IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2020
PRONOUNCED ON : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.6442 of 2016

V.Ramachandran
Adwave Towers,
C Block , Ground Floor,
No.9, South Boag Road,
T.Nagar, Chennai 600 017 ... Petitioner / 7th Accused

Vs.

1. The State ,
Represented by the Inspector of Police,
EOW-II, Anna Nagar,
Chennai – 600 040 ... Respondent / Complainant

2. Ranjith Chithuri
New No.299, Old No.192,
Poondamalli High Road,
Kilpakkam , Chennai - 10 ... Respondent / Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to Call for the records and Quash the FIR in Crime No.5 of 2015 registered on 01.04.2015 on the file of the respondent police.

For Petitioner	:	Mr. Nithyaesh Nataraj
For Respondent -1	:	Mr.Shanmuga Velayudham Public Prosecutor
For Respondent -2	:	No Appearance

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in Crime No.5 of 2015, on the file of the respondent police.

2. The case of prosecution, in nutshell, is as follows:-

On 01.04.2015, the defacto complaint viz., Dr.Ranjith Chithuri, lodged a complaint before the Superintendent of Police, Economic Offences Division II, Anna Nagar, Chennai-40, which was forwarded to the Inspector of Police, EOW-II Chennai, alleging that M/s.Bajaj Capital Ltd., Chennai, informed the defacto complainant about the Fixed Deposit Scheme of M/s.Helious and Mathesan Information Technology Limited, Chennai, that they are paying 12% interest for the deposit of 12, 24 and 36 months. Believing their words, the defacto complainant deposited a sum of Rs.59,50,000/-, on various dates, for three years scheme. The first deposit was made on 11.07.2011. Accordingly, the defacto complainant was issued with cheque for interest and postdated cheque for the amount invested by him. On maturity, when the defacto complainant deposited the cheque for Rs.30,00,000/-, which was returned with an endorsement that 'transaction of the Forum with the Bank had stopped'. Immediately, the defacto complainant approached the agent M/s.Bajaj Capital Limited. They received the cheque in original from the defacto complainant on the assurance that they will send the same to the Institution and will get the money back. However, the money has not been received sofar. Hence, the petitioner approached the Office of M/s.Helios And Matheson Information Technology Limited in Tharamani and Nungambakkam several times, for repayment of deposit, but they have not returned back the money. The Company's Principal Officer and Executive Director was G.K.Murali Krishnan and Divakar Sai Ojaha, Srinivasa Rao, Sasi Kishore Patel, Suresh Kumar Raje Sekaran are Directors and one V.Ramachandran was an important share holder and Administrator. The defacto complainant latter came to know that the Company / A1 - M/s.Helios and Matheson Information Technology Limited are taking investment from public with an intention to cheat them, without paying any interest and principal. Hence, the above complaint.

3. The learned counsel appearing for the petitioner would submit that the Petitioner retired from the Board way back on 25.03.2010. The “Report on Corporate Governance” in the Annual Report sets out “Details of Helios and Matheson Board of Directors, their attendance at Company's Board Meetings and their Directorships”. Petitioner vacated Office as a Director at the last AGM held on 25.03.2010. He would further submit that the petitioner is only an advisor of the Company and not responsible for the Management or affairs of the A1-Company. As per Section 5 of the TNPID Act, every persons 'responsible for the management of affairs' of the financial establishment alone will be liable. The first accused is a Company and as per the Companies Act, the Company is run and managed by its Board

of Directors. Even as per the FIR, the offence has taken place due to non-payment of deposits along with interest from the year 2014 onwards.

4. The learned counsel for the petitioner further alleged that earlier, the Company filed a Writ Petition before this Court in W.P.No.14664 of 2015, seeking to quash the FIR and the same was dismissed. Against which, the Company preferred a Writ Appeal in W.A.No.1227 of 2015, which was also dismissed. Against which, the Company preferred SLP(Crl) No.7961 of 2015, which was later converted to Crl.Appeal No.1279 of 2015 in which an interim order of stay of all further proceedings was granted on 01.10.2015, subject to the condition that the Company deposit a sum of Rs.10 Crores within four weeks of the date of order. In order to show his bonafide and to help the Company, the petitioner paid a sum of Rs.5 Crores to the depositors, on his own personal funds. Since the conditional order has not been complied with, the Criminal Appeal itself dismissed by the Hon'ble Apex Court on 30.10.2015. It was submitted that no offence is made out against the petitioner and therefore, by no stretch of imagination can the present FIR be maintained against the petitioner. Further, the petitioner submitted that the petitioner is only a Fonder Director, who got relieved in the year 2010. In the subsidiary Company, the Petitioner/A7 was only a Director and no alter ego had been attributed prior to 01.04.2015, is not liable.

5. Per contra, the learned Public Prosecutor appearing for the 1st respondent would submit that the default Company A1 - M/s.Helios and Matheson Information Technology Ltd., was started in the name and style of 'M/s.Express Financial Ltd' , on 08.03.1991 and it was registered with Registrar of Companies, Chennai. Subsequently, the name of the Company was changed as, 'M/s.Helios and Matheson Information Technology Ltd.', on 29.04.1999 and this Company has seven subsidiary Companies. The petitioner / A7 was one of the Directors in M/s.Jayamaruthi Software Systems Private Ltd. The A1/Company started to receive deposits from the public from 2003, at the rate of 12% interest per annum, for the period 12, 24 and 36 months. The Company had engaged some agent Companies, for collection of deposits from the public on commission basis.

6. It was further contended that during the course of investigation, the A1/Company, had come up with a scheme to settle the deposit amounts partially by filing an application in C.A.No.561 of 2015, before this Court, but the same was not accepted by the depositors. Therefore, on 21.01.2016, an Official Liquidator took charge of the assets of the Company, as per the orders of this Court. The petitioner is the founder of A1 Company and the petitioner is fully responsible for the day-

to-day affairs of the Company in the capacity as its Founder Director. The petitioner was the guiding force. The petitioner and other accused borrowed nearly Rs.35/- Crores from the State Bank of Travancore, on 19.11.2015 and the same was not paid. Therefore, the Bank filed a case against the petitioner and others before the Debt Recovery Tribunal-II, Chennai, in which, an order of injunction was granted on 28.12.2015, directing A7, his wife and others not to travel anywhere outside India. It was further contended that the Petitioner/A7 played an active role in decision making of the Company. The Petitioner/A7 with predetermination convincingly retires in the year 2010 thereafter, started subsidiary companies and transferred the funds. Subsidiary companies not refunded the money to the defaulting Company and the documents have been collected in this regard. Further, projecting the remuneration alone was received and the same are reflected in the Income Tax Return will not be sufficient and it is too premature to make such submission now. A thorough investigation would only to show the active role played by the Petitioner / A7 and thereafter, only it is to be decided. In this case, A1 is Company, A2 to A6 are the Directors and A7 is the Founder Director, who conveniently retires in the year 2010.

7. The learned Public Prosecutor further contended that the petitioner participated in the Annual Day functions of the A1 Company and it is proved by the photographs available in the Annual Reports of A1/Company, mentioned as “Management Team”, for the year 2011-12 and 2012-13. A1 projected and conducted the business, who was the key person, aware of the entire know how. Sofar, 1629 complaints have been received against A1 / Company, to the tune of Rs.80,31,00,000/- from all over India for defaulting the interest and deposit amounts. The most of the depositors are senior citizen, who deposited their terminal benefits. The charge sheet for 100 complaints / depositors out of 1629 depositors had been filed before the TNPID Court, Chennai, at first spell. Hence, the learned Public Prosecutor prayed for dismissal of the petition.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the records it is seen that A1- Company viz., M/s.Helios and Matheson Information Technology Ltd., is a Company incorporated and registered under the Companies Act, 1956. The petitioner / A7 is the founder Director of A1 Company, the brain behind the business module. According to the petitioner, he was retired from the Company on 25.03.2010, but he continued to play active role of Chairman of A1-Company, presiding over the Board Meetings of the Directors and making decisions on both policy and operational level. Further it is

seen that the Petitioner received Rs.1,50,000/- as remuneration per month till 07.07.2015, through his Axis Bank Account. The petitioner was one among the Director of M/s.Jayamaruthi Software Systems Private Limited, which is the subsidiary Company of A1-Company. The petitioner was nominated as authorized signatory for operating the several bank accounts for the Company, therefore, the contention of the petitioner/A7 that he retired from the Company as early as on 25.03.2010, cannot be countenanced.

10. Further, A1-Company, on the promise of paying 12% interest per annum for the deposit of 12, 24 and 36 months, had collected huge deposits from the defacto complainant and 1629 others, to the tune of Rs.80,31,00,760/- from all over India, in which most of the depositors are senior citizen, who invested their terminal benefits. Due to large-scale frauds committed by the petitioner, defacto complainant and other innocent senior citizen were cheated, by the petitioner. On perusal of the FIR and evidence gathered by the 1^{st} respondent Police so far shows that the Petitioner was an active participant having 20% share holding conducted the day-to-day affairs of the Management of the Company, the accused cheated to the tune of several crores, that too, from the senior citizen, the amount cheated to be recovered from the accused. The learned counsel for the petitioner relied on the Judgments of the Hon'ble Supreme Court, in State of Madras Vs. C.V.Parekh and Another reported in (1970 (3) SCC 491); in Sheoratan Agarwal and Another Vs. State of madhya Pradesh reported in (1984) 4 SCC 352); in J.K.Industries Ltd., and others Vs. Chief Inspector of Factories and Boilers and Others reported in (1996 (6) SCC 665); in Assistant Commissioner Vs. Velliappa Textiles Ltd., reported in (2003 (11) SCC 405); in Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others reported in (2005 (4) CC 530); in P.C.Agarwala Vs. Payment of Wages Inspector, M.P. reported in (2005 (8) SCC 104); in Maksud Saiyed Vs. State of Gujarat and Others reported in 2008 (5) SCC 668; in R.Kalyani Vs. Janak C. Mehta and Others reported in (2009 (1) SCC 516); in Iridium India Telecom Limited Vs. Motorola Incorporated and Others reported in (2011 (1) SCC 74); in Harshendra Kumar D Vs. rebatilata Koley and Others reported in (2011 (3) SCC 351); in Aneeta Hada Vs. Godfather Travels and Tours Private Limited reported in (2012 (5) SCC 661); in Sunil Bharti Mittal Vs. Central Bureau of Investigation reported in (2015 (4) SCC 609); in Sharad Kumar Sanghi Vs. Sangita Rane reported in (2015 (12) SCC 781; in Ashoke Mal Bafna Vs. Upper India Steel Manufacturing and Engineering Company Limited reported in 2018 (14) SCC 202; in Shiv Kumar jatia Vs. State of NCT of Delhi reported in 2019 SCC Online SC 1090; and the decision of this Court in Tmt.Prasannadevi Vs. State of Tamil Nadu, rep.by Deputy

Superintendent of Police (Economic Offence Wing), Cuddalore reported in 2009 (3) MWN (Cr.) 32.

11.The petitioner, in support of his contentions, relied on the above Judgments, primarily on the ground that the petitioner is not a Director of A1 Company and was not Managing the affairs of the Company and responsible for the Management of the affairs of the Company, further once resignation accepted, duly notified to Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the Company after the acceptance of resignation. I am afraid to find that there is any such criteria on the facts of the case in hand. In view of the same, the citations are not applicable. On the other hand, the Hon'ble Apex Court in the case of Gunmala Sales Private Ltd Vs. Anu Mehta and Ors., reported in (2015(1) SCC (Cri) 580) had summarized and held one of the criteria that "Director was in charge and responsible for conduct of the business of the Company at the relevant time, when the offence was committed" can be proceeded with. In this case, investigation is on going.

12. Considering the entire facts and circumstances of the case, this Court, at the stage of investigation, cannot probe into those disputed questions of fact and in the interest of justice, is not inclined to grant the relief as prayed for. Accordingly, this Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

MPK

To
1. The Inspector of Police,
EOW-II, Anna Nagar,
Chennai - 600 040

2.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER MADE IN
Crl.O.P.No.6442 of 2016
23.03.2021

SMI(co)
RG.28.04.2021(6P/3C)