IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022
CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.29160 & 29968 of 2018
&
CRL.M.P.Nos.17066 & 17606 of 2018

1.Banyan hydraulics and projects private limited,
Rep.herein by their Director,
A.G.Sreedhara Narayanan,
S/o.Gururajan Narayana Rao,
TS 83, Thiru Vi Ka Industrial Estate,
Chennai - 600 032.

2. A.G.Sreedhara Narayanan

3. Kalpana Sreedhara Narayanan

4. Gururajan Narayana Rao
... Petitioners in both Crl.O.Ps/Accused

Vs.

Vijaya Chandra Kumar ... Respondent in both Crl.O.Ps/Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for records relating to in STC.Nos.1611 & 1759 of 2018, pending on the file of the Judicial Magistrate Court, Tambaram and quash the same as against the petitioners in STC.Nos.1611 & 1759 of 2018.
In both Crl.O.Ps

For Petitioners : Mr.G.Gokul

For Respondent : Mr.C.P.G.Yoganand

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in STC.Nos.1611 & 1759 of 2018, respectively, on the file of the Judicial Magistrate Court, Tambaram and quash the same as against the petitioners.

2.The petitioners who are A1 to A4, on a private complaint filed by the respondent under section 138 N.I. Act, are facing trial in STC.Nos.1611 & 1759 of 2018, which is pending before the Judicial Magistrate Court, Tambaram. The complaint is that the respondent/complainant was previously a Shareholder and Director of the first accused company, namely, Banyan hydraulics and projects private limited, which is incorporated under the Companies Act. The first accused company was in the business of hydraulic equipments and related components manufacturing and executes projects in marine, power and industrial purposes and also acts as a consultant in the said domains. The accused 2, 3 and 4 are the Directors of the company who are closely related and jointly carrying on the day-to-day affairs of the first accused company. The respondent/complainant had transferred his equity shares in the first accused company in favor of A2 by way of a share purchase agreement, dated 19.07.2017 and at that time, it was agreed by the first and the second accused to repay the respondent/complainant a sum of Rs.15,00,000/- on or before 31.05.2018. Further, the consideration was for the purpose of not carrying on with any competing business for the stipulated period of three years, which was mutually agreed and a Cheque for Rs.5,00,000/-dated 31.05.2018 and a Cheque for Rs.10,00,000/- dated 31.07.2018, were issued. Thereafter, these Cheques were presented by the respondent/complainant and the same was returned for the reason payment stopped by the drawer. Thereafter, statutory notice dated 23.06.2017 issued to the accused, who had received the same on 26.06.2018, sent a reply on 02.07.2018 with false allegations. Thereafter, rejoinder sent on 06.08.2018 and the complaint had been lodged.

3. The contention of the petitioners is that on a plain reading of the complaint, it is seen that it is admitted by the respondent/complainant that he had entered into a Non-Compete Agreement with A1 and A2 and this agreement was entered on 19.07.2017. Pursuant to the Non-Compete Agreement, two cheques for Rs.5,00,000/- and Rs.10,00,000/-totalling to Rs.15,00,000/- were issued as per the Non-Compete Agreement. If there is any breach before 31.07.2018 and before the payment of consideration, the Cheque loses its significance. Further a specific undertaking has been given by the respondent/complainant that three years from the execution of the Non-Compete Agreement, he shall cease from carrying on a competing business to that of the A1 company either personally or through an agent or otherwise, in any manner directly or indirectly. He further submitted that previously, the petitioner was looking after the agricultural machineries of the company. These agricultural machineries were imported from an American company, namely, 'Eaton' and they were the sole dealer of the

entire state of Tamil Nadu. After resignation, the respondent/complainant had entered into a business agreement with 'Eaton' and he is now carrying on the business which the petitioners were previously doing from the year 2017. Now on verification of the GST website, it has come to the knowledge of the petitioners that from 01.07.2017, the respondent/complainant had formed a partnership in the name of Hyjoint Fluid Power and after, he parted away from the petitioner company and had entered into a paid agreement with the American company 'Eaton' and now, dealing with agricultural machineries and spare parts, now become its sole dealer, which is a breach of Non-Compete Agreement. Hence, the payment stopped. He further submitted that as regards A3 and A4, A3 is the wife of A2 and A4 is the father of A2. Further, except for referring to them generally in three or four places in the complaint that they are equally involved in the day-to-day affairs of the company and closely related and they are to be severally and jointly prosecuted and thereby invoking Section 141 N.I. Act, they are arrayed as accused. He further submitted that the vicarious liability cannot be fastened on the other directors without any materials. He relied on the case of S.M.S. Pharmaceuticals Ltd Vs.Neeta Bhalla and another reported in (2005) 8 SCC 89 and Alka Khandu Avhad Vs. Amar Syamprasad Mishra & Anr. in Crl.Appeal No.258 of 2021 wherein the Apex Court held that mere repeating of the magical words is not sufficient, unless some positive materials are further available, the directors cannot be arrayed as accused vicariously. As far as this case is concerned, A3 and A4 have been fastened with vicarious liability under section 141 of N.I.Act. Hence, he prayed for quashing the case in STC.Nos.1611 & 1759 of 2018.

4.The learned counsel for the respondent/complainant submitted that the points raised by the petitioners are to be decided during trial and not in this quash application. He further submits that A1 is the company and A2 to A4 are its directors. A3 is the wife of A2 and A4 is the father of A2. It is a closely held company and all the accused take part in the day-to-day affairs of the company. The petitioners as directors have close contact and knows the working of the company and without the involvement of the other accused, A2 will not take any individual decisions. He fairly submits that the shares transferred in the name of A2 and share consideration received by the respondent. Non payment arise following the Non-Compete Agreement entered into between the respondent and A1 represented by A2. The dispute now raised by the petitioners are factual questioned during trial, why the payment of Rs.15,00,000/- is withheld. He further submits that in paragraph 5 of the complaint, it is stated that A2 to A4 are the directors of the first accused company and they are equally involved in the day to day affairs and management of the first accused company and are in forefront in all dealings between the first accused company and the complainant. A3 and A4 are the wife and father respectively of the second accused. Likewise in paragraph 9 of the complaint, it is stated that thus all the accused have willfully and wantonly committed a clear breach of trust and the terms and conditions of the agreement dated 19.07.2017. In paragraph 10, it is mentioned that all the accused with a malafide and dishonest intention and in order to cheat the complainant issued the Cheque to the complainant. In Paragraph 11, the relationship of A3 and A4 with A2 stated. In Paragraph 14, it is stated that A3 and A4 are also jointly and severally liable to be prosecuted. He further submits that the citations relied by the petitioners are not applicable to the facts and circumstances of the above case and strongly opposed this quash application.

5. Considering the submissions and on a perusal of the materials on record, this Court finds that it is not disputed that the respondent/complainant is the erstwhile director of A1 company, thereafter, he had left the company and transferred his shares in the name of A2 and for which he had received the entire consideration. The dispute now is withregard to the payment of Rs.15,00,000/- which has been withheld pursuant to the Non-Compete Agreement due to violation of confidentiality of the Agreement. The contention of the respondent/complainant that there are sufficient averments in the complaint as regards A3 and A4 is not sufficient. The judgment of the Apex Court clearly state that the repetition of the magical words without positive materials, not sustainable to rope in the persons, fastening vicarious liability and making them to face criminal proceedings. Lodging a criminal case to be with positive materials, in this case, this Court feels that materials to proceed against A3 and A4 is not sufficient. Further, for the complaint the counter answer given in that due to non compliance of the Non-Compete Agreement, violating the same payment seems to be withheld, which is factual one, and no immediate answer can be given at this stage. Be that as it may, this Court is not dwelling into these aspects, these points are raised by the petitioners A1 and A2 which are to be decided during trial. As regards petitioners/A3 & A4, there is no sufficient averments, or no materials against them to invoke section 141 of the Act and to proceed agaisnt them. Hence, this Court quashes the proceedings against A3 & A4 alone in STC.Nos.1611 & 1759 of 2018, on the file of the Judicial Magistrate Court, Tambaram. Case as against A1 & A2 to proceed with.

6. Accordingly, these Criminal Original Petition are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

The Judicial Magistrate Court,
Tambaram.

+2ccs to Mr.C.P.G.Yoganand and Associates, Advocate SR.No.11459, 11460

CRL.O.P.Nos.29160 & 29968 of 2018

SR(CO)
GMY(21/03/2022)