



Crl.O.P.No.825 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

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THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 825 of 2014

and

M.P.Nos. 1 & 2 of 2014

1. Bliss Plantations and Hill Pvt Ltd.,
67,Armenian Street, Chennai – 600 001.
Rep. by its Director,
Mr.Hitesh V.Shah.

2. Hitesh V.Shah,
S/o.V.S.Shah,
Director,
Bliss Plantations and Hill Pvt Ltd.,
67,Armenian Street, Chennai – 600 001.

3. C.R.Sathia Lakshmi
D/o.Ramamurthy.

4. B.V.Shah
W/o.(Late) Mr.V.S.Shah. Petitioners/Accused 1 to 4

Vs

Securities and Exchange Board of India,
(SEBI) Rep by its Asst.General Manager,
D, Monte Building, 3rd Floor,
D' Monte Colony, TTK Road,
Alwarpet, Chennai – 600 018. Respondent/Complainant



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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to exercise its powers under Section 482 of Cr.P.C. by calling for the entire records relating to the criminal complaint filed by the respondent against the petitioner in C.C.No.6435 of 2004 now pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.K.Sudhan

For Respondent : Mr.K.Balamurali
for M/s.Shiva Kumar & Suresh

ORDER

This Criminal Original petition has been filed to quash the complaint filed by the respondent in C.C.No.6435 of 2004 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. Heard, Mr.K.Sudhan, learned counsel appearing for the petitioners and Mr.K.Balamurali, learned counsel appearing for the respondent and perused the materials available on record.

3. The respondent filed a private complaint under Section 200 of Cr.P.C. r/w Sections 24(1), 27 of the Securities and Exchange Board of



India Act, 1992, against the petitioners alleging that the Government of

India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory frame work for regulating entities, which issue instruments like Agro bonds, Plantation bonds, etc., has to be put to place. Hence, in the year 1999, the respondent notified regulations for regulating the activities of Collective Investment Scheme Companies titles as Securities and Exchange Board of India (Collective Investment Scheme) Regulations Act,1999. The petitioners have not complied with the respondent directives meant to protect the interests of the investors. The petitioners averred that the complaint was not taken cognizance on the statement given by the affected customers. No independent witnesses like the former customers or investors who have been allegedly cheated by the first petitioner company have been examined or cited as witnesses in the complaint.

4. That apart, no investor or customer has lodged any complaint with the respondent that the petitioners have cheated them and apart from the above said reason, the respondent has not levelled any specific allegation in



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that regard in the complaint. In the absence of any complaint, there was no cause of action to lodge the complaint. These are all the grounds have to be given into the fulfilled complaint and the complaint was lodged by the respondent, after recording the evidence. The Trial Court found prima-facie made out and had taken cognizance. Therefore, the complaint cannot be thrown out.

5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding



the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

6. The Hon'ble Supreme Court of India while dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The



very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

7. Further the Hon'ble Supreme Court of India also held in the Judgment dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis



for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.6435 of 2004 on the file of the XXIII



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Metropolitan Magistrate, Saidapet, Chennai. While pending this matter, this Court, by an order dated 25.01.2016, appointed an Auditor of one M/s.Brahmayya & Co., in order to settle the issue. However, the petitioners did not settle the same and nothing proceeded further. Therefore, the appointment of Auditor also now stand cancelled.

9. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

13.04.2023

Internet: Yes
Neutral Citation : Yes/No
Speaking/non speaking order

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