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CRL.O.P.No.27643 of 2016 &CRL.O.P.No.1489 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.11.2022

Pronounced on : 30.08.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.27643 of 2016

and

CRL.O.P.Nos.1489 of 2017

Crl.M.P.Nos.14136, 14137 of 2016

and

Crl.M.P.Nos.1104 and 1105 of 2017

1.Kamala Thiagarajan

... Petitioner / A5
in Crl.O.P.No.27643/2016

2.Karunanithi

... Petitioner / A10
in Crl.O.P.No.1489/2017

Vs.

Union of India
Represented through,
Mr.S.Krishnakumar,
Asst.Director,
Ministry of Corporate Affairs,
Serious Fraud Investigation Affairs,
Government of India,
Regional Office – Chennai,
Ground Floor, Corporate Bhavan, 29,
Rajaji Salai, Chennai – 600 001

... Respondent / Complainant
in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.173 of 2016, on the file of the Additional Chief Metropolitan Magistrate, (E.O.-I) Egmore, Allikulam Complex, Chennai and quash the same.



For Petitioners : Mr. N.Ramakrishnan
For M/s.Waron & Sai Rams
in Crl.O.P.1489 of 2017

and

Mr.N.R.Elango,
Senior Counsel
For Mr. R.Vivekananthan
in Crl.O.P.27643 of 2016

For Respondent : Mr.K.Ramanamoorthy, CGC
in Both Crl.OPs.

COMMON ORDER

Seeking to quash the proceedings in E.O.C.C.No.173 of 2016, pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, the petitioners are before this Court with these petitions.

2. Since the issue involved in both the Criminal Original Petitions are one and the same, both the petitions were taken together and a common order is being passed.

3. The facts, which are absolutely necessary for deciding the present petitions, are as follows:-



(i) The Respondent lodged a private complaint against the Petitioners/A5 and A10 and other accused before the learned Additional Chief Metropolitan Magistrate, Chennai, on 14.12.2016, for offences under Sections 68, 628 r/w 211, 211(3C) and 211(1) r/w AS-1,2,18,19,26 & Schedule VI of the Companies Act and Sections 212, 217(2), 217(2AA) and 217(3) and Sections 253 and 266A of Companies Act 1956 and under Sections 177, 187, 34, 227, 233, 403, 405, 406, 409, 420, 464, 465, 471 and 120B of IPC.

(ii) The Serious Fraud Investigation Office (in short, 'the SFIO'), during investigation, analyzed the Tri-partite Agreements (i.e.) Share Holders Agreement(SHA) and Share Subscription Agreement(SSA) executed between the Paramount Airways Pvt. Ltd (in short, 'PAPL'), Promoter Group of PAPL and Kotak Mahindra Bank Limited, on behalf of investors India Growth Fund (IGF). As per the agreement, the promoters of PAPL promised the investors that PAPL would incur marginal loss during first year of operations (i.e.) 2005-06 and PAPL would earn profits from the second year onwards and the entire operations would be met with a total equity investment of Rs.71.20 Crore. The PAPL would be generating sufficient cash to meet the operational requirements. PAPL would be going for credit facilities only for the acquisition of aircraft or



purchase of fixed assets. PAPL and its Directors promised the investors a minimum return of Internal Rate of Return (IRR) 12% on their investments during the year 2009-2010. Based on the promises made, the investors, through the investment Manager, Kotak Mahindra Bank Limited, agreed to invest a sum of Rs.50 Crores in PAPL by subscribing to 1.25 Crore of preference shares of face value Rs.10.00, at a premium of Rs.30.00 per share. PAPL, the promoters and the promoter group entered into Similar Shareholders' Agreement(SHA) with the other Investor viz., Bennnett, Coleman and Company Limited (in short, 'BCCL') on 25.01.2006, promising minimum return of IRR 12% per annum on the equity Investments made by them and agreed to repurchase the shares. Believing on the projections, BCCL agreed to invest a sum of Rs. 6.00 Crore into the equity of PAPL and subscribe to 3,06,140 shares of face value Rs.10/- at a premium of Rs. 186/- per share.

(iii) The Promoter Group made many commitments to the investors on the conduct of business and submission of financial projections, performance and the results. They also agreed to purchase back the preference shares from the investors at an agreed price, if the Investors were not able to redeem their investments through sale or through public issue and the performance was not as per projections. The investors (IGF and BCCL) made an investment of Rs.46.00 Crore in PAPL. The promoters



of PAPL presented projections before the investors, which were not economically feasible to achieve within the projected period. It transpires that the promoters made a forecast to investors knowingly well that the forecasts were deceptive and false and not achievable. The promoters, namely, M.Thiagarajan and Lakshmi Murugesan violated the provisions of the Act.

(iv) The Supplemental Rent Payments made to Celestial were not treated as revenue expenditure, instead accounted as loans and advance under Maintenance Reserve. There were debits in Maintenance Reserve account transferred from ATF fuel expenses, which were not made to lessors and not agreed by them also. The Supplemental Rent Payments made to Celestial were not treated as revenue expenditure instead accounted as loans and advances under Maintenance Reserve. There were debits in Maintenance Reserve account transferred from ATF fuel expenses, which were not made to lessors and not agreed by them also. Pre-Operative Expenses (in short, 'POE') debited after commencement of commercial operations. There were unconnected debits transferred from many revenue heads like salaries, insurance, interest, commission and catering expenses. There were high variation in revenue and expenditures during 2009-10 compared to previous years, which were not explained. There were improper accounting entries under stocks, maintenance



reserve and repairs and maintenance heads. The statutory auditors could not explain the rationale behind these accountings made by PAPL. The Directors, both present and past, were also unable to explain and put the blame on ex-vice president (Corporate Affairs), who passed away. The statements recorded from the ex-employees revealed that M.Thiagarajan, Ex-MD., was the sole deciding authority and he only managed the entire affairs till closure of operations. The Auditors did not make adequate disclosures under AS 18, AS 19, AS 26, AS 2 and AS 1. The promoters of PAPL did not bring in any investment/ additional investment by way of share capital or long term funds to fund the operations. The promoters depended upon bank borrowings to fund the operations. The promoters with the help and assistance from statutory auditors intentionally made falsified accounting entries, not followed up the AS, and not given complete disclosures. Since inception to till 05.09.2009, M.Thiagarajan was the Managing Director of PAPL.

(v) M.Thiagarajan, Lakshmi Murugesan, E.R.Gurubalachandran and C.Periyakaruppan were the officers in default for not preparing the financial statements showing a true and fair view. The Directors despite knowing well that disclosures of transactions are material facts, omitted the same in the returns filed with the ROC. The omission of full disclosure is willful, same was done deliberately and attracts violation of Sec.628 of



the Companies Act, 1956, as the Management and Statutory Auditor, who were the signatory of the Balance Sheet willfully allowed the material information not to be disclosed to the shareholders/stakeholders, bankers, regulators etc. The persons namely, M.Thiagarajan and Lakshmi Murugesan, E. R.Gurubalachandran, C.Periyakaruppan, N.Visvanathan and A.Zahir Hussain are liable to be prosecuted.

(vi) The disclosures made by Ex-MD M.Thiagarajan available in public domain revealed that PAPL incorporated five subsidiaries abroad and incorporated the same in BVI during 2008. M.Thiagarajan was the only Director and shareholder of these five subsidiaries. Among the subsidiaries incorporated, two subsidiaries were Golden Lotus Leasing Corporation (GLLC) and Celestial Corporate Investment Limited. GLLC had a branch office in Singapore and had accounts with UBS AG, Singapore. PAPL reportedly entered into an agreement with GLLC for supply of aircraft engine from April 2008. PAPL also made payments of lease rentals every month approximately USD 200,000/- from April 2008 to October 2009. However, the lessors of aircrafts, namely ECC and GECAS, informed that they did not give any permission for change of engine in the aircrafts. The various documents obtained show that there was no change of engines or lease of engines, as claimed for making payments to GLLC. The PAPL did not file either the audited financial



statements of subsidiaries or a statement on subsidiaries, as required as per the Act. During the period (2007-09), Lakshmi Murugesan and M.Thiagarajan were the Directors of PAPL till 31.08.2009 / 05.09.2009 (As per filings with ROC, Chennai, filed on 21.01.2011 and 25.06.2011). Later C. Periyakaruppan and E.R.Gurubalachandran became the Directors of PAPL from 29.08.2009 and 05.09.2009. Ex-Directors of PAPL, Lakshmi Murugesan and M.Thiagarajan and present Directors E.R.Gurubalachandran and Periya Karuppan (till liquidation orders) did not comply with the provisions of Section 212 either by filing the financial statements of subsidiaries along with audited financial of PAPL or a statement as required under the Act, if the financial period did not coincide with the FY or Period PAPL. In view of the same, the above Directors are liable for punishment as per sub Section (9) of Section 212 of the Companies Act, 1956.

(vii) The Ex-Directors of PAPL Lakshmi Murugesan and M.Thiagarajan and present Directors, till liquidation orders did not comply with the provisions of Section 217 Sub Section 2, 2AA and 3 of the Companies Act, 1956. During the course of investigation, the SFIO team issued summons to M.Thiagarajan and Lakshmi Murugesan. The issued summons were duly served upon them on 7.2.2014 & 6.3.2014. In response to the summons, only M.Thiagarajan, the Ex-Managing Director



of PAPL, appeared before the SFIO team on 10.4.2014, 15.12.2014, 16.12.2014, 17.12.2014 and 24.2.2015, and his statements recorded. Lakshmi Murugesan chose, not to appear before the SFIO. The SFIO team during the course of investigation found, large value intergroup financial transactions. Therefore, the team obtained the permission as required under section 240(2) of the Companies Act, 1956, to enquire into such transactions, from the Competent Authority. After taking permission from the Competent Authority, the team wrote letters to the present and past Directors of the associate Companies, on 3.12.2014 to furnish the details, and also to produce the relevant records.

(viii) The Directors Lakshmi Murugesan, Kamala Thiagarajan, Ponnusamy. Thangaraj Jayakumar received the summon by Speed Post but demanded the copy of the copies of sanction accorded by the Competent Authority before complying with the directions contained in the summons received by them. The team issued fresh summons on 3.12.2014, 19.12.2014 and 6.2.2015 and along with summons enclosed the copy of the sanction accorded by the Competent Authority along with details of foreign inward remittances received, as well as payments made out of these remittances, by these companies and again provided another opportunity to the directors, to furnish the information on or before 30.11.2014. The summons dated 3.12.2014 were duly received by all the



addressee. Kamala Thiagarajan refused to receive the letter and returned the cover. The addressee Directors despite having received the summons did not provide the details and choose not to appear before the Inspectors. These directors, Lakshmi Murugesan, Kamala Thiagarajan, Ponnusamy, Thangaraj Jayakumar instead of appearing themselves, sent their representatives, before the team. The representatives also could not explain, the provision under which, they have appeared before the SFIO team, and how their answers would be binding, on the directors. Hence, the team could not obtain the relevant details, and record, the statement on oath. The above stated facts and the documents collected by the investigation team transpires that the persons namely, Lakshmi Murugesan, Kamala Thiagarajan, Ponnusamy Vijayaraja, Thangaraj Jeyakumar are liable to be prosecuted under Section 240(3) of the Companies Act, 1956.

(ix) That, SFIO team examined various persons, recorded their statements on oath, including M.Thiagarajan, E.R.Gurubalachandran, present Directors and N. Visvanathan, the statutory Auditors of PAPL. M.Thiagarajan is the promoter Director of PAPL and his statement was recorded on oath, under Section 240 (2) of the Companies Act, 1956, on 10.04.2014, 15.12.2014 to 17.12.2014 and 24.01.2015. During recording of the statement, he informed that T. D.Gopalakrishnan was responsible



for managing the day-to-day affairs of the company. The documents collected during investigation established that M.Thiagarajan, had negotiated the investment issues with the Investors as the head of Management team, with the designation Managing Director and every head of the department, was reporting to the Managing Director, M.Thiagarajan only.

(x). The documents collected from banks also established that M.Thiagarajan was matters relating to loans. The record revealed that T. D. Gopalakrishnan joined PAPL, again as Vice President on, 25.10.2009. The appointment Letter, appointing T.D.Gopalakrishnan as Vice President was signed by M.Thiagarajan, in his capacity as the Managing Director of PAPL. M.Thiagarajan deposed on oath that he attended only two board meetings at the invitation of T.D.Gopalakrishnan. He also attended some meetings as Alternate Director in place of C.Periyakaruppan; however, the collected records established that M.Thiagarajan, regularly conducted the board meetings, and passed resolutions, whenever required. He also signed these board resolutions, in his capacity, as Managing Director. He falsely deposed that he was not the authorized signatory in any of the bank in the capacity of Managing Director and the resignation letter was given to Banks after 05.09.2009. He signed in the capacity of authorized signatory as per the resolutions passed and given to Bank. However, the



documents collected from the bank showed that no such resolution was passed and given to banks during the course of investigation and recording of the statement on oath, E.R.Gurubalachandran falsely deposed on oath that he was appointed director of PAPL on 05.09.2009 and completed all formality of appointment on the same day. However SFIO team found that as per Form No.32 filed with ROC, Chennai on 24.06.2011, he was appointed as Director of PAPL, with effect from 28.08.2009, and not from 05.09.2009. N.Visvanathan was the Statutory Auditor of PAPL, since incorporation of PAPL till 2009-10. The SFIO team recorded his statement, on oath under Section 240(2) of Companies Act, 1956 on various dates. He falsely denied his involvement in negotiating with the banks in connection of the loan facilities whereas, the investigation established that he prepared and certified many provisional financials of PAPL, which were given to the banks. These financials contained inflated revenues and non-existent capital. These documents helped PAPL, to show an improved performance of its financials, before the banks. It helped PAPL, to obtain enhanced, additional, fresh credit facilities from the banks. Thus, the said M.Thiagarajan, Ex-MD, E.R.Gurubalachandran, present director and N.Visvanathan are liable to be prosecuted under Section 629 of the Companies Act, 1956 and are punishable as per the above Section.



(xi). During investigation, E.R.Gurubalachandran informed that he made as director of PAPL on 05.09.2009. However, the mandatory compliance of filing of Form 32, show his appointment as Director was carried out only on 24.06.2011. No consent letter was filed by E. R. Gurubalachandran along with Form 32, to act as Director of PAPL. It was also revealed that only on 23.06.2011, E R. Gurubalachandran was allotted DIN number. E. R. Gurubalachandran did not have DIN, on the date of his appointment, and also from 28.08.2009 to 22.06.2011. However he acted, as a director of PAPL. during this period. E.R.Gurubalachandran acted as director without DIN. PAPL and the promoter directors namely M. Thiagarajan and Lakshmi Murugesan had appointed E. R. Gurubalachandran, to act as Director of PAPL, without DIN from 28.08.2009 to till 22.06.2011 and hence violated the provisions of Section 253 of the Companies Act, 1956. Therefore, the company and M. Thiagarajan and Lakshmi Murugesan & E. R. Gurubalachandran being the officers, in default, are liable to be punished under Section 629A of the Companies Act, 1956.

(xii) M.Thiagarajan fraudulently sold the current assets of aircraft spares and stocks by way of export and the sale proceeds were received through associate company accounts, namely, PFSPL and PFRPL, and



later misappropriated. The sales were made without informing the lending banks with a criminal intention of misappropriating the sale proceeds.

M.Thiagarajan, Ex-MD of PAPL and the director of the Paramount Flight Services Pvt Ltd (in short 'PFSPL') and the PFRPL, at that time, knew well that PAPL had hypothecated these assets to the lending banks. Apart from the above, M.Thiagarajan sold the fixed assets (Vehicles) to third parties apart from transferring some vehicles in the name of associate companies. The directors of the Paramount Textile Mills Pvt Ltd. Paramount Holdings Pvt Ltd (in short 'PHPL'), PFSPL and PFRPL were in the knowledge of workings of PAPL, its borrowings and lien of financing banks over the assets. Despite having the knowledge, they permitted the companies under their control to purchase these assets, to receive the sale proceeds of assets sold and thereby connived with the promoters/directors of PAPL. The accused misled the DGCA and obtained "NOC" from DGCA in the name of "Paramount Airways by submitting fabricated and forged documents instead of PAPL. Misrepresented the facts before the DGCA and other authorities and tried to restart the airline in the name of "Paramount Airways India P Limited" by defrauding the existing lenders and creditors.

(xiii) The accused in this case acted in a criminal conspiracy, to deceive the banks, committed a criminal breach of trust and faith, the



banks reposed on them. They connived with the promoters of PAPL, in the disposal of the assets belonging to the banks under hypothecation, with a motive to benefit them and the entities belonging to them. Thus, they have committed the offence under Sections 34, 420 r/w Section 120B of Indian Penal Code along with the directors of PAPL.

(xiv) PAPL made regular monthly payments to the tune of USD 200,000/- from April 2008 onwards to a foreign entity by name GLLC, Singapore. These payments were made for towards Lease Rentals-Engine Access. No documentary evidence ever produced / submitted by PAPL, its Directors and its Statutory Auditors, showing that the payments made by PAPL to GLLC were in connection with services rendered. No aircraft was ever imported and the GLLC was the subsidiary company created by M.Thiagarajan to receive property of PAPL under the garb of lease rental. These persons under a criminal conspiracy, among themselves, dishonestly misappropriated the amount of Rs.13.43 Crore, in 2007-09, and an unspecified sum, up to October 2009, in violation of various provisions of the Indian Penal code, 1860. Thus, they committed an offence of criminal breach of trust, as defined under Section 405 of the Indian Penal Code, 1860 and render themselves liable to be punished under Section 406 of the Indian Penal Code, 1860 r/w Section 120B of the Indian Penal Code, 1860.



(xv) On 31.03.2009, the fixed assets, stocks and aircraft spares valued at Rs.35.53 Crore, but in the Balance Sheet, as on 31.03.2010, reduced to Rs.1.45 Crore. PAPL not shown income, on the sale of fixed assets. The assets of PAPL were available with PAPL and removed on the instruction of the said M.Thiagarajan, Ex- Managing Director of PAPL. The promoters have disposed of the vehicles, and misappropriated the sale proceeds of the vehicles. The promoters of PAPL exported the stocks and aircraft spares belonging to PAPL, during 2010 to 2012, to the buyers in US and Singapore. However the proceeds were received, in the bank accounts of group companies, namely, PFSPL and PFRPL. The value of the goods was Rs.0.68 Crore when these goods were exported. The total value of inward remittances received was at Rs. 12.03 Crore in the bank account of the Paramount Flight Services Pvt Ltd and the Paramount Freight Pvt. Ltd. The directors of PFSPL and PFRPL namely M. Thiagarajan and his wife, Kamala were also called upon to explain about these transactions but they did not provide any detail. However, the operations of bank accounts of the PPSRE PERPL and BlueBird Publication Pvt Ltd (herein after may be referred as BBPPL) and the documents provided by the PFRPL/PFSPL to the banks for Inward remittances received, show that the said M.Thiagarajan was fully aware of the sale of stocks, and aircraft spares and the receipt of sale proceeds in



the PESPL and the PFRPL

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(xvi) The promoter directors of PAPL had sold some of the fixed assets, stocks and aircraft spares. The sale proceeds of the vehicles and sum of Rs. 12.03 Crore received on the sale of stocks and spares have been misappropriated by the promoter director of PAPL, namely, M.Thiagarajan through his other group companies PFSPL and PFRPL. Thus, PAPL its directors M. Thiagarajan, Lakshmi Murugesan and Kamala Thiagarajan, Ex-Director of PFSPL and PFRPL dishonestly misappropriated the sale of proceeds of the above mentioned stocks and spares / fixed assets, which were entrusted to them, and thereby, committed an offence punishable under Sections 403 and 406 of Indian Penal Code, 1860. The Directors of PFSPL and PFRPL were party to criminal conspiracy in misappropriation of fund received against the sale of stock and spares and hence, liable under Section 120-B of Indian Penal Code, 1860.

(xvii). The financial statements submitted by M.Thiagarajan to the banks were certified by N. Visvanathan, the statutory auditors of PAPL. In these financial for the six months period ending 31.03.2008, PAPL show that, PAPL earned a net profit of Rs.1.17 Crore on total revenue of Rs.121.04 Crore. The entries of financial statement recorded that PAPL



had received additional capital of Rs.200 Crores and the same was invested, as advance for the purchase of aircrafts. The PAPL earned a profit of Rs. 7.26 Crores on the revenue of Rs. 373.27 Crores. The balance sheet as on 31.03.2009 also shown that PAPL had received additional share capital of Rs. 200.00 Crore by way of share application money and the same was utilized for giving advance for purchase of aircrafts related-equipments. The entries relating to additional share capital, revenues and profit were nothing but forged and fabricated entries. The reported e-mail of Ratan Ral, head-revenue, on the earnings of PAPL, for the 18 months period ending 31.03.2009 was fabricated one. The revenues were managed by the Paramount Group, and they used to provide the number of tickets sold, during the period. The documents obtained from CENT BANK that the reported foreign investor of Rs.200.00 Crore was Celestial Corporate Investment Limited, one of the subsidiary companies formed by PAPL. The said M.Thiagarajan conspired with N.Visvanathan, Statutory Auditor of PAPL, prepared false and fabricated provisional financial statements of PAPL for the six months period ending 31.03.2008 and Provisional Financial statement of PAPL, for the eighteen months period ending 31.03.2009. The said M.Thiagarajan forged and fabricated provisional financial statements with the help of N. Visvanathan and submitted the same as genuine to the banks and committed an act of forgery these documents were used by the banks, in assessing the



financial performance of PAPL, lending money and in sanctioning the credit facilities. Thus, M. Thiagarajan committed an offence under Section 464 and 471 of IPC, 1860, which is punishable under Section 465 and 471 and N. Visvanathan under Section 120B r/w Section 464 and 471 of IPC, 1860, which is punishable under Sections 465 and 471 of IPC.

(xviii). The said M. Thiagarajan, Ex-Managing Director of PAPL, B. R. Gurubalachandran, present director and N. Visvanathan, the statutory auditors of PAPL persons made false statement on oath at the time of recording of their statement under Section 240(2) of the Companies Act, 1956 and furnished false written submission to the inspectors of SFIO team. The said T.D.Gopalakrishnan was responsible for managing the day to day affairs of the company and TDG was instrumental for roping in Kotak and Bennett Coleman. However, the document collected during investigation transpires that M.Thiagarajan negotiated the Investment issues with the investors as the head of Management team. All the heads of the departments were reporting to the Managing Director M.Thiagarajan, resigned from the Board of Directors as well from the Managing Director post on 04.09.2009 / 05.09.2009, gave the resignation letter to T. D. Gopalakrishnan. However, the records revealed that T. D.Gopalakrishnan joined PAPL, again as Vice President, Corporate Affairs on, 25.10.2009. The appointment Letter, appointing T. D. Gopalakrishnan



as Vice President, Corporate Affairs was signed by M. Thiagarajan, in his capacity as the Managing Director of PAPL M. Thiagarajan deposed on oath that he attended only two board meetings at the Invitation of T. D. Gopalakrishnan. He also attended some meetings as Alternate Director in place of C. Periyakaruppan. However, the collected records established that M. Thiagarajan, regularly conducted the board meetings, and passed resolutions, whenever required. He had also signed these board resolutions, in his capacity, as Managing Director. M/s Bala & Co., Chartered Accountants, were the Statutory Auditor of PAPL for the period from 2005-06 to 2009-10. Thereafter, A.Jahir Hussain, Chartered Accountant, Madurai, was appointed as Statutory Auditor of PAPL for the F.Y. 2010-11. The role of Auditors was examined by the investigation team under the provisions of Companies Act, 1956 as regards the compliance to provisions of Sections 211 and 227, r/w Sec. 628 of the Act.

(xix) The financial statements of PAPL during the period 2005-06 to 2010-11 have been falsified. M/s Bala & Co., Chartered Accountants, through its partner N.Visvanathan audited the financial statements of PAPL without complying the Accounting Standards and furnished its partly qualified report based upon the falsified balance sheets for the period 31.03.2006, 01.04.2006-20.09.2007, 01.10.2007-31.03.2009 and 31.03.2010. The Statutory Auditor of PAPL, tried to conceal, the material



facts. He feigned ignorance and pleaded to excuse him, for not providing an answer immediately. He tried to give wrong or incorrect information, and mislead investigation. A.Jahir Hussain, Madurai Chartered Accountant, audited the financial statements of PAPL for the period 31.03.2011 without complying with the Accounting Standards-18 and furnished its unqualified report based upon the falsified balance sheets for the period 31.03.2011, thus, he failed to comply with the provisions of Section 227(2) of the Companies Act, 1956 as the books of accounts of PAPL were falsified and does not give a true and fair view of their financial affairs. Similarly, the financial statements of PAPL does not conform to the requirements of Section 211 of the Companies Act, 1956 read with section 628 of the Companies Act, 1956. Thus, N.Visvanathan and A.Jahir Hussain has violated the provisions of Section 227 of the Companies Act, 1956 and is liable for penal action under Section 233 of the Act, 1956.

4. Mr.N.R.Elango, the learned Senior Counsel appearing for the petitioner/A5 in Crl.O.P.27643 of 2016 would submit that the alleged offences against the petitioner is of occurrences of the year 2009 and 2014. The cause of action of the offences are different. Hence, they cannot be clubbed together, hence the complaint is not legally sustainable. The allegations in the complaint do not disclose any prima-facie case against the Petitioner. Petitioner was never a Director of A11 and A12



Companies and it is improper to include the petitioner as an accused when she had never participated in the affairs of the above companies.

The petitioner was the Director of the companies namely, PFSPL and PFRPL and to prosecute the petitioner, the respondent ought to have added the above named companies as an accused, without adding those companies as accused, the complaint is not maintainable against the petitioner. The petitioner / A5, except being wife of A1, she has nothing to do with the transaction of Paramount Airways Limited. Further, the Petitioner is not a Director of Paramount Airways limited. She is the Director of Paramount Flight Services Private Limited and Paramount Freight Private Limited. Admittedly, in this case, both the companies have not been arrayed as accused. Hence, proceedings against the Petitioner, in the absence of the company is not proper. The Court without applying its mind has taken cognizance of the case, hence the complaint is liable to be quashed.

5. Mr.N.Ramakrishnan, the learned counsel appearing for the petitioner/A10 in Crl.O.P.No.1489 of 2017 would submit that the proceedings have been initiated by the Respondent against the Paramount Airways Private Limited and its Directors. The Paramount Airways had four Directors viz., A1 to A4. The Petitioner has been arrayed as A10. The Petitioner had not in any way involved in Paramount Airways Private



Limited, except being a brother of 1st accused and son of 2nd accused, he had got no other connection with them. The Petitioner independently runs a business under the name of Paramount Textile Mills Private Limited. The complainant wrongly presumes that for A12/Paramount Mills Private Limited, Petitioner is the Director. The Paramount Mills Private Limited belongs to A1 and nothing to do with the Petitioner.

6.Further from the reading of entire complaint, nowhere it is stated that there is no overt act attributed against Petitioner/A10, except there are bald allegation stating that A1 had sold fixed assets (Vehicles to the third parties), apart from transferring some vehicles in the name of Associate Companies. Director of Paramount Textile Mills Private Limited had the knowledge of workings of Paramount Airways Private Limited, its borrowings and lien of financing banks over the assets. Despite having knowledge, they permitted the Companies under their control to purchase the assets, to receive the sale proceeds of assets and thereby connived with the Promoter or Directors of Paramount Airways Private Limited. Further Paramount Textile Mills Private Limited was shown as Paramount Mills Private Limited/A12, then also the Petitioner cannot be proceeded with. The Petitioner has been arrayed as accused as Director of Paramount Textile Mills Private limited. In the case of **Sharad Kumar Shanghi Vs. Sangeetha Rane**, reported in **2015 (12) SCC 781**, the Hon'ble Apex Court clearly issued guidelines that unless company is made



as accused, the Director for vicarious liability cannot be proceeded.

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7. The Petitioner's company is not an accused. Further, the Petitioner in its individual capacity had not connected in any manner with regard to Paramount Airways limited, except some bald allegation that vehicles have been used or purchased by the Petitioner from Paramount Airways, there is nothing more. Further as regards the dispute with regard to Kotak Mahindra, the issue between Paramount Airways and Kotak Mahindra has been settled. He further submitted that apart from the Serious Fraud Investigation Officer, CBI and Enforcement also proceeded against the Paramount Airways and its Directors and in none of the case, the Petitioner is an accused. Hence, the learned counsel prayed for quashing of the proceedings against the petitioner / A10.

8. The learned counsel in support of his contentions relying on the Judgment of the Apex Court in ***Maksud Saiyed Vs. State of Gujarat and Others*** reported in ***(2008 (5) SCC 668)*** would submit that “ the penal code does not contain any provision for attracting vicarious liability on the part of the Managing Director or the Director of the Company when the accused is the Company.”. Further, in the said Judgment in para 13, it has been held as follows:-

“13. Where a jurisdiction is exercised on a



complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

9. Further, the learned counsel relied on the Judgment of the Apex Court in ***Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and Others*** reported in ***(2019 (16) SCC 610)*** wherein, it has been held as follows:-

"33. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.



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The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman, this Court held as under:-

"22.the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power



of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

10.Mr.K.Ramanamoorthy, learned Senior Panel Counsel for respondent submitted that there are specific allegations against the Petitioners. The Petitioner in Crl.OP.No1489 of 2017 is the brother and Petitioner in Crl.OP.No.27643 of 2016 is the wife of A1. The Paramount Airways Limited has borrowed huge amount from various banks, financial organisation and thereafter, misappropriated the public funds. On the direction of this Court, Serious Fraud Investigation Officer had conducted an investigation and thereafter, filed a complaint. Petitioners not only under the Companies Act, even they have also committed offences of cheating, misappropriation, and conspired with each other. Further a detailed enquiry has been conducted and report consisting of 800 pages has been prepared. The points raised by the Petitioners has to be decided during Trial and not in the quash Petition. Further, he has produced a portion of investigation report and typed set showing the custody of properties, Notification of Ministry of Corporation Affairs.



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11. The learned Senior Panel Counsel for the respondent by filing a counter would submit that earlier, this Court, vide order dated 19.08.2013 in C.P.No.268 and 287 of 2009 and C.P.Nos.49, 271 and 272 of 2010 and C.P.No.20 of 2011, directed the Ministry of Corporate Affairs (Central Government) to investigate into the affairs of PAPL. In compliance, the Ministry of Corporate Affairs, in exercise of powers under Section 237 of the Companies Act, 1956, ordered for investigation on 17.12.2013. As per the investigation of the Inspectors of the SFIO, the various irregularities are found like, illegalities, manipulation of Accounts, misappropriation of funds, sale of Air Craft spare parts to foreign entities by PAPL and receipt of proceeds in group/associate companies Accounts by A1 to A12 and on receipt of instruction/ consent from MCA, in compliance, the SFIO filed a complaint before the Chief Metropolitan Magistrate, Egmore (EOI) under Sections 68, 628 R/W 211, 211 (3C) & 211 (1) R/W Accounting Standards No. 1, 2, 18, 19, 26 & Schedule VI of the Act Section 212, S: 217 (2), 217 (2AA) & 217 (3), S 240 (3), 629 Section 253 & 266A of Companies Act 1956 & complaint under section 177, 187, 34, 227, 233, 403, 405, 406, 409, 420, 464, 465, 471, 120B of Indian Penal Code, 1860, The learned Magistrate, after prima facie satisfaction, took the complaint on file and issued process. The total assets of the company is Rs. 0.76 crores, whereas, the liabilities is of Rs.611.82 crores. The company sold the



fixed assets (Vehicles) to third parties apart from transferring some vehicles in the name of associate companies. The Directors of the paramount Textile Mill Pvt. Ltd, PHPL, PFSPL and PFRPL were in the knowledge of working of PAPL, its borrowings and lien of financing banks over the assets. Despite having the knowledge, they permitted the companies under their control to purchase these assets, to receive the sale proceeds of assets sold and thereby connived with the promoters/Directors of PAPL. The fixed assets and stocks and Aircraft spares valued at 35.53 Crores in the year 2009 were reduced to 1.45 Crores in 2010. The Directors siphoned the amount of Rs. 12.03 crores received on account of sale spares/Paramount Textile Mills Pvt. Ltd and PAPL misappropriated fixed assets and vehicles without the consent of secured creditors. The Paramount Textile Mills Pvt. Ltd has two Directors namely A2 and the petitioner herein/A5. They were working in the capacity of an agent and had dominion over the property. Five vehicles (4 LMV car and one motor cycle) had been transferred in the name of new owners, 2 cars and one motor cycle transferred in the name of individuals at different places and 2 cars had been transferred in the name of Paramount Textile Mills Pvt. Ltd, a company owned by Mrs. Lakshmi Murugesan and Mr. Ram, mother and brother of A1.



12. The learned Senior Panel Counsel for Government of India, relied on the Judgment of the Apex Court in ***Kurukshetra University and Anr. Vs. State of Haryana And Anr.*** reported in ***(AIR 1977 SC 2229)*** wherein it has been held as follows:-

"It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the CrPC, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

13. Further, the Apex Court in ***R. P. Kapur vs. The State of Punjab*** reported in ***(1960 AIR 862)*** held: "that no case for quashing the proceedings was made out. The inherent jurisdiction of the High Court could be exercised to quash the proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. The High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not." Further, the



Supreme Court in the Judgment in ***Janta Dal V. H. S. Chowdhary & Others*** reported in ***(1992 (4) SCC 305)*** wherein it has been held as follows:-

"This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage."

14. The learned Senior Panel Counsel for the respondent further relied on the Judgment of Apex Court in ***CBI Vs Maninder Singh*** reported in ***(2015 (9) SCALE 365)*** wherein it has been held as follows:-

"The inherent power of the High Court Under Section 482 Code of Criminal Procedure should be sparingly used. Only when the Court comes to the conclusion that there would be manifest injustice or



there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large.”

15. It is submitted that while issuing process the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. In this regard, the learned counsel relied on the Judgment of the Apex Court Judgement in ***Smt.Nagwwa Vs. Veeranna Shivalingappa Konjalgi & Ors.*** reported in ***(1976) 3 SCC 736***, wherein it has been held as follows:-

"It is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and



the discretion has to be judicially exercised by him. It was further held that once the Magistrate has exercised his discretion, it is not for the High Court, or even to this court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of accused."

16. Further, the Hon'ble Supreme Court in case of ***Kanti Bhadra Shah & Anr. Vs. State of West Bengal*** reported in ***(2000) 1 SCC 722*** held in para 12 that;

"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed



for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial....."

17. The learned counsel also relied on the Judgment of the Apex Court in ***Dy.Chief Controller of Imports & Exports Vs. Roshan Lal Agarwal & Ors.*** reported in ***(2003) 4 SCC 139***, wherein in para no. 9, it has been held as follows:

"In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground conviction Whether the evidence is adequate for supporting the convictions, can be determined only at the trial and not at the stage of enquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

18. Further, the learned counsel relied on the Judgment of the Apex Court in ***U.P.Pollution Control Board Vs. Messrs Modi Distillery and Others*** reported in ***(1987 (3) SCC 684)***, wherein in para 6, it has been held as follows:-



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“6. On a combined reading of the provisions contained in Sub-sections (1) and (2), we have no doubt whatever that the Chairman, Vice-Chairman Managing Director and members of the Board of Directors of Messrs. Modi industries Limited, the Company owning the industrial unit Messrs. Modi Distillery could be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Messrs. Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged. The learned Single Judge has failed to bear in mind that this situation has been brought about by the industrial unit viz. Messrs. Modi Distillery of Messrs. Modi Industries Limited because in spite of more than one notice being issued by the Board, the unit of Messrs. Modi Distillery deliberately failed to furnish the information called for regarding the particulars and names of the Managing Director, Directors and other persons responsible for the conduct of the Company. Having wilfully failed to furnish the requisite information to the Board, it is now not open to the Chairman, Vice-Chairman, Managing Director and other members of the Board of Directors to seek the Court's assistance to derive advantage from the lapse committed by their own industrial unit. The learned Single Judge has focused his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of



Messrs. Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the Appellant to make the formal amendments to the averments contained in paragraph 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the Appellant for leave to amend by substituting the name of Messrs Modi Industries Limited, the Company owning the industrial unit, in place of Messrs Modi Distillery.

Although as a pure proposition of law in the abstract the learned Single Judge's view that there can be no vicarious liability of the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors under Sub-section (1) or (2) of Section 47 of the Act unless there was a prosecution against Messrs Modi Industries Limited, the Company owning the industrial unit, can be termed as correct, the objection raised by the Petitioners before the High Court ought to have been viewed not in isolation but in the conspectus of facts and events and not in vacuum. We have already pointed out that the technical flaw in the complaint is attributable to the failure of the industrial unit to furnish the requisite information called for by the



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Board. Furthermore, the legal infirmity is of such a nature which could be easily cured. Another circumstance which brings out the narrow perspective of the learned Single Judge is his failure to appreciate the fact that the averment in paragraph 2 has to be construed in the light of the averments contained in paragraphs 17, 18 and 19 which are to the effect that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors were also liable for the alleged offence committed by the Company.”

19. Further, the learned counsel relied on the Judgment of the Apex Court in ***S.R.Sukumar Vs. S.Sunaad Raghuram*** reported in **(2015 (9) SCC 609)**, wherein it has been held as follows:-

“18. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In *U.P. Pollution Control Board v. Modi Distillery and Ors.* MANU/SC/0912/1987 : (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. the name of the company was



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mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:

...6. The learned Single Judge has focussed his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the Appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the Appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery.... Furthermore, the legal infirmity is of such a nature which could be easily cured...."

20. Further, the learned counsel relied on the Judgment of the Apex Court in ***Padal Venkata Rama Reddy Alias Ramu Vs. Kovvuri Satyanarayana Reddy and Others*** reported in ***(2011 (12) SCC 437)***, wherein it has been held as follows:-

"32. It would not be proper for the High Court



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to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal."

21. Further, relying on the Judgment of the Delhi High Court in ***Malvinder Mohan Singh Vs. Enforcement Directorate & Anr*** reported in ***(2022 LiveLaw (Del) 445)*** the learned counsel would submit that the "Economic offences are detrimental not only to the economy of the nation but also the society at large the underprivileged and downtrodden are often at the receiving end of the after-effects of such offences. Extraordinary powers of High Court are not meant to be exercise at the disposal of the affluent accused who do not leave any stone untuned to arm-twist the law of the land and administrative machinery to



achieved their scrupulous ends.”

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22. Thus, the learned counsel submitted that the order dated 11.11.2016 passed by the Ld. ACMM (EO -1), Chennai is correct one and a true exposition of law and same is based on the material on records and thus, requires no interference is called for. Hence, the learned counsel prays for dismissal of the petitions.

23. This Court heard the submissions advanced by learned counsel for the parties and gone through the records placed before this Court.

24. This Court felt it necessary to examine the SFIO Report so as to gain clarity about the nature of disputes involved in the present case. From the Investigation Report of Paramount Airways Pvt Ltd., filed by the Serious Fraud Investigation Office, Ministry of Corporate Affairs, New Delhi, dated 31.08.2015, it is seen that in the complaint, there are 12 accused. The petitioners herein are arrayed as A5 and A10 respectively. As regards the Petitioner/ A5 in Crl.OP.No.27643 of 2016, it is the specific case of the respondent that she is the Ex-Director of the Companies namely, Paramount Flight Services Pvt Ltd (PFSPL) and Paramount Freight Services Pvt., Ltd. (PFRPL). She along with other Directors, used the bank accounts of PFSPL and the PFRPL, to siphon off the sale



proceeds. These accounts were operated by M.Thiagarajan, who is the husband of A5. The specific case of the respondent as against the Petitioner/A10 in Crl.O.P.No.1489 of 2017 is that he is the brother of A1. The Directors of the Paramount Textile Mill Pvt. Ltd, Paramount Holdings Pvt Ltd(PHPL), PFSPL and PFRPL were in the knowledge of working of PAPL, its borrowings and lien of financing banks over the assets, they permitted the Companies under their control to purchase the assets, to receive the sale proceeds of assets sold and thereby, connived with the Promoters/Directors of PAPL. Further, the petitioners along with other Promoters / Directors involved in misappropriation of funds of PAPL to the tune of Rs.12.03 Crores, by sale of aircraft spares, by receiving the sale proceeds in Associate Companies. Further, A5 did not appear before the Inspectors for examination on oath, which amounts to non-cooperation in investigation.

26. On perusal of the Investigation report, it is seen that there is no specific averment that the petitioners were in charge of and responsible to the Companies for the conduct of its business at the time of commission of the offence. In the instant case, except the fact that the petitioners are wife and brother of the Director, nothing has been produced by the complainant showing that the petitioners were controlling the day-to-day affairs of the Company. With regard to the nature of charge against the



petitioner/A5, as per the report of SFIO, that she, in connivance with other Promoter Directors, involved in misappropriation of fixed Assets of PAPL, siphoning off funds of PAPL to the tune of Rs.12.03 Crore, by sale of aircraft spares and by receiving the sale proceeds in associate companies by sale of fixed assets and stocks of PAPL to aircraft spare dealers in US and Singapore and non-cooperation in investigation.

27. The ingredients, in order to constitute criminal breach of trust, as defined under Section 405, IPC, are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust. On the other hand, the ingredients of offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes



or is likely to cause damage or harm to the person induced in body, mind, reputation or property. The case of the respondent-complainant is, the petitioners along with others acted in a criminal conspiracy to deceive the banks and committed a criminal breach of trust and faith, the banks reposed on them. Further, they connived with the promoters of PAPL, in the disposal of the assets belonging to the banks under hypothecation, with a motive to benefit them and the entities belonging to them. On perusal of the SFIO report, it is seen that the information is bereft of even the basic facts, which are absolutely necessary for making out the offence, as against the petitioners herein / A5 and A10.

28. At the cost of repetition, from the Investigation Report of the respondent it is seen that there are totally 16 charges formulated for violation of the Companies Act, Indian Penal Code and the Foreign Exchange Management Act, 1999 (FEMA). Charges 1 to 10, for violation of Companies Act; Charges 11 to 15, for various provisions of the Indian Penal Code and Charge Nos. 16 and 17, for violation of FEMA. Charge No.1 is for violation of Section 542 of the Companies Act, against Ex-Managing Director and Directors viz., M.Thiagarajan and Mrs.Lakshmi Murugesan; Charge No.2, for violation of Section 541, against Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan, Mr.E.R.Gurubalachandran, and Mr.C.Periyakaruppan; Charge No.3, for violation of Section 53-B,



against Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan, Mr.E.R.Gurubalachandran and Mr.C.Periyakaruppan; Charge No.4, for violation of Section 68, against Mr.M.Thiagarajan, and Mrs.Lakshmi Murugesan; Charge No.5, for violation of Section 628 r/w. Section 211 of the Companies Act, against Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan, Mr.E.R.Gurubalachandran, Mr.C.Periyakaruppan and N.Visvanathan, Statutory Auditor. Charge No.6, for violation of Section 212 of the Companies Act, against M.Thiagarajan, Mrs.Lakshmi Murugesan, Mr.E.R.Gurubalachandran and Mr.C.Periyakaruppan; Charge No.7, for violation of Section 217 of the Companies Act, against M.Thiagarajan, Mrs.Lakshmi Murugesan, Mr.E.R.Gurubalachandran, and Mr.C.Periyakaruppan; Charge No.8, for violation of Section 248 of the Companies Act, against Mrs.Lakshmi Murugesan, Mrs.Kamala Thiagarajan, Ex-Directors of PFSPL, PFRPL and BBPPL, Mr.Ponnusamy Vijayaraja and Mr.Thangaraj Jeyakumar; Charge No.9, for violation of Section 629 of the Companies Act, against Mr.M.Thiagarajan, Mr.E.R.Gurubalachandran and Mr. N.Visvanathan; Charge No.10, for violation of Section 266-A, against Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan and Mr.E.R.Gurubalachandran,



29. As regards violation of Indian Penal Code, Charge No.11, for offence under Sections 34, 420 r/w 120-B against M.Thiagarajan, Mrs.Lakshmi Murugesan, Mrs.Kamala Thiagarajn, Mr.Ram Murugesan, and Mr.N.Visvanathan, Auditor; Charge No.12, for violation of Sections 403, 405, 406, and 409 against Mr.M.Thiagarajan and Mrs.Lakshmi Murugesan; Charge No.13, for violation of Sections 406, 409 r/w 120-B, against Mr.M.Thiagarajan, Mrs.Lakshmi Murugesan and Mrs.Kamala Thiagarajan; Charge No.14, for violation of Sections 464, 465, and 471, against Mr.N.Visvanathan and Mr.M.Thiagarajan; Charge No.15, for violation of Section 177 r/w Section 187 against Mr.M.Thiagarajan, Mr.E.R.Gurubalachandran and Mr.N.Visvanathan; Charge No.16, for violation of Sections 227 and 233 of the Companies Act, against Mr.N.Visvanathan, Chartered Accountant and Mr.A.Jahir Hussain.

30.The following charges as found in the report are focussed against the petitioner:-

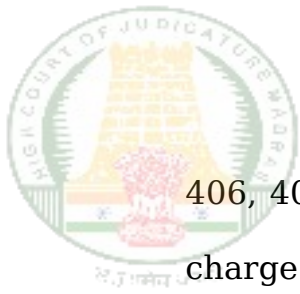
(i) **Charge No.8**, pertains to violation of Section 240, wherein the overt act against the petitioner is as Director of PFSPL, PFRPL and BBPPL, did not comply with the provision. The petitioner not attended the enquiry, on the other hand, only a representative attended, hence, relevant details could not sought for. As per the charge, production of



documents not complied and false statement furnished by the Directors and Auditors. During investigation, it was established that Thiagarajan / A1 only negotiated all the investments it was D.Gobalakrishnan, who was managing the day-to-day affairs of the Company.

(ii) As regards **Charge No.11**, for violation of Sections 34, 420 IPC., r/w 120-B IPC, the petitioner are roped in primarily on the charges of conspiracy. During enquiry it was found that it was M.Thiagarajan, who fraudulently sold the current assets of aircraft spares and stocks by way of export and the sale proceeds received through associate Companies' accounts namely, PFSPL and PFRPL, and later misappropriated. It was M.Thiagarajan, Ex.-MD of PAPL and Director of PFSPL and PFRPL, who knew all the transactions about the hypothecation of assets to the lending banks. Further, he sold the fixed assets to the third parties and in the name of associate Companies. Though knowledge is attributed to the other Directors, there is nothing on record or to infer that against the petitioner / A5. Further, by purchase of vehicles of PFSPL and PFRPL are only to sustain loss and no profit utmost it would have been a book adjustment.

(iii) As regards **Charge No.13**, for misappropriation of Sections



406, 409 r/w 120-B IPC., again primarily the petitioner is roped in on the charge of conspiracy and the enquiry report reveals that it was Thiagarajan, who fully aware of the sale of stocks and aircraft spares on receipt of sale proceeds in the PFSPL and PFRPL account and by sale of fixed assets, stocks and aircraft spares and also sale of vehicles, a sum of Rs.12.30 crores siphoned by Thiagarajan of PAPL, through its other group of Companies viz., PFSPL and PFRPL. A5 is proceeded being Director of these two companies and conspired with Thiagarajan, who is none other than the husband of A5. There cannot be conspiracy between husband and wife, more so, when the categorical finding of the enquiry is that it was A1/Thiagarajan, who had complete control of all the Companies, actively taking part in the affairs of the company. It is seen that CBI registered a case in RC.No.220-2016 E0004, dated 13.04.2016 and finally report has been filed in this case before the Patiala Court, New Delhi, for offence under Sections 120-B, r/w Sections 420, 467, 468 and 471 of IPC., against Paramount Airlines Pvt.Ltd. Thiagarajan, Managing Director, N.Visvanathan, N.Venkatesan and T.Vadivelkannan.

31. In the said case, admittedly, the petitioners are not accused. As an off shoot to the CBI case, the Enforcement Director filed the complaint in O.C.No.1105 of 2019, for money-laundering offence against Thiagarajan and Paramount Airways Pvt. Ltd. Against the attachment of properties,



the parties have approached the Hon'ble Apex Court in SLP.Nos.27172 – 27177 of 2019. The Hon'ble Apex Court, by order dated 01.10.2021 finding that the parties therein had jointly consensus of settlement had given an undertaking to settle the dispute on the agreed terms, giving by way of three instalments. Thereafter, again it was listed on 22.02.2022 wherein, concern terms of settlement, dated 09.09.2021 was found to be complied and SLP closed. Though this may have no direct bearing on the above case, the same referred to the limited extent to show that the petitioner / A5, except being wife of A1/Thiagarajan and Director PF SPL and PFRPL, nothing more, it was only A1, who controlled the functioning of the Companies and oversaw the maintenance of the accounts. It is not out of place to mention that the credit of Rs.12.02 crores, which is the basis of allegation against both the petitioners in the PMLA report, it is recorded Thiagarajna dealt with the same.

32. As regards A10, from the entire investigation report there is nothing against him except that, two of the vehicles of Paramount Airways transferred in his name. Further, it is seen that in this case, neither Paramount Flight Services Pvt., Ltd. Paramount Freight Services Pvt. Ltd., and Paramount Textiles Mill Pvt. Ltd., arrayed as accused when the primary allegation is that as Directors of the Companies, they facilitated the Paramount Airways to use the Company accounts to siphon the



account. In the absence of Companies made as accused and in the absence to show that the petitioners are alter ego to the Company, they cannot be made as accused. Thus, this Court finds proceedings against the petitioners would amount to abuse of process of law.

33. The inherent powers of the High Court is not the one conferred by the Code, but the one which the High Court already has in it and which is preserved by the Court. Section 482 saves inherent power of the High Court postulating that “nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”. When the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent the abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent powers in an appropriate case.



34. Further, the High Court can quash an F.I.R. or a complaint in exercise of its powers under Article 226 of the Constitution or under Section 482 of the Criminal Procedure Code, if the allegations found in the F.I.R. or the complaint, taken at their face value and accepted in its entirety, does not *prima facie* disclose commission of a cognizable offence or make out a *prima facie* case against the accused or where manifestly the proceeding is actuated by malice. The Apex Court in the Judgment in ***S.W. Palnitkar v. State of Bihar*** reported in **(2001) 1 SCC 241**, while referring to the earlier decision in the case of ***Medchi Chemicals & Pharma (P) Ltd., v. Biological E.Ltd., & Ors, Medchl Chemicals and Pharma (P) Ltd.*** where it has been held that “exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the face of it does not constitute or disclose any offence as alleged,



there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law.” Their Lordships further observed that if no offence is made out from the allegations made in the complaint, there should be no hesitation in exercising power under Section 482 Cr.P.C. to pass appropriate order.

35. Considering the facts and circumstances of the case and on careful perusal of the report of SFIO, absolutely nothing would reveal that the petitioners were in overall control of the day-to-day affairs of business of the Company, controlling the day-to-day affairs of the Company and they, in connivance with other Promoter Directors, involved in misappropriation of fixed Assets of PAPL, siphoning off funds of PAPL to the tune of Rs.12.03 Crore, by sale of aircraft pares and by receiving the sale proceeds in associate companies by sale of fixed assets and stocks of PAPL to aircraft spare dealers in US and Singapore. In order to constitute the offence, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that they committed an act of cheating with dishonest intention. The Court, on a perusal of the complaint and material, comes to a conclusion that the allegations levelled in the complaint on the face of it does not constitute any offence as against the petitioners.



36. In view of the forgoing discussions, the Criminal Original Petitions are allowed and the proceedings in E.O.C.C.No.173 of 2016, pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.-I) Egmore, Chennai, is hereby quashed as against the petitioners/A5 and A10 alone. Consequently, the connected miscellaneous petitions are closed.

30.08.2023

Index : Yes/No
Internet : Yes / No
mpk/vv2



To

1.The Additional Chief Metropolitan Magistrate, (E.O.-I)
Egmore, Allikulam Complex,
Chennai.

2.The Assistant Director,
Union of India
Ministry of Corporate Affairs,
Serious Fraud Investigation Affairs,
Government of India,
Regional Office – Chennai,
Ground Floor, Corporate Bhavan, 29,
Rajaji Salai, Chennai – 600 001

3.The Public Prosecutor,
High Court, Madras.



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CRL.O.P.No.27643 of 2016 &CRL.O.P.No.1489 of 2017

M.NIRMAL KUMAR, J.

VV2/MPK

Pre-Delivery Order made in

CRL.O.P.No.27643 of 2016
and
CRL.O.P.No.1489 of 2017

30.08.2023