IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
25.10.2021	02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. O.P. NO.12719 OF 2018
AND
CRL. M.P. NO. 6869 OF 2018

1. N.Sankar
2. N.Kumar
3. Vijay Sankar
4. B.Visweswaran

.. Petitioners

- Vs -

1. State rep. By
The Inspector of Police
District Crime Branch
Erode District.
(Crime No.10 of 2018)

2. V.Aishwarya Lashmi

.. Respondents

Criminal Original Petitions filed u/s 482 Cr.P.C. praying this Court to call for the records and quash the FIR in Crime No.10 of 2018 on the file of the 1st respondent.

For Petitioner : Mr.N.R.Elango, SC, for
Mr.Aruna Elango

For Respondent : Mr.C.E.Pratap, GA (Crl. Side)
for R-1
Mr.D.Selvaraju for R-2

ORDER

The present petition arises due to the registration of FIR by the 1st respondent on the directions of this Court in Crl. O.P. No.30 of 2018 vide order dated 11.1.2018 against the petitioners for the alleged offences u/s 120 (B), 409, 420 and 506 (i) IPC, which has been lodged by the 2nd respondent.

2. It is the case of the prosecution, as is evident from the FIR registered on the basis of the complaint given by the 2nd respondent is that the petitioners are associated in a senior position with M/s.Chemplast Sanmar Ltd., and they had approached the firm of which the 2nd respondent is a partner and induced the firm to buy 60 lakh shares worth Rs.3 Crores, on the premise that the said amount would triple within a very short time. Believing the words of the petitioners, the firm invested Rs.3 Crores in the shares for which a cheque was issued by the firm from its current account.

3. It is the further case of the prosecution that instead of transferring the amount of Rs.9 Crores to the defacto complainant's partnership company, which is the profit of the shares purchased from the petitioners' firm, the amount was remitted to the personal account of the father-in-law of the defacto complainant. It is the further case of the prosecution that after transfer of the amount to the personal account of Mr.V.N.Ayyadurai, the petitioners' firm sought reinvesting of the said sum back in the shares, which was acceded to by Mr.V.N.Ayyadurai.

4. It is the case of the prosecution that when the defacto complainant enquired about the petitioners about the amount invested in shares and the profits thereof, the petitioners threated that they would cancel the dealership of the defacto complainant's partnership firm. Alleging non-payment of the money due to the defacto complainant's partnership firm from the petitioners' firm, the present complaint has been lodged by the defacto complainant, which has been registered in Crime No.10 of 2018 on the file of the respondent. Aggrieved by the said registration of the case, the present petition has been filed for quashment of the same.

5. Learned senior counsel appearing for the petitioners submit that subsequent to the receipt of the money, 60 lakh shares of the value of Rs.3 Crores was issued in favour of Mr.V.N.Ayyadurai and on completion of the period, the amount of Rs.9 Crores, as has been undertaken, has been credited to the account of Mr.V.N.Ayyadurai and, thereafter, the said Mr.V.N.Ayyadurai has also reinvested the said amount in shares in the petitioners' firm. Therefore, the present petition by the defacto complainant is nothing but an arm twisting tactic to gain unjust enrichment by demanding payment of the amount to the defacto complainant's firm.

6. In this regard, learned senior counsel appearing for the petitioners submit that the share certificate pertaining to the allotment made to the said Mr.V.N.Ayyadurai, which has been annexed in the typed set, which share certificate was issued as early as on 27.04.2009 on receipt of the amount, clearly shows that even at the first instance, the shares were issued in the name of Mr.V.N.Ayyadurai and that being the case, the subsequent allotment of shares in the name of V.N.Ayyadurai, after payment has been made by the petitioner's firm cannot be found fault with. If at all the defacto complainant is aggrieved, she has to proceed against V.N.Ayyadurai and not against the petitioners' firm. It is the further submission of the learned senior counsel for the petitioners that the defacto complainant, being the daughter-in-law of the said V.N.Ayyadurai should have been conscious of the issuance of shares in the name of V.N.Ayyadurai, as early as on 27.4.2009, but had kept quiet and had filed the complaint only during April, 2018.

7. It is the further submission of the learned senior counsel for the petitioners that even the complaint clearly reveals that the amount has been paid by the petitioners to the personal account of V.N.Ayyadurai way back on 28.4.2012, which information was also communicated to the defacto complainant's partnership firm. It is the further submission of the learned senior counsel for the petitioner that after receipt of the amount by V.N.Ayyadurai, the amount, once again, has been reinvested in the petitioners' firm, on the own volition of V.N.Ayyadurai and if at all the defacto complainant is aggrieved, she has to proceed against V.N.Ayyadurai for receiving the amount in his personal account and not accounting it in the name of the firm, as the petitioners' firm is not

oblivious of the transactions taken place in the defacto complainant's firm. Therefore, it is submitted that the present complaint against the petitioners is misconceived and is liable to be quashed.

8. Per contra, learned counsel appearing for the 2nd respondent submitted that the amounts having been issued from the current account of M/s.V.N.Ayyadurai Firm, the amounts ought to have been credited back to the account of the firm. Inspite of the request made by the defacto complainant's partnership firm, the amount was said to have been credited to the personal account of V.N.Ayyadurai and further the said amount was utilised for the purpose of purchase of further shares in the name of V.N.Ayyadurai, which clearly shows that the petitioners' firm wanted to defraud M/s.V.N.Ayyaduraiu Firm of its lawful right to get the amount back from the petitioners' firm. It is the further submission of the learned counsel for the 2nd respondent that once the petitioners' firm had received the amount from the account of M/s.V.N.Ayyadurai Firm, the amounts, on maturity, ought to have been credited to M/s. V.N.Ayyadurai Firm and crediting it to the personal account of V.N.Ayyadurai, the interest of the defacto complainant's partnership cannot be jeopardized. It is the further submission of the learned counsel for the 2nd respondent that the wrongful credit to the personal account of V.N.Ayyadurai would not absolve the petitioners of their duty to pay the proceeds to M/s.V.N.Ayyadurai Firm and the non-payment of the said amount to M/s.V.N.Ayyadurai Firm, when the money has been received from M/s.V.N.Ayyadurai Firm is a clear intent of cheating on the part of the petitioners and inspite of the defacto complainant's partnership firm demanding payment, no payment having been made and the petitioners having threatened the defacto complainant's firm, the present complaint has been made by the 2nd respondent.

9. On the above contentions, this Court heard the learned Government Advocate (Crl. Side) appearing for the 1st respondent and perused the materials available on record.

10. A perusal of the materials available on record reveal that even at the first instance, when 60 lakh shares was purchased from the petitioners' firm, for a sum of Rs.3 Crores and odd, the share certificate has been issued in the name of V.N.Ayyadurai. It is the claim of the defacto complainant that

the shares were purchased by M/s.V.N.Ayyadurai Firm for which amount was released from the current account of the said firm. However, the said amount is said to have been paid in the year 2009 by issuance of cheques by the firm, but even on 27.4.2009, the share certificate has been issued by the petitioners' firm in the name of V.N.Ayyadurai. The partnership firm of the defacto complainant has not taken any steps to rectify the said mistake, if really it was a mistake committed by the petitioners' firm. Such being the case, the petitioners' firm had recredited the proceeds of the said shares to the tune of Rs.9 Crores and odd to the credit of V.N.Ayyadurai on 28.4.2012. It is admitted that the amount of Rs.9 Crores and odd had been received by V.N.Ayyadurai in his personal account, which has been stated by the defacto complainant in the complaint as well.

11. It is the case of the defacto complainant that V.N.Ayyadurai was lured into purchasing the shares once again for the sum of Rs.9 Crores, which amount has not been paid by the petitioners' firm. It is the claim of the defacto complainant that the amount held by V.N.Ayyadurai pertains to the firm of M/s.V.N.Ayyadurai and, therefore, the amount paid by the petitioners' firm to V.N.Ayyadurai, which has been reinvested by V.N.Ayyadurai in the petitioners' firm actually belongs to M/s.V.N.Ayyadurai Firm. This Court is not inclined to adjudicate any dispute as to whether the amount belongs to M/s.V.N.Ayyadurai Firm or V.N.Ayyadurai.

12. Once the amount has been paid back by the petitioners' firm for a sum of Rs.9 Crores and odd to V.N.Ayyadurai to his personal account, which is on the basis of the share certificate issued by the petitioners' firm, no question/objection raised by the defacto complainant for issuance of share certificate in the name of V.N.Ayyadurai, it does not lie in the mouth of the 2nd respondent to contend that the amount due to M/s.V.N.Ayyadurai Firm has not been paid. In fact, on the maturity of the shares, the petitioners' firm had paid the matured amount in a sum of Rs.9 Crores and odd to the personal account of V.N.Ayyadurai, which stands fairly accepted by the defacto complainant. That being the undisputed position, the further purchase of shares by V.N.Ayyadurai from the petitioners' firm, the defacto complainant cannot claim any amount from the petitioners' firm as the same has been purchased by V.N.Ayyadurai.

13. The 2nd respondent not raised any hue and cry at the first instance with regard to the issuance of share certificate in the name of V.N.Ayyadurai, though the amount is alleged to have been paid by M/s.V.N.Ayyadurai Firm, the claim of the 2nd respondent that the amount was not paid back to the defacto complainant's partnership firm does not merit acceptance. The petitioners' firm had paid back the maturity amount to V.N.Ayyadurai as per the share certificate issued and the said share certificate having not been questioned at the threshold by the 2nd respondent, the subsequent purchase of shares by V.N.Ayyadurai cannot be put against the petitioners and the claim of the defacto 2nd respondent for repayment of amount back to M/s.V.N.Ayyadurai Firm cannot be sustained.

14. It is to be pointed out that even from the first instance all the share certificates have been issued only in the name of V.N.Ayyadurai. There is no iota of material to show that the shares were issued in the name of M/s.V.N.Ayyadurai Firm. May be M/s.V.N.Ayyadurai Firm may have paid the amount from its current account, but there being no material to show that the purchase of shares was in the name of M/s.V.N.Ayyadurai Firm and no question having been raised for the issuance of share certificate in the name of V.N.Ayyadurai, the present complaint by the 2nd respondent that the petitioners are trying to cheat M/s.V.N.Ayyadurai Firm by not paying the amount due on the share certificate is nothing but a fragile attempt on the part of the 2nd respondent to achieve something, which is not rightfully the share of the partnership firm.

15. V.N.Ayyadurai having received the amount at the first instance and, thereafter, deposited the amount in shares in his name in the petitioners' firm, no claim can be made against the petitioners' firm in the absence of any materials to show that the purchase at the first instance was made in the name of M/s.V.N.Ayyadurai Firm. Further, on the date when the transaction between the petitioners and M/s.V.V.Ayyadurai Firm is said to have taken place, i.e., 15.4.2009, petitioners 1 to 3 were no longer the Directors of the petitioners' firm and they had ceased to be Directors of the petitioners' firm way back in July, 2004 and the 4th petitioner is not even shown to be a Director of the petitioners' firm. Such being the case, maintainability of the case against the petitioners itself looms large. In the above backdrop, the complaint of the 2nd

respondent against the petitioners sans merit and the same is liable to be quashed.

16. For the reasons aforesaid, Crime No.10 of 2018 on the file of the 1st respondent is hereby quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

GLN

To

1. The Inspector of Police
District Crime Branch
Erode District.
(Crime No.10 of 2018)

2. The Public Prosecutor
High Court, Madras.

CRL. O.P. NO. 12719 OF 2018

PM(CO)
RLP(22/11/2021)