

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019
PRONOUNCED ON : 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.Nos.30144 of 2019 and 24461 of 2016
and
Crl.M.P.Nos.11705 of 2016 and 4961 of 2016

- 1.M/s.QuestNet Enterprises India Pvt. Ltd.,
Represented by
Selvi.Pushpam Appala Naidu,
No.100, 2nd Floor, McNichols Road, Chetpet,
Chennai - 600 031, Tamil Nadu.
- 2.Selvi.Pushpam Appala Naidu,
Managing Director,
M/s.QuestNet Enterprises India Pvt. Ltd.,
D/o.Appala Naidu,
No.A, 8th Floor, High Breeze Apartment,
Ormes Road, Kilpauk, Chennai 600 010.
... Petitioners / Accused No.1 and 3 in both Crl.O.Ps

/vs./

- 1.The Inspector of Police, Crime Branch CID,
Metro-I, Egmore, Chennai - 8.
... 1st Respondent in both Crl.O.Ps
- 2.Assistant Director,
Directorate of Enforcement Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, Murugesu Naicker Complex,
No.84, Greaves Road, Thousand Lights,
Chennai - 600 006.

...2nd respondent in Crl.O.P.No.24461 of 2016

[R-2 is impleaded as per the Order of this Hon'ble Court dated
03.10.2017
made in Crl.M.P.No.4074 of 2017 in Crl.O.P.No.24461/2016.]

PRAYER in Crl.O.P.No.30144 of 2019: Petition filed under
Section 482 of Criminal Procedure Code, to call for the entire
records in C.C.No.3876 of 2009 now pending on the file of the
Special Magistrate for C.C.No.3876 of 2009 at Allikulam Road,
Chennai and quash all further proceedings against the Accused.

PRAYER in Crl.O.P.No.24461 of 2016: Petition filed under Section 482 of Criminal Procedure Code, to appoint an Advocate Commissioner to consider all the complaints and the legitimate claims made by those complainants, and recommend the said complaints for being compounded before the lower Court in C.C.No.3876 of 2009 on the file of the C.M.M., Egmore, Alikulam, Chennai.

For Petitioner: Mr.P.S.Raman
for Mr.P.Ramesh Kumar (in both Crl.O.Ps)
For R-1 : Mr.C.Iyyapparaj
Public Prosecutor (Crl. Side)
(in both Crl.O.Ps)
For R-2 :Mr.N.Ramesh
(in Crl.O.P.No.24461 of 2016)

COMMON ORDER

The petitioners herein have been charged alleging that they had collected a sum of Rs.321,06,07,850/- from 1,07,999 persons across the State of TamilNadu under Money Circulation Scheme and therefore, have committed the offences under Section 420 IPC r/w Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The petitioner's company was originally started in the year 2004 and the nature of business was that any customer with interest could buy products ranging from Gold and Silver Medallions, Jewellery, Watches to vacation packages. The petitioner's Company promoted sale of products through its customers by network marketing and the scheme was to the effect that if a customer is interested, he/she can sell the products to new customers, for which they would get commission delivered from the sale.

2. The issue arose on a complaint before Madurai City Central Crime Branch in Crime No.68 of 2002, wherein the complainant alleged that the petitioners had cheated him. This complaint was followed by various other complaints through out the State. The petitioners then came forward to settle all the customers and thereby sought for compounding the offences and accordingly, a petition in Crl.O.P.No.22943 of 2009 under Section 482 Cr.P.C., came to be filed before this Court for having the case compounded by settling the claims. This Court was of the view that the interests of justice would best be served by directing the lower Court to permit compounding of complaints between the accused Company and the claimants and accordingly, further prosecution of the case against the petitioners was put on hold. The respondent had challenged the said order before the Hon'ble Apex Court in Criminal Appeal Nos.823 to 825 of 2010 and by order dated 19.04.2010, the submissions of the State as well as the

petitioners that the entire issue could be resolved to avoid unnecessary inconvenience to the complainants/persons, who invested money with the petitioner's Company, if a Commissioner is appointed for disbursement, were taken into consideration. Approving such submissions made, the Hon'ble Apex Court had appointed Justice Mr.K.P.Siva Subramaniam, Former Judge of the Madras High Court as 'Settlement Commissioner' and prescribed guidelines for settling the claims. The Hon'ble Apex Court had also directed the Settlement Commissioner to recommend compounding of the legitimate claims to the Court within a period of six months ending on 15.12.2010, which subsequently came to be extended till 29.02.2012. After due publicity, the claimants/victims were invited for the purpose of adjudication. The commission received 40,880 claims, out of which, the petitioners' company had settled 1958 claimants alone. By a final report dated 26.02.2012, the Hon'ble Settlement Commissioner had observed as follows:

'73.I) I have to point out that the expectations of the Hon'ble High Court and Hon'ble Supreme Court in having accepted the plea on the part of the Company to compound the complaints have not been fulfilled. Both the Courts had accepted the request of the Company to compound the cases in the interest of large number of aggrieved persons belonging to lower and middle class even overlooking objections from the police. The attitude of the Company in refusing to settle the claims of about 36650 out of 40880 claimants is unacceptable and I can only say that the company has deliberately and completely misled everyone including the Hon'ble Court.

II)The Company had agreed to refund the amounts to a total number of 2145 claimants for a sum of Rs.5,74,30, 996/- (Rupees five crores seventy four lakhs, thirty thousand nine hundred and ninety six only).

III)However out of the 2,145 claimants there has been no response from 187 claimants who would have been entitled to a total amount of Rs.33,53,740/- (Rupees thirty three lakhs, fifty three thousand seven hundred and forty only)

IV)As far as individuals who had given complaints to the police, it is seen that there are 795 out of 2145 complainants. Out of the said 795 complainants, 742 have received the

payments and hence, the Settlement Commissioner is forwarding /filing a memo before the Chief Metropolitan Magistrate, Chennai recommending compounding of the 742 complaints. The remaining 53 complainants have not come forward to receive the refund.

V)As regards claimants who are not complainants before the police, settlement has been arrived at with 1216 claimants. I am satisfied that the settlement thus arrived in their cases are acceptable as they have agreed on their own discretion and have expressed full satisfaction.

VI)In terms of the order of the Hon'ble Supreme Court dated 21.02.2012, we have stopped the claimants from seeking to receive the pay orders from 15.02.2012. About 9 claimants had appeared before me before 15.02.2012 and as their documentation was not complete, I had given them one week time for compliance and they have complied with the requirements on or before 22.02.2012. The pay orders issued in the name of others who have not approached the office of the Settlement Commissioner will be returned to the Bank and it will be deemed that the respective claimants have not accepted the proposals for compounding.

VII)I must state that I had discharged my duties to the best of my ability and in the event of any further directions to be issued, I undertake to discharge such directions without any further remuneration.'

Since the period of the Commission came to an end on 29.02.2012, the Hon'ble Settlement Commissioner had made a request for discharging him from the Commission. While that being so, by a subsequent order of this Court dated 15.02.2013 passed in Crl.R.C.No.1477 of 2012, the respondent police had conducted further investigation and submitted a final report under Section 173(8) of Cr.P.C., before the learned Metropolitan Magistrate, Egmore on 12.01.2016 which was taken on file in C.C.No.3876 of 2009 and the same is now pending trial.

3. Since the Settlement Commissioner appointed by the Hon'ble Apex Court had recused himself from the Commission, this Court, by order dated 23.10.2017, had appointed Hon'ble Mr.Justice S.Jagadeesan, former Judge of the Madras High Court to further continue with the Commission for the purpose of

disbursing the amounts to the claimants. Accordingly, the claims came to be adjudicated by the new Hon'ble Settlement Commissioner and after about two years, by a final report dated 12.01.2019, 15,486 complainants were settled on merits and the remaining complainants either did not revert back or were not traceable as per the report of the Commissioner. The settlement thus came to an end.

4. Learned counsel for the petitioners submitted that as per the orders of this Court, 15646 complainants have also been settled out of 17361 and by taking into account the cases relating to double entry, uneligible claims, absence of supporting documents, 67 claimants alone now remain to be settled. Learned Senior counsel would submit that as on date, sufficient amounts in the bank account attachment are still available for disbursement and that the said amount would more than satisfy the claims of these 67 persons and therefore, the criminal proceedings should be quashed.

5. The respondent herein had filed a counter affidavit stating that totally 1005 claims are still pending, which includes 141 claims, who refused the settlement and wanted to get along with criminal proceedings.

6. The question that now arises is when 15486 complainants have already been settled and 1470 complainants had withdrawn the complaints having been satisfied with the Commission that had received already, whether the criminal proceedings should be continued against the petitioners on the stand taken by 141 customers, who entitled to get along with the criminal complaint.

7. Originally, in the year 2009, when the petitioners had approached this Court seeking to have the criminal case compounded in view of their offer to settle the claims, this Court, in its order dated 16.11.2009 passed in Criminal Original Petition No.22943 of 2009 was of the view that in the interests of justice, the lower Court should be permitted to compound the complaint between the petitioners' Company and the claimants, as and when the request thereof is made by both the parties. When the State challenged this Order before the Hon'ble Apex Court, by order dated 19.04.2010, the Hon'ble Apex Court was also of the view that compounding of the legitimate claims could be permitted and thereby appointed a Settlement Commissioner for disbursement of the claims.

8. In this background, though charge sheet alleged that the complaints were received from about 32011 persons across the State of Tamil Nadu, the total complaints received by both the Settlement Commissioners, after wide publicity was 15486 and the remaining, apart from the unwilling victims were claims without proof of deposit, double entries, fictitious

claims, etc. 140 complainants had also withdrawn the complaints on being satisfied with the Commission they had already received. Thus, in view of 141 victims who expressed to get along with the trial, the respondents claim that the criminal proceedings as against the petitioners should not be quashed.

9. When the Hon'ble Apex Court in its earlier order dated 19.04.2010 was of the view that the case against the petitioners could be compounded and had also appointed Settlement Commissioner for such a purpose, the intention of the Hon'ble Apex Court was not to have the prosecution being continued parallelly along with the settlement. As a matter of fact, the Hon'ble Apex Court had also permitted the Settlement Commissioner to recommend compounding of the legitimate claims to the Concerned Court.

10. This Court has taken into consideration the majority of the claims, who wanted to receive back the amounts from the petitioner's Company and the Hon'ble Apex Court as well as this Court had facilitated such a plea by appointing Settlement Commissioner and utilising funds of the Company for the purpose of disbursement. The petitioner's conduct from the very inception of the litigation before this Court is to willingly offer to settle all the legitimate claims.

11. Insofar as these unwilling victims are concerned, the details of their eligibility have been furnished before this Court. A perusal of the amounts due to these unwilling victims ranges from Rs.3800/- per person to a maximum of Rs.18,400/-. Two of these unwilling victims to whom the products were not despatched have a claim of Rs.27,600/- and Rs.53,590/- respectively. On an average claim of these unclaimed victims approximately Rs.10,000/- per person would be the amounts due to them. When the majority of the claimants, who have come forward to receive the settlement were also receiving their settlement for a like sum, possibly in view of the need for the amounts or to avoid further litigation, the unwilling victims may possibly be not in need of the amount. Such a situation would have already been contemplated by the Hon'ble Apex Court, when it had approved compounding of the offences by way of appointment of Settlement Commissioner, by taking a pragmatic view of the Majority of the claimants, who were willing to receive their respective amounts.

12. In this background, I am constrained to take a view that the impugned criminal case could be quashed for the following two reasons:

(i) Firstly, the amount due to 141 unwilling victims have been secured in the deposits of the petitioners' bank accounts which have already been freezed.

(ii) In an identical case, in T.R.Patchamujithu @ Parivendhar vs. State of Additional Deputy Commissioner of Police and others [Special Leave to Appeal (Crl.) No.7295 of 2017 dated 22.09.2017], the Hon'ble Apex Court thought it fit to quash the FIR by directing the Commissioner to adjudicate claims made by the victims from the accused therein. Brief facts of that case are as follows:

(a) When a criminal complaint came to be registered against the accused therein on the ground that the admission fees paid for various medical courses was neither returned nor were seats allotted to candidates, petition to quash the FIR was filed by the accused with an offer to repay the amount. I had appointed a retired Chief Justice of Jammu and Kashmir High Court as Settlement Commissioner for the purpose of disbursing the amount to 136 claimants. However, since all the complainants had not offered to render 'No Objection' for quashing the criminal proceedings, I had directed the investigation to continue and file a final report within a stipulated time. The accused had filed an appeal against this order in S.L.A.No.7295 of 2017 and the Hon'ble Apex Court, by its order dated 22.09.2017 had taken into consideration the 'No Objection' rendered by one among the many claimants with a further direction to the rest of the claimants to file affidavits expressing their no objections in quashing criminal proceedings as a pre-condition for disbursement. The relevant portion of the order reads as follows:

'Learned counsel appearing for the first complainant/Dr.K.Jayachandran (respondent no.2) on caveat submits that if the money is released as directed by the High Court, he shall have no objection for quashing of the proceedings arising out of the aforesaid, provided that the money which was deposited is released back to the claimants by the Commissioner appointed by the High Court. We find that there are 136 claimants. Learned counsel for respondent no.2 states that all these claimants are ready to make the aforesaid statement on payment of dues as directed by the High Court. This is acceptable to the petitioner as well. In these circumstances, we dispose of this petition with the following directions:

a) All the claimants are directed to approach the High Court with the aforesaid request by filing affidavits stating that they have no objection in quashing the criminal proceedings arising out of the aforesaid FIR insofar as the

petitioner is concerned.

b) On filing the affidavits the High Court shall quash the proceedings arising out of the aforesaid FIR insofar as the petitioner is concerned.

c) Till such time these affidavits are filed and the order of the quashing is passed by the High Court the amount shall not be disbursed and the amount shall be disbursed only after filing of the affidavits.

d) The petitioner shall also be involved in the aforesaid process so that he is able to verify that only genuine persons have filed the affidavits and received the payments. The Special Leave Petition is disposed of accordingly. Pending application(s), if any, stands disposed of accordingly.'

13. Drawing inference from the aforesaid decision and by taking into account the overall settlements received by a majority of the claimants, the criminal proceedings could be quashed by this ground also.

14. Before parting with a case, this Court places its appreciation to the significant and enormous task rendered by both the Hon'ble Settlement Commissioners in facilitating disbursement of the amounts to the majority of the legitimate claimants.

15. For all the foregoing reasons, the impugned C.C.No.3876 of 2009 now pending on the file of the Special Magistrate at Allikulam Road, Chennai, is quashed. Crl.O.P.No.30144 of 2019 thus stands allowed. The prayer sought for in Crl.O.P.No.24461 of 2016 has become infructuous, since the Advocate/Settlement Commissioner has also already been appointed and thus, Crl.O.P.No.24461 of 2016 stands closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Crime Branch CID,
Metro-I, Egmore,
Chennai - 8.

2.The Assistant Director,
Directorate of Enforcement Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd floor, Murugesan Naicker Complex,
No.84, Greams Road, Thousand Lights,
Chennai-600 006.

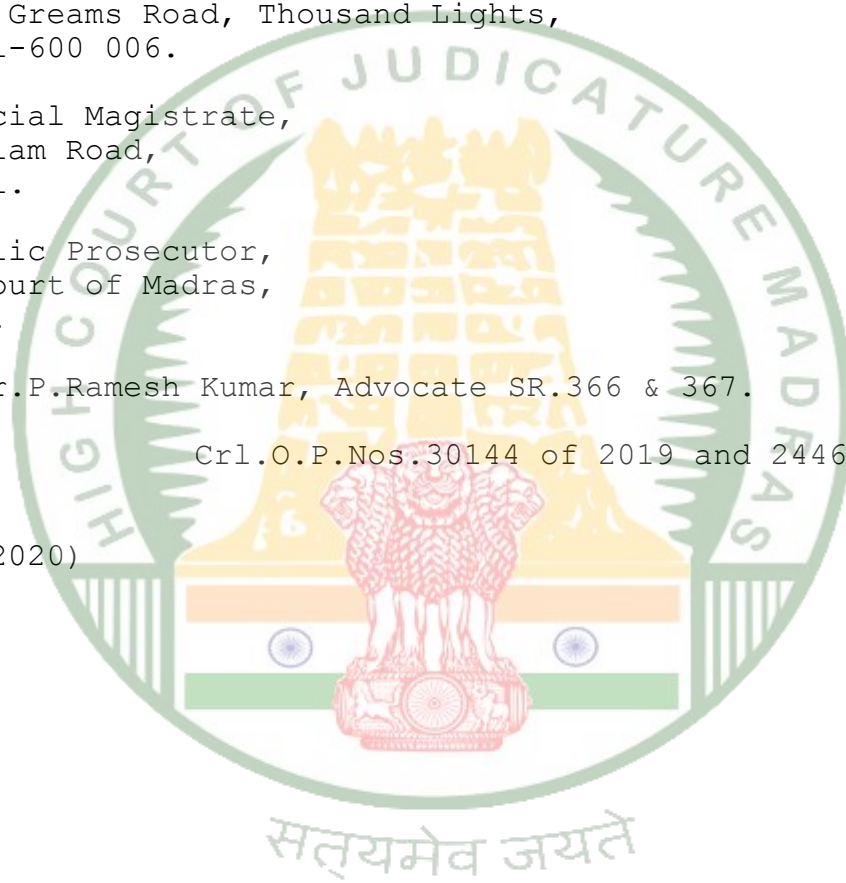
3.The Special Magistrate,
Allikulam Road,
Chennai.

4.The Public Prosecutor,
High Court of Madras,
Madras.

+2cc to Mr.P.Ramesh Kumar, Advocate SR.366 & 367.

CrI.O.P.Nos.30144 of 2019 and 24461 of 2016

SPD(CO)
CB(04/02/2020)



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