dated 06.06.2018 and quash the same as against the petitioner.

For Petitioner : M/s.N.R.Elango, Senior Counsel for
M/s.M.Sathiavel

For Respondent : M/s.K.Srinivasan,
Special Public Prosecutor[CBI Cases]

ORDER

This Writ Petition has been filed to quash the proceedings in C.C.No.239 of 2019 on the file of the Chief Metropolitan Magistrate Court, Rouse Avenue Courts, New Delhi.

2.The case of the prosecution is that on 02.11.2016, a complaint was lodged by one S.Krishnakumar (Assistant Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs) against the petitioner and 11 others before the Additional Chief Metropolitan Magistrate, Economic Offences-I, Chennai for the offence under Sections 68, 628 r/w Section 211, Section 211(3C) and Section 211(1) r/w AS-I, 2, 18, 19, 26 and

Schedule VI of the Companies Act, 1956 and Section 629, 253 and 266A of the Companies Act, 1956 along with offences under Sections 34, 227, 233, 403, 405, 406, 409, 420, 464, 465, 471, 120-B of IPC.

3.The learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Chennai, after taking cognizance on 11.11.2016 on the complaint of the said Krishnakumar, assigned E.O.C.C.No.173 of 2016 and issued summons to all the 12 accused persons, wherein the petitioner is arrayed as 1st accused.

4.Subsequently on the same set of facts based on a complaint lodged by one Parthasarathy, Deputy Superintendent of Police, CBI, the respondent Police had registered a case in Crime No.RC 2202016 E0004 against the 5 accused persons for an alleged offence under Sections 120-B r/w 406, 420, 467, 471 of IPC. After completion of the investigation in the above said crime No. the respondent police had filed a final report before the learned Chief Judicial Magistrate, Patiala House Courts, New Delhi. The learned Chief Judicial Magistrate, Patiala House Court, New Delhi took cognizance over the same and assigned C.C.No.2 of 2018 and issued summons to all the accused, wherein the petitioner is arrayed as 2nd accused and thereafter, the case was transferred to the file of the Chief Metropolitan Magistrate Court, Rouse Avenue Courts, New Delhi and re-numbered as C.C.No.239 of 2019. Challenging the same, the present Writ Petition has been filed. Initially, the Registry of this Court raised a doubt for maintainability of the Writ Petition before this Court and subsequently this Court by its proceedings in Writ A.E.No.184 of 2019 dated 03.10.2019 directed the Registry to number and list the case.

5.The learned counsel for the petitioner would submit that the case in C.C.No.239 of 2019 is pending on the file of the Chief Metropolitan Magistrate Court, Rouse Avenue Courts, New Delhi and the case in E.O.C.C.No.173 of 2016 is pending on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Chennai would evidently revealed that these two proceedings operate in same fields is an unsustainable one and the same is liable to be quashed. He would further submit that Section 186 of the Code of Criminal Procedure mandates that in the event of two or more cases took cognizance of the same offence, then the High Court within local limits of whose appellate jurisdiction a Court first took cognizance shall decided which amongst the Courts to have taken cognizance shall inquire into and try the matter and thereafter, the proceedings before the other Courts shall be discontinued.

6.Since both the proceedings aroused out of the same set of transactions and the learned Magistrates' have taken cognizance of the same offences and therefore, out of the two proceedings

one proceedings pending against the petitioner ought to be discontinued. In order to avoid unnecessary harassment of the accused to appear and face trial in more than one Courts, necessary direction is to be issued to discontinue the subsequent proceedings in other Courts. Hence, it is submitted that the proceedings initiated in C.C.No.239 of 2019 pending on the file of the Chief Metropolitan Magistrate, Rouse Avenue Courts, New Delhi would ultimately tantamount to double jeopardy and it is a violation of article 20(2) of the Constitution of India and the same is liable to be quashed.

7.The petitioner filed a petition earlier before this Court to quash invoking Section 482 of Cr.P.C in Crl.O.P(SR)No.29404 of 2019 and this Court by an order dated 19.07.2019, dismissed the petition at the SR stage itself on the ground of non-maintainability. Further, the learned counsel for the petitioner relied upon the order of this Court in W.P(SR) Nos.69241, 69245 & 69249 of 2017, which was pleased to hold that a petition like the present one is maintainable vide order dated 22.08.2017.

8.Per Contra, the learned Special Public Prosecutor for CBI Cases appearing for the respondent would submit that there are two proceedings in respect of the offences punishable under the enactments. The complaint before the learned Additional Chief Metropolitan Magistrate, Economic Offence-I, Egmore, Chennai is for contravention of the provisions of the companies Act and the Prosecution before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi is for the offences under the provisions of IPC. Thereby, Section 186 of Cr.P.C will not made applicable to the present case on hand and the order relied upon by the petitioner in W.P(SR)Nos.69241, 69245 & 69249 of 2017 dated 22.08.2017 is not applicable to the facts of this case. The learned Special Public Prosecutor filed a counter on behalf of the respondent police and the same is extracted here under:-

“3.The instant Petition is liable to be dismissed on the sole issue of maintainability. The Petitioner, has in a mala fide manner, sought to invoke the Writ Jurisdiction of this Hon'ble Court when the same prayer sought for has been dismissed twice by this Hon'ble Court vide orders dated 19.07.2019 and 13.09.2019 in Crl.OP.No.SR.29404. By changing the nomenclature of the jurisdiction invoked and seeking the same remedy, the Petitioner is only trying to misuse the process of law and the present Petition amounts to forum shopping. As such, the instant Petition is liable to be dismissed, the same

being in the nature of a review and hit by the bar envisaged u/s 362 CrPC. This Hon'ble Court has already adjudicated upon the same issue and the issue is no longer res integra. Once a final order has already been passed, the Petitioner is at a liberty to seek appropriate remedy challenging the order dated 19.07.2019, as has been duly noted by this Hon'ble Court vide its order dated 13.09.2019. A copy of the order dated 19.07.2019 is annexed herewith as Annexure R-1. A copy of the order dated 13.09.2019 is annexed herewith as Annexure R-2.

4. Further, it is a settled position of law that the extraordinary jurisdiction of this Hon'ble Court must not be exercised ordinarily, and even in exceptional circumstances mandating invoking of the jurisdiction, only such High Court within whose jurisdiction the order of the subordinate court has been passed or then substantial/ material cause of action arises would have the jurisdiction to entertain the Petition. The CBI FIR was registered in Delhi and the Ld. CMM, Rouse Avenue Courts, New Delhi is now seized of the matter, with the cognizance of the offences having been taken vide order dated 28.06.2018. The Petitioner has, in a clandestine manner, not challenged the proceedings initiated by the Serious Fraud Investigating Office (SFIO) and not even made the SFIO a party to the proceedings in the present Petition or the previous petition bearing number Crl.OP.No.SR.29404. The scope of the prayer as Such 1S restricted to the CBI proceedings pending before the Ld. CMM, Rouse Avenue Courts, New Delhi in CC.No.239/2019. In light of the same, no case is made out by the Petitioner for invoking the extraordinary jurisdiction of this Hon'ble Court.

5. Even otherwise, under the Companies Act, 2013, a reading of S. 447 and S. 436(2) would have been a relevant consideration to file such a Petition. However, the Companies Act, 1956 has no identical provision which can support the claimor the issue raised by the Petitioner herein."

9. This Court has considered the submissions made on either side and perused the materials available on records.

10. Earlier the petitioner filed a petition to quash invoking Section 482 of the Code of Criminal Procedure in CrI.O.P(SR) No.29404 of 2019 and this Court by an order dated 19.07.2019, dismissed the petition by differentiating the offences involved in the complaint before the learned Additional Chief Metropolitan Magistrate, Economic Offence-I, Egmore, Chennai is for contravention of the provisions of the Companies Act and the prosecution before the Chief Metropolitan Magistrate, Patiala House Courts, New Delhi is for the offences under the provisions of IPC, which has been rightly pointed out by the learned Special Public Prosecutor for CBI.

11. Hence, without challenging the said order before the appropriate forum in the manner known to law, the petitioner again seeking a remedy by a way of filing a Writ is not maintainable. Accordingly, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Metropolitan Magistrate,
Rouse Avenue Courts, New Delhi.
2. The Additional Chief Metropolitan Magistrate,
Economic Offences-I, Chennai.
3. The Sub-Inspector of Police,
CBI, AC-VI/SIT/New Delhi.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Sathiavel, Advocate, S.R.No.4441

W.P.No.32893 of 2019

SV(CO)
CS/19/02/2020