IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
05~01~2022	12~01~2022

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.18951 of 2017
&
Crl.M.P.Nos.11502 & 11503 of 2017

1. Upendra Hosdrug Sundar Kamath
Managing Director,
Tamilnadu Mercantile Bank Limited,
Anugraha Housing, No.1363,
Opp. Rajashekhar Hospital, 9th Cross Road,
J.P.Nagar - 1st Phase, Bangalore.

2. Sankaralingam Annamalai,
Managing Director,
Tamilnadu Mercantile Bank Limited.,
No.239/2, Pioneer Avenue,
New Natham Road, Narayanapuram,
Madurai – 625014.

3. Shanmugam Rajendran Aravind Kumar,
Director, Tamilnadu Mercantile Bank Limited,
45, New Colony, Thoothukudi – 628 003.

4. Periya Nadar Chidambaram Nadar Ganeshan Ashokkumar,
Director, Tamilnadu Mercantile Bank Limited,
No.48, Gnanagiri Road, Cornation Colony,
Sivakasi, 626 123.

5. Bidalur Seetharamarao Keshavamurthy,
Director, Tamilnadu Mercantile Bank Limited,
No.41, 3rd Cross Road, Central Excise Layout,
Viyayanagara, Bangalore – 560 040.

6. Nagarajan Kandavel
Director, Tamilnadu Mercantile Bank Limited,
C-3, Pandian Avenue, 123 New Market Street,
Office Choolaimedu High Road,
Chennai – 600 094.

7. Shidambaranathan Arumugasami
Director, Tamilnadu Mercantile Bank Limited,
No.6, Javulikadal Street, Sivakasi – 626 123.

8. Vikraman Nithyanandham
Director, Tamilnadu Mercantile Bank Limited,
No.2/3C/12, Palai road, West Ganesh Nagar,
Thoothukudi – 628 008.

9. Balasubramanian Vijayadurai
Director, Tamilnadu Mercantile Bank Limited,
No.35, P.K.S.A.Arumugam Road,
Sivakasi – 626 123.

10. Yesuthansen Pathiudian
Director, Tamilnadu Mercantile Bank Limited,
No.4-B, Cross Street, Srinagar Colony,
Chennai – 600 015. ... Petitioners

Vs

K.G.Inian ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the case in C.C.No.240 of 2017 in the Court of the Additional Chief Metropolitan Magistrate [Economic Offence – 1] Egmore, Chennai for alleged offences punishable under section 447 and 448 of the Companies Act and Section 463 and 464 of the Indian Penal Code.

For petitioner : Mr.R.John Sathyan

For Respondent : Mr.M.K.Kabir, Senior Counsel
for Mr.K.Subbu Ranga Bharathi

O R D E R

This petition has been filed to quash the private complaint in C.C.No.240 of 2017 in the Court of the Additional Chief Metropolitan Magistrate [Economic Offence – 1] Egmore, Chennai filed under section 447 and 448 of the Companies Act and Section 463 and 464 of the Indian Penal Code.

2. The crux of the allegation contained in the private complaint is that the petitioner is the share holder of the 11th accused Tamilnadu Mercantile Bank Limited, holding 2500 equity shares. The accused 1 to 10 are the Directors of the 11th accused which is a banking company and is regulated under the

Companies Act, 2013 as well as Banking Regulation Act and Reserve Bank of India. The affairs of the company was managed by the accused 1 to 10. The 6th petitioner is the lawyer by profession and also one of the Director of the bank. He is also incharge of the affairs and functioning of the bank. The board consists of two Directors nominated by Reserve Bank of India, Mr.K.N.Rajan and Mr.K.V.Rajan and they played their role independently and hence, they have not been arraigned as accused. It is further stated that in the Annual General Meeting held on 29.01.2016, the petitioners were elected as directors. In the same Annual General Meeting, a resolution was passed to issue bonus share to the existing shareholders in a 500 : 1 ratio. In the Annual General Meeting held on 26.05.2016 the petitioners allegedly decided to issue bonus shares to the shareholders who had supported the petitioners to get elected. Consequently bonus shares were issued against 46,862 shares held by Nonresident Indians facing prosecution by the Enforcement Directorate without the approval of the Reserve Bank of India. The above move was opposed by the then Company Secretary Mr.C.S.Deepak as it would lead to violation. However, the accused ignored the objections and proceeded to issue bonus shares to foreign investors. The Board has also decided not to issue bonus shares to the share holders who have voted against them in the Annual General Meeting in order to strengthen their hold in the bank by issuing shares only to the shareholders who are in their favour and eliminate and decimate those who are against them.

3. It is further stated that PAS-3 form relating to allotment of bonus shares dated 19.09.2016 submitted to the Registrar of Companies is a fraudulent one which was allegedly contrary to the PAS-3 form dated 31.05.2016 submitted to the Registrar of Companies. The accused also obtained legal opinion dated 11.06.2016 from Mr.A.K.Myilsamy, Advocate and he has opined that bonus shares should be issued to all as per the Register of Members as on the date. However, the accused is not satisfactory with the opinion and took another legal opinion from Mr.T.Poornam on 12.07.2016. After taking the legal opinion, the accused conducted three board meetings and tried to convince Mr.C.S.Deepak to agree to their plans. However, he did not agree, which resulted in Mr.C.S.Deppak to go on compulsory leave. It is also stated that the accused conveyed a Board meeting on 08.09.2016 without informing Mr.C.S.Deepak wherein two nominee Directors were also present. The accused also forced Mr.C.S.Deepak to submit his resignation and obtained resignation against his will. Using his resignation, the accused modified the minutes of the Board Meeting dated 08.09.2016 stating that Mr.C.S.Deepak had resigned on 08.09.2016 and the same was recorded in the Board meeting. It is stated that the resignation was not available on 08.09.2016 and the

board meeting has been endorsed by the two directors nominated by the Reserve Bank of India. Hence, it is stated that the above acts of commission and omission, fabrication of documents, forging and creating of non-existent documents by the petitioners are offences punishable under sections 447 and 448 of the Companies Act 2013 and Section 463 and 464 of Indian Penal Code. It is also stated that the accused systematically indulged in creating false documents and sending false statement to the Registrar of Companies. Based on the above private complaint, after recording the sworn statement of the complainant, though the complaint was returned by the Court for certain clarifications, was later taken cognizance by the Special Court for the offences referred above. The same is sought to be quashed.

4. The learned counsel appearing for the petitioners contended that the Reserve Bank of India nominated director has not preferred any such complaint. Without following the procedure under section 202 of Cr.P.C., the complaint has been taken on file. Though the other grounds are also raised, it is the contention of the learned counsel appearing for the petitioners that the complaint ought not have taken on file. As the offences alleged are under sections 447 and 448, the cognizance can be taken by the Court only on the complaint preferred by the director or any other officer appointed by the Central Government. Hence, the respondent have no locus standi to file such complaint. It is also submitted by the counsel that when there is oppression or mismanagement, separate procedure is contemplated and only when there is a finding with regard to fraud, congnizance can be taken for the offence under sections 447 as per the Companies Act. In the absence of any inquiry conducted in this regard by the authorities as contemplated in the Companies Act, the minority shareholder cannot lodge a complaint alleging fraudulent activities. In other words, it is his contention that only the authorities empowered under the Companies Act can conduct enquiry and give a finding as to the mismanagement, oppression as well as fraudulent activities of the company. In the absence of finding being recorded, the prosecution cannot be launched. It is his further contention that as per section 212 of the Companies Act, on the complaint by third parties or minority shareholders, cognizance cannot be taken. Hence, submitted that the entire prosecution is nothing but motivated and abuse of process of law. Therefore, submitted that entire complaint has to be quashed. He has placed reliance on the following judgments :

Doraisamy and others Vs. The State and others reported in 2019 - 1 L.W. [Crl.] 861

M.Pitchaiah and others Vs. K.S.Periyasamy reported in 2016 [2] AKR 61

Abhijit Pawar Vs. Hemant Madhukar Nimbalkar and another reported in [2017] 3 Supreme Court Cases 528

Vijay Dhanuka and others Vs. Najima Mamtj and others reported in [2014] 14 Supreme Court Cases 638

5. Whereas, the learned Senior counsel appearing for the respondent submitted that the private complaint was taken on file after following the procedures under section 202 Cr.P.C. It is his further contention that the Court has taken cognizance subject to the satisfaction and the complainant holds 2500 equity shares and aggrieved by the act of issuance of bonus shares in 500 : 1 ratio and bonus shares issued against 46862 equity shares held by the foreign investors, which was done without the approval of the Reserve Bank of India. It is his contention that the entire process of issuance of shares of the company is in violation of the minutes of the Board Meeting held on 30.06.2016 The trial Court examined the respondent and after perusing the records and considering the sworn statement took cognizance. Further, it is his contention that as per Section 439 [2] of the Companies Act the complaint can be given by either by the Registrar or a share holder or an officer appointed by the Central Government on their behalf. Therefore, it is his contention that as per Section 439 [2] of the Companies Act, the respondent being a shareholder has locus standi to file a complaint. Hence, it is submitted that the complaint is maintainable. It is further submitted that once false statement is being given or omitted to state material facts, it attracts the punishment under section 447 IPC. Hence, it is his contention that the complainant is entitled to file the complaint. Therefore, the private complaint cannot be quashed. In support of his submissions he relied on the following judgments :

National Bank of Oman Vs. Barakara Abdul Aziz and another reported in [2013] 2 Supreme Court Cases 488

Shivjee Singh Vs. Nagendra Tiwary and another reported in [2010] 7 Supreme Court Cases 578

Azim and others Vs. India Awake for Transparency in W.P.Nos.10140 & 10142 of 2020 of High Court of Karnataka at Bengaluru.

6. The entire allegations in the complaint appears to be with regard to issuance of bonus to the shareholders who are nonresidents of India and not to all the shareholders, without the approval of the Reserve Bank of India. It is the further allegation that the Board decided not to issue bonus shares to

the shareholders who voted against them in their Annual General Meeting. Similarly, the PAS3 form relating to the allotment of bonus shares is a fraudulent one and it is contrary to the Board Meeting Held on 30.06.216. Therefore, the prosecution is sought under section 447 and under the Companies Act, 2013 and 463 and 464 of IPC. As the very locus standi of the petitioner to launch the private complaint is questioned before this Court, it is relevant to refer Section 448 of the Companies Act, which reads as follows :

Section 448: Punishment for false statement.

448. Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

7. The above section makes it clear that who ever makes a false statement, which is false in material particulars, knowing to be false or any omission of any material fact, knowing it to be material, he shall be liable under section 447.

Section 447 of the Companies Act reads as follows :

Punishment for Fraud.

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud 1[involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud: Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Provided further that where the fraud involves an amount less than ten

lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

A perusal of the above section makes it clear that without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person, who is found to be guilty of fraud, [involving an amount of atleast ten lakh rupees or one percent of the turnover of the company, whichever is lower], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three time the amount involved in the fraud. The word found to be guilty of fraud, assume significance. Any offence, normally punishable in any other enactment, normally refer that who ever commits forgery shall be punished with imprisonment. In any other enactments, the term 'found to be guilty' is normally absent. The significance of the word 'found to be guilty of fraud under section 447' assumes significance in view of the Special Act, viz., the Companies Act.

8. It is relevant to note that when any inspection or enquiry or investigation is required with regard to the affairs of the company, a separate proceedings are contemplated under the Companies Act 2013. Chapter XIV deals with enquiry, inspection and investigation. Section 206 of the Companies Act deals with the power to call for information, inspect books and conduct enquiries on the basis of the information received by the Registrar. On such investigation, if it is found that the business of a company is being carried for fraudulent or unlawful purpose or not in compliance with the provisions of the Act or if the grievances of investors are not being addressed every officer of the company who is in default shall be punishable for fraud in the manner as provided under section 447. Similarly, apart from the registrar, the Central Government may also authorize any statutory authority to carry out the inspection of books of accounts of a company or class of companies as per clause 6 of Section 206 of the Companies Act, 2013. Section 207 of the Companies Act deals with conduct of inspection and enquiry. Section 208 contemplates further investigation on the basis of the recommendation made by the Registrar or Inspector. Section 210 deals with investigation of the affairs of the company where the Central Government is of the opinion that it is necessary to inspect into the affairs of the company and may Order investigation into the affairs of the

company. Section 211 deals with establishment of Serious Fraud Investigation Office. Section 212 deals with investigation into the affairs of the company by serious fraud investigation office. Sub Section 6 of section 212 reads as follows :

> (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 1[offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:
>
> Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:
>
> Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—
>
> (i) the Director, Serious Fraud Investigation Office; or
>
> (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

Sub section 6 of Section 212 makes it very clear that the offence covered under section 447 of the Companies Act shall be cognizable in nature. The second proviso of the above section makes it clear that the Special Court shall not take cognizance of any offence referred to this Sub-section except upon a complaint in writing made by the Director, Serious Fraud Investigation Office or any office of the Central Government authorized by a general or special Order in writing in this behalf by that Government in this regard. Therefore, to maintain the prosecution for the offence of fraud, a complaint ought to have been made by either by the Director, Serious Fraud Investigation Office or any office of the Central Government authorized by a general or special Order by the Government. To find out the irregularities of the fraudulent activities only, Chapter XIV has been specifically made in the Companies Act.

9. It is also relevant to note that even in mismanagement, oppression, complaint by any of the minority shareholders, the remedy lies under section 241 of the Companies Act for oppression or mismanagement. Only if the Tribunal gives any finding that there are fraudulent activities and fraud has been committed by any person, give cause of action to proceed under section 447 of the Companies Act. Chapter XIV and XVI of the Companies Act are fact finding procedures. If any irregularities which lead to the fraudulent activities of the company found during the inspection as per the procedure, certainly there cannot be any difficulty in lodging any complaint under section 447 of the Companies Act. It is also relevant to extract Section 439 of The Companies Act. which reads as follows :

> (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
>
> (2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, or a member of the company, or of a person authorised by the Central Government in that behalf:
>
> Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:
>
> Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.
>
> (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.
>
> (4) The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a

company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

10. A perusal of the above section makes it very clear that except the offence under sub section 6 of Section 212 of the Companies, other offences are non cognizable and the Court can take cognizance of any offence on a complaint in writing by the Registrar or a person authorised by the Central Government on their behalf. Explanation for Section 447 reads as follows :

> Explanation.—For the purposes of this section—
> (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
> (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
> (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

10. The above explanation makes it clear that there must be any act or omission, concealment of any fact or abuse of connivance in any manner with intent to deceive to gain undue advantage from or to injure the interests of the company or its shareholders or its creditors or any other person. Therefore, this Court is of the view that to proceed for any penal action, there must a fact finding either by way of enquiry or by way of investigation or inspection, a finding recorded by the Tribunal under section 241 of the Companies Act. What was sought to be envisaged in a private complaint is oppression of some of the share holders and preference given to non resident shareholders. Further the allegation that the PSA3 form submitted by the Registrar has been manipulated and there was a case of omission and commission which amounts to fraudulent activities.

11. It is to be noted that to find out such irregularities only the special provisions have been incorporated in the Companies Act. The Registrar of Companies or any other Officer authorised by the Central government or Investigating Agency appointed by the Central Government never found that the affairs of the company as fraudulent one and the petitioners are found

to be guilty of fraud. Therefore, when no such factual finding has been recorded with regard to the affairs of the company as to be fraud, merely on the basis of a private complaint, the person cannot be prosecuted.

12. It is further relevant to note that in a similar case in Doraisamy and other Vs. The State and Others reported in 2019 -1-LW[Crl.] 861 this Court has held that the if the complainant is really aggrieved and for any redressal, he should have restored to the proceedings under the Companies Act and held that the Registrar of Companies has to conduct inspection and he can call for records and arrive at an opinion and if the materials are available, he can submit a report to the Government for investigation by SFIO. If SFIO is able to collect materials sufficient to prosecute, it can proceed against the offenders and by holding so, quashed the proceedings and directed the Registrar of Companies to cause inquiry with regard to the affairs of the company. In this case, much emphasis has been made the by learned counsel for the respondent that since lodging a complaint is very well provided under section 439 of the Companies Act, the complaint lodged by the shareholder is maintainable. As already held, Section 439 of the Companies Act deals with noncognizable offences. In such case, the complaint can be filed by the shareholder also. Whereas, for prosecution for the offence under section 447 of the Companies which involve an amount of Rs.10 lakhs or one percent of the turn over of the company, which ever is lower, Section 212 [6] proviso makes it clear that cognizance can be taken only on the complaint in writing made by either the Director, Serious Fraud Investigation Office or any Officer of the Central Government authorized by a general or special order in writing in this behalf by that Government. Legislature in their wisdom have included Section 447 in sub Clause 6 of Section 212 to take cognizance by the Court, specifically on the complaint either by the Director, Serious Fraud Investigation Office or any Officer of the Central Government authorized by a general or special order in writing by them. Therefore, merely because the shareholder is given a right to proceed against noncognizable offence, he cannot be permitted to file complaint for cognizable offence in view of specific bar under section 212 [6] of the Companies Act on the basis of certain inferences and assumptions, without any enquiry or investigation or by inspection.

13. It is also relevant to note that the Apex Court in the judgment in Satish Mehra V. State [NCT of Delhi and another reported in [2012] 13 Supreme Court Cases has observed as follows :

> "A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would

not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused."

Therefore, whether or not there is mismanagement or oppression, the same cannot be gone into by the Special Court. The Special Court can try the offence on the specific charges. Situation is not ripen for that stage. Only on recording a finding about the fraud committed by the petitioners, the Court can try the offence for specific charges. The criminal Court cannot assume the role of Company Court and investigate the matter. Though much reliance has been placed on the judgment of the Apex Court in the judgment in National Bank of Oman Vs. Barkara Abdul Aziz and another reported in [2013] 2 Supreme Court Cases 488 to contend that the Magistrate has considered the sworn statement. In the above case, the Apex Court has held that the High Court instead of quashing the complaint should have directed the Magistrate to pass fresh Orders following the procedure under section 202 of Cr.P.C.

14. The judgment in Shivajee Singh Vs. Nagendra Tiwary and others reported in [2010] 7 Supreme Court Cases 578, the Apex Court in para 14 has held as follows :

"14. Although, Shah, J. and Thomas, J. appear to have expressed divergent views on the interpretation of proviso to Section 202(2) but there is no discord between them that non examination of all the witnesses by the complainant would not vitiate the proceedings. With a view to clarify legal position on the subject, we deem it proper to observe that even though in terms of the proviso to Section 202(2), the Magistrate is required to direct the complainant to produce all his witnesses and examine them on oath, failure or inability of the complainant or omission on his part to examine one or some of the witnesses cited in the complaint or whose names are furnished in compliance of the direction issued by the Magistrate, will not preclude the latter from taking cognizance and issuing process or passing committal order if he is satisfied that there exists sufficient ground for doing so. Such an order passed by the Magistrate cannot be nullified only on the ground of non-compliance of proviso to Section 202(2).”

The above case relate to noncognizable offence. Whereas Section 447 is a cognizable offence and there is a specific provision under section 212 [6] in the proviso for cognizable offences.

Much emphasis is made on the judgment of the Karnata High Court in W.P.No.10142 of 2020 Order dated 18.01.2021 in Azim and others Vs. India Awake for Transparency. Whereas in the present case, the case is governed by a Special Act which deals with the procedure to inquire, investigation and inspection and only on a finding recorded by such authorities and the persons are found guilty, he can be prosecuted under section 447 of the Companies Act. Merely on the basis of the petitioner's inferences and presumptions, the entire Directors of the company cannot be prosecuted. The contention of the learned counsel that the shareholders can any time file complaint against the directors is accepted, any minority shareholder and that too without any proof of the alleged mismanagement or oppression or fraud committed by the company can subject the running company into a criminal prosecution. Only in order to prevent such things, such safeguards have been made in the Companies Act to find out the irregularities in the company. Therefore, this Court is of the view that the without any finding as to fraud by the authorities under enquiry or investigation as contemplated under the Companies Act, the prosecution is not maintainable. In such view of the matter, taking cognizance for the offence under sections 447 and 448 is not according to law.

15. As far as the offences under sections 463 and 464 of IPC is concerned, it is relevant to note that Section 463 is the definition clause of forgery. Section 464 deals with making of false document. Section 465 deals with punishment for forgery. Except a general allegation that forms have been manipulated and the resolution has been manipulated and submitted to the Registrar of Companies, no other allegations are found in the complaint. It is relevant to note that in the judgment in Mohammed Ibrahim and other Vs. State of Bihar and another reported in [2009] 8 Supreme Court Cases 751 the Apex Court has has held as follows :

> 17. The allegations in the complaint do not also made out the ingredients of an offence under section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation in the complainant is that when he enquired with accused 1 and 2 about the sale deeds, they asserted that they

will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to appellants 1 and 2, it cannot be said to amount to an "insult with intent to provoke breach of peace". The statement attributed to accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by first appellant in favour of the second appellant.

Section 464 IPC deals with making of false and the same is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

16. In the above judgment, the Apex Court has held that in order to attract an offence under section 464 of IPC, a person ought to have made or executed a document claiming to be someone else or authorised by someone else or he altered or tampered a

document or he obtained a document by practicing deception, or from a person not in control of his senses. Except contending that resolution and PAS-3form have been manipulated, the nature of alleged manipulations is totally absent. Therefore, the offence under 464 of IPC is also not made out. In such view of the matter, the entire complaint is liable to be quashed. If at all the respondent is really interested to unearth the mismanagement, oppression or irregularities, he ought to have given a complaint before the authorities. Therefore, it is for the respondent to make necessary complaint to the concerned authorities to conduct enquiry or investigation or inspection in the affairs of the company and take appropriate legal action. By holding, this Court is of the view that the present prosecution is nothing but abuse of process of law and not maintainable.

17. Accordingly, this Criminal Original Petition is allowed and private complaint in C.C.No.240 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate [Econonic Offence - I], Egmore filed against the petitioner is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vrc
To
1. The Additional Chief Metropolitan Magistrate,
   [Economic Offence - I]
   Egmore, Chennai.

2. The chief Metropolitan Magistrate,
   Egmore, Chennai.

Copy to
   The Section Officer,
   Criminal Section,
   High Court, Madras - 104.

+2ccs to Mr.K.Subbu Ranga Bharathi , Advocate, S.R.No.2674

Crl.O.P.No.18951 of 2017 &
Crl.M.P.Nos.11502 & 11503 of 2017

AD[co]
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