IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.4191, 4251 & 19269 of 2021 and
Crl.M.P.Nos.2633, 2714 & 10558 of 2021

1.Narottam Dharawat ... Petitioner in Crl.O.P.No.4191 of 2021
2.Sunita Sunderdas Damani ... Petitioner in Crl.O.P.No.4251 of 2021
3.S.Suresh Kumar Pranav ... Petitioner in Crl.O.P.No.19269 of 2021

Vs.

1.State Rep by:
The Inspector of Police,
District Crime Branch, Coimbatore.

2.Sai Akash ... Respondents in all Crl.O.Ps

PRAYER in all Crl.O.Ps : Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the Crime No.21 of 2020, on the file of the Inspector of Police, District Crime Branch, Coimbatore and quash the same in respect of the petitioners.

In all Crl.O.Ps:

For Petitioners : Mr.B.Gopalakrishnan for P1 and P2
Mr.M.Arunachalam for P3

For Respondents : Mr.A.Damodaran,
Additional Public Prosecutor for R1
: Mr.G.Balasubramanian for
Ms.Leela & Co for R2

COMMONORDER

These Criminal Original Petitions have been filed to call for the entire records pertaining to the Crime No.21 of 2020, on the file of the Inspector of Police, District Crime Branch, Coimbatore and quash the same in respect of the petitioners.

2. Heard Mr.B.Gopalakrishnan, learned counsel for the petitioners in Crl.O.P.Nos.4191 & 4251 of 2021 and Mr.M.Arunachalam, learned counsel for the petitioner in Crl.O.P.No.19269 of 2021 and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent and Mr.G.Balasubramanian, learned counsel for the second respondent in all Criminal Original Petitions.

3. The case of the prosecution is that the petitioners are the accused 4, 5 and 7. The second respondent / defacto complainant is an employee of HDB Financial Services Limited (HDFC Bank Group Company) for many years; he is a *bonafide* holder of his employer's unlisted equity shares of HDB Financial Services Limited offered to him under Employee Stock Options Scheme (ESOP) as a part of his compensations and salary. He transferred and maintained some of the shares in the name of his wife Sreedevi also. All the shares held in their respective Demat accounts are usually traded in off-market mode through various brokers who specialises in this unlisted trading market.

3.1. The defacto complaint and his wife Sreedevi entered into an agreement with a Bengaluru based individual Anurag Bhatia / first accused who is also the CEO of M/s.Minance Company, for further sale transaction of their shares. As per the agreement, Sai Akash and Sreedevi entrusted Anurag Bhatia to sell 12000 unlisted equity shares of HDB Financial Services Ltd., for a total sale consideration of Rs.107.5 lakhs in the share market. It was agreed that the defacto complainant would transfer the shares to the first accused and he would sell 2000 shares in retail and 10000 shares directly to some of his high net worth clients known to him personally through his online platform minanceprivatemarket.com escrow account. It was agreed between the defacto complainant, his wife and the first accused that the first accused would transfer the sale proceeds to the defacto complainant and his wife before the shares are transferred to any buyers. As agreed, the defacto complainant Sai Akash and his wife Sreedevi transferred 10000 and 2000 unlisted equity shares of HDB Financial Services respectively to the Demat account of the second accused, who is said to be the partner of the first accused. Since the first accused was not able to sell the entire lot of shares within the stipulated time, Sai Akash and his wife Sreedevi opted to cancel the deal and the first accused also agreed for the said proposal. But the first accused did not return the unsold shares nor paid the sale consideration to the defacto complainant and his wife. Instead, the first accused had sent fake and forged transaction number to deceive the defacto complainant and his wife that 11000 shares have been refunded to the defacto complainant's account. Since the defacto complainant did not receive back his shares genuinely, he tried to contact the second accused, but he came to know that the shares were not available with the demat account of the second accused also and the second accused at the instructions of the first accused, transferred those shares to various parties as gift. On the above allegations, a case has been registered against the accused 1 to 7 for the offence under Sections 406 and 420 I.P.C.

4. The learned counsel for the petitioners submitted that the persons responsible for the loss sustained by the defacto complainant and his wife are only the first and second accused and the petitioners who are the accused Nos.4,5 and 7 are only the *bonafide* purchasers of the shares from the second accused; since the petitioners have got no overtact in the alleged occurrence, no case could be made out against them for the offences as alleged by the prosecution; there was no intention on the part of the petitioners to cheat the defacto complainant and they had not influenced the defacto complainant and his wife to part away their shares in their favour; since there is no material available as against the petitioners, the case against the petitioners should be quashed.

5. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioners had also act hand in glove with the accused 1 and 2, in order to gain unlawful enrichment with the shares belonged to the defacto complainant and his wife; the investigation had revealed that the second accused had gifted the shares in favour of the accused Nos.4,5 and 7 and other accused by way of gift; the records would show that an alteration report has been filed to alter the charges from Sections 406, 420 I.P.C to Sections 120B, 406, 409 and 420 I.P.C.; the alteration report was caused to be filed only because the investigation revealed the involvement of the petitioners also in the occurrence; it is seen from the letter sent by the Angel Broking Limited to the first respondent Police that the second accused had transferred the shares to the account of the petitioners and another; it is also relevant to mention that those transfers were shown as gift in favour of the transferees and for which, no consideration has been passed.

6. The crux of the arguments of the learned counsel for the petitioners is that the petitioners are the *bonafide* purchasers of the shares. They had no criminal intention in the said occurrence.

7. The materials available on record would show that the first accused himself has registered his website with fake and fabricated SEBI registration number and influenced the second respondent to transfer the shares in favour of the second accused. Though the second accused has been projected as a partner of the first accused, he was not a partner. The second accused has transferred the shares in the name of the petitioners without receiving any consideration. The manner in which the transfers have been effected under the name of the petitioners would show that there are grounds to believe that the petitioners have also acted hand in glove with the first and second accused in order to gain unlawful enrichment. Neither the first accused nor the second accused had paid any consideration to the shares obtained from the defacto complainant. The second accused had donated those shares in the name of the petitioners.

8. The defacto complainant came to know from the second accused that he had transferred those shares in favour of the petitioners and another, at the instructions of the first accused. It is well within the knowledge of the first accused that he did not pay any consideration to the shares obtained by him in the name of the second accused from the defacto complainant and his wife. However, he had instructed the second accused to transfer the shares in the name of the petitioners in the form of gift. So *modus operandi* would only show that there are reasons to believe that the petitioners have also conspired with the other accused to swindle the shares belonged to the defacto complainant and his wife.

9. Though it is claimed by the petitioners that they are *bonafide* purchasers, they have not produced any material to show their *bonafideness.* On the contrary, the materials collected by the prosecution on the face of it would show the possible connivance of the petitioners to swindle the shares rightfully belonged to the second respondent and his wife.

10. The Courts would rarely invoke the powers under Section 482 of

Cr.P.C., to quash the proceedings. Such occasion would normally arise only to prevent abuse of the process of the Court and to save the interest of justice. Normally, the prosecuting agency should be allowed to investigate the case whenever the materials available to make out any cognizable offence against the accused. Since there are ground materials to show that the petitioners have accommodated the accused 1 and 2 to own the shares illegally obtained from the first and second accused in their respective names as gifts, it is right for the first respondent to proceed with the case against the petitioners also.

11. In view of the above stated reasons, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No **17.10.2022**
Speaking / Non Speaking Order
gsk

To

1.The Inspector of Police,
District Crime Branch,

Coimbatore.

2.The Public Prosecutor,
High Court of Madras.

R.N.MANJULA, J.

gsk

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Crl.M.P.Nos.2633, 2714 & 10558 of 2021

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