IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2023

PRONOUNCED ON : 31.01.2023

CORAM:

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

CRL.OP.No.5585 of 2021
and
CRL.MP.Nos.3613 & 3614 of 2021

Mohammed Kasim

... Petitioner

Vs.

1. State rep.
   Inspector of Police,
   EDF-II, Team-IV,
   Vepery, Chennai.

2. Karthick

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C, praying to call for the records and quash all proceedings in C.C.No.2846 of 2020 on the file of Special Court for CCB/CB CID, Egmore, Chennai in Crime No.332 of 2019 on the file of the Inspector of Police, EDF-II, Team-IV, Vepery, Chennai pending investigation before the respondent police based on the complaint dated 7.11.2018.

For Petitioner	:	Mr.A.Ramesh Senior Counsel for Mr.R.Ashwin
For Respondents	:	Mr.A.Gopinath Government Advocate (Crl.Side) for R1 Mr.R.Rajarathinam Senior Counsel for Mr.S.Ramachandran for R2

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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.2846 of 2020 on the file of Special Court for CCB/CBCID, Egmore, Chennai and quash the same.

2. The petitioner is the sole accused in the said case. The case of the prosecution which appears from the complaint is that the petitioner is the Managing Director of a Private Limited Company. The said Company is involved in selling food items. The franchise of the Company has been given to various persons by getting money for constructing infrastructures. The franchise money will be collected depending upon the place of the outlet chosen by the respective franchisees. The second respondent herein is said to have given a sum of Rs.10,00,000/- and got a franchise. The food products are prepared at a centralised kitchen at Vadapalani by the petitioner and to be

distributed to various outlets in the city. The petitioner was giving advertisements in Television. On being influenced by that, various persons including the second respondent have deposited money. As per the agreement, 70% of the profit will be taken by the petitioner and 30% of the profit will be given to the franchisee. The second respondent and other persons had been conducting the business as per the agreement for a few months. But as agreed, the petitioner did not give the share in the profits. Further, some of the persons, who have supplied the raw materials like provisions and other food materials were not paid for the products supplied by them. So, nearly ten aggrieved persons have given complaints against the petitioner and a complaint has been given that the petitioner had defrauded their money by making false assurance and thereby, influenced them to give away their money. On the above allegations, a case has been registered in Crime No.332 of 2019 for the offences under Sections 406 & 420 IPC. After investigation, charge sheet has been filed for the offence under Sections 406 & 420 IPC.

3. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl. Side) appearing for the first respondent and the learned counsel for the second respondent. Perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that the contract was entered into between the franchisees with the Company by name Namma Unavagam Private Limited; the petitioner is the Managing Director of the Company, the charge sheet has been filed without adding the Company as an accused. As per the definition of Section 11 IPC, the word 'person' would include Company or Association etc., and whenever allegations are made against the Company, the Company ought to have been added as an accused. Without impleading the Company, if the prosecution was made against the Managing Director alone, that it is not maintainable. The allegation on the complaint would show that the grievance is only due to breach of the terms of contract between the franchisees and the Company. For breach of contracts, no criminality can be attached. The process of recovery cannot be made in the guise of giving a criminal complaint and it is an abuse of the process of law. The complainant and others had chosen the criminal complaint as a weapon to collect their alleged dues and it is not permissible. The petitioner has been charged for the offence under Sections 406 & 420 IPC. So far as the offence under Section 420 IPC is concerned, the intention of the accused should be from the very inception of the transaction. Section 406 IPC involves legitimate

custody of certain things handed over to the accused; without the above ingredient no illegality attached to the transaction from the inception; only when there is a breach of trust, that would pay the way for criminal action; since the basic ingredients to constitute offences under Sections 420 & 406 IPC are different, they cannot go together. In support of the above contention, the learned counsel for the petitioner cited the following citations:-

1. ***Vesa Holdings Private Ltd., Vs. State of Kerala*** reported in ***(2015) 8 SCC 293.***
2. ***Anil Mahajan Vs. Bhor Industries Pvt. Ltd.,*** reported in ***(2005) 10 SCC 228.***
3. ***Ranjan Taneja Vs.T.Ram Naresh Tripathi and Another*** reported in ***(2004) (1) MWN (Cr.) 199.***

5. The learned Government Advocate (Crl.side) appearing for the first respondent submitted that whenever the prosecution is made based upon the special acts, the act itself would contemplate a provision to include the Company also as an accused; such technicalities cannot be stand in the way of the prosecution; the petitioner had influenced the franchisees by giving inflated assurance about the profits; after collecting the entire money, he had absconded

and that would show his criminal intention even from the inception of the contract; though there is no disagreement on the point that the contractual obligations cannot be viewed with the criminality and the object of criminal action should not be for recovery of money, the materials available would show the criminal intention on the part of the petitioner to cheat the witnesses; when the second respondent and others asked the petitioner to return their money, he absconded by closing the business; so from the conduct of the petitioner itself his intention can be presumed and hence, the petitioner should be subjected to trial.

6. The petitioner is the Managing Director of Namma Unavagam, which is a Private Limited Company. The venture undertaken by the Company is to sell food products, which are prepared in the centralised kitchen by the petitioner himself. The petitioner has sold franchise to various persons and had collected money from them for establishing franchisees outlet for them. It is agreed between the franchisees and the petitioner on behalf of the Company that the profits will be shared in 70:30 ratio. By being influenced by the popularity given by the petitioner through Television advertisements etc., the second respondent and others had invested their money. Though it is technically

correct to state that the dues for the petitioner should be borne by the Company and without Company the petitioner cannot be prosecuted, the facts would show that the petitioner is the face of the Company and the Company's activities are being carried out by the petitioner.

6.1. The petitioner being the Managing Director of the Company had interacted with all the franchisees and the suppliers and persuaded them to invest their money by assuring an attractive profit. Had the business transaction was continued for atleast few years and thereafter, the venture failed, it can be understood that something beyond the control of the petitioner had occurred. The profits for the franchisees were not given even from the inception and that would reflect upon the intention of the petitioner in persuading the second respondent and other franchisees to deposit money with the Company.

6.2. Though technically it is correct to state that the transactions had been done in the name of the Company and hence, the Company should be arrayed as an accused, the Corporate veil should be lifted in order to see actions committed by the individual in the name of the Company. The petitioner, who was responsible for the entire conduct of the business cannot escape by finding shelter in the technicalities. There is every possibility that the prosecution can implead the Company also as an accused at any point. Even though there are written agreements between the petitioner and the franchisees, who had purchased franchise from the petitioner, the conduct of the petitioner is very much relevant to understand his intentions. It is within the knowledge of the petitioner that every franchisee has invested huge sum in lakhs and their only expectation for such investment would be to earn profit.

6.3. In business, there might be fluctuation in earning the profits though the ratio of share will be constant. The second respondent and others did not conduct business for long and enjoy the taste of money for their investments. If the petitioner had paid some profit atleast for the first month when the business was started, it can be believed that ups and downs in the business has been exaggerated as criminal action. But the petitioner all of a sudden closed his centralised kitchen and stopped supplying food products to the franchisees. Subsequent abscondance of the petitioner is also the *prima facie* circumstance to infer his intention from the inception of contract. The second respondent and others, who have dues from the petitioner and his Company no doubt are entitled to file relevant civil proceedings for recovery of money or for specific performance basing on the contract. But such a scope and the remedy open to the second respondent and others cannot be the sole ground to reject the charge sheet on the ground that it does not disclose a criminal case. Only if the petitioner is subjected to trial and examined, the fact whether the petitioner's intention was dishonest or whether the factors beyond his control had affected is investors can be proved. The petitioner owes explanation for his conduct of disappearance as well.

7. Even if it is necessary to implicate the Company as an accused, that can be done at any stage of the proceedings and the charges can also be altered at any time subject to the materials produced before the Court. So it is too early to comclude that the petitioner had an honest intention to work with the franchisees but the failure is due to the acts committed by the Company. The affairs of the Company is being managed by the petitioner and it is the petitioner, who assured the franchisees and others about the probable profit and other details. If it comes to light that the constitution of the Company itself made by the petitioner just to cheat and to enjoy undue enrichment, it would definitely bind the petitioner personally also for criminal action. So it cannot be simply said that the charge sheet is not maintainable by adding the Company as an accused and which can be rectified at any stage of the proceedings, if it is

relevant. Since the materials coupled with the conduct of the petitioner make out a case for taking cognisance, I feel that the petitioner should be subjected to trial.

8. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also closed.

31.01.2023

Index: Yes/No
Speaking / Non Speaking Order
Neutral Citation Case: Yes/No

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To
1.The Judge,
Special Court for CCB/CB CID,
Egmore, Chennai.

2. The Inspector of Police,
EDF-II, Team-IV,
Vepery, Chennai.

3. The Public Prosecutor,
High Court of Madras,
Chennai-104.

R.N.MANJULA, J

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