IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2022

DELIVERED ON : 24.02.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25859 of 2014
and
M.P.No.1 of 2014

1.B.Siva Kumar
2.S.Ragunathan ... Petitioners 1 & 2/A-1 & 2

Vs.

1.The State represented by the
Sub-Inspector of Police,
City Crime Branch,
Coimbatore City,
Coimbatore.
(Crime No.06/2012 dated 02.02.2012)

2.Dr.K.Radhakrishnan
S/o.Mr.S.K.R.Ramanujam,
Chairman,
Telecare Infrastructure Limited,
No.45, Rajiv Gandhi Nagar,
Sowripalayam, Coimbatore – 641 208. ... Respondents
(R2-Impleaded as per order in Crl.M.P.
No.13335/2021 in Crl.O.P.No.25859/2014
dated 12.01.2022)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, prayed to call for the records and quash the proceedings pending in C.C.No.190/2014 for offences under Sections 120(B), 408 and 420 I.P.C. on the file of the Judicial Magistrate No.VI, Coimbatore as against the petitioners.

For Petitioners : Mr.C.Arunkumar

For Respondent-1 : Mr.L.Baskaran
Government Advocate

For Respondent-2 : Ms.J.Sreelekha
Legal Aid Counsel

ORDER

The petitioners/Accused 1 and 2 in C.C.No.190 of 2014, who are facing trial for offence under Sections 120(B), 408 and 420 I.P.C. have filed this quash petition. The petitioners along with two other accused are facing prosecution in C.C.No.190 of 2014.

2. The gist of the case is that the de-facto complainant/second respondent, who is the Chairman of M/s.Telecare Infrastructures Limited, lodged a complaint with the first respondent, who registered a case in Crime

No.6 of 2012 for offence under Sections 120(B), 408 and 420 I.P.C. on 02.02.2012. Thereafter, on completion of investigation, charge sheet filed before the trial Court on 25.02.2014 and the same was taken on file on 15.04.2014. The de-facto complainant lodged a complaint against the 4 erstwhile Directors of M/s.Telecare Infrastructures Limited, who are the accused in this case.

2.1. The de-facto complainant as Chairman of the board of Directors, looked after the policies and strategies of the company, while the day to day management was maintained by the other erstwhile Directors led by the respective Managing Directors, who assumed office from time to time, viz. From 20.01.2009 to 13.07.2010, K.G.Sivakumar/A3 was the Managing Director, S.Ragunathan/A2 looked after the finance port-folio and he was the company authorised sole cheque signing authority, S.Rangarajan/A4 looked after the sales and marketing and B.Sivakumar/A1 was looking after the projects and execution. The first petitioner/A1 was appointed as Managing

Director on 14.07.2010 and he managed the company and its day to day affairs, while all other Directors/accused assisted him, in the management of the company.

2.2. When the first petitioner/A1 took over as Managing Director, he shifted the registered office from 33, Sundaram Brother's layout, Trichy Road to Kiruba Complex, MTP Road, Coimbatore. At that time all the company assets worth about Rs.20 lakhs and the stocks worth about Rs.4 lakhs physically moved by the first petitioner from the registered office at Trichy Road. On 28.05.2011 and 04.06.2011, the Annual General Body Meeting of the company was held and elected the new Directors, namely, K.Radhakrishnan, A.Rajagopal and R.Balasundaram. After the new management took over charge, it was found that

(1) the first petitioner/A1 robbed the company's office assets and material stocks to the tune of Rs.24 lakhs.

(2) the second petitioner/A2 had withdrawn unauthorisedly a sum of Rs.25 lakhs without informing others, since he is the sole cheque signing authority.

(3) the former directors have failed to hand over the company related documents including the cheque books, account documents and sale invoices etc. to the new management. They also failed to hand over the receivables to the tune of Rs.76 lakhs from various customers which could not be verified.

(4) The former Directors have misappropriated and diverted the funds of the company by not paying the vendor dues to the tune of Rs.46 lakhs, even though the company made a profit for that period ending 31.03.2010. The vendors claim not paid.

(5) the petitioners and other former Directors/accused have failed to pay statutory dues by submitting the false auditor's statements to the company, bank, commercial taxes department and income tax department.

2.3. Despite several requests, the accused 1 to 4 failed to comply with the requests and thereafter the complaint lodged. After receipt of the complaint, F.I.R. registered. On completion of investigation, recording the statement of L.W.1 to L.W.10 and listing L.W.1 to L.W.12 and documents, charge sheet filed in this case. The trial Court on perusal of the materials and documents found *prima-facie* case made out and hence took the case on file in C.C.No.190 of 2014 and issued summons. Thereafter, immediately the petitioners have filed this quash petition and obtained an order of stay.

3. The primary contention of the petitioners is that the petitioners and other two accused in this case are the erstwhile Directors of M/s.Telecare Infrastructures Limited. They have been now accused of committing misappropriation and cheating of the company funds, though the Profit and Loss accounts, deliberated in the board meeting and after deliberation the same approved and signed by all Directors including de-facto complainant, the then Chairman. The Profit and Loss account prepared by a qualified

Chartered Accountant after verifying the accounts and relevant documents. Now making a turn around, after induction of new Directors, making false allegations as though the petitioners and other erstwhile Directors have misappropriated and cheated the company, is not sustainable. The complaint is made by the Chairman against the former Directors, which is not permissible.

4. Learned counsel for the petitioner submitted that on 28.09.2009, the Company held its first Annual General Body Meeting and thereafter on 30.09.2009 filed its Income Tax returns for the assessment year 2009-2010. For the assessment year 2010-2011, the company filed its Income Tax returns on 13.10.2010. The company also filed the auditors report and Director's report with Registrar of Companies. On 04.06.2011 in the Annual General Body Meeting held at registered office, one A.Rajagopal/L.W.3 and R.Balasundaram/L.W.2 were inducted as new Directors of the company and the petitioners and other two accused not opted for Directorship and

thereafter ceased to hold the office as Directors of the company. During the Annual General Body Meeting, it was resolved that the assets and liabilities of the company was brought on record and acknowledged by the de-facto complainant/K.Radhakrishnan and other Directors of the company.

5. The first petitioner, on 07.07.2011, lodged a complaint with the Commissioner of Police, Coimbatore City, requesting police protection for the threat given by the de-facto complainant and the newly inducted directors, since the first petitioner demanded his invested money in the company. Seven months thereafter, as a counter blast, on 02.02.2012, the de-facto complainant lodged the present complaint against the four erstwhile Directors with allegations against the petitioners are that the second petitioner/A2 along with S.Rangarajan/A4 withdrawn a sum of Rs.25 lakhs and not brought the same in the books of accounts. The first petitioner/A1 failed to hand over the assets and material stocks worth about Rs.24 lakhs, Income Tax return for 31.03.2009 was not filed and the funds were diverted to the company owned

by the petitioners. Uncontraverted allegations found in the complaint would go to show that there is no case made out. The trial Court cognizance order dated 15.04.2012, does not reflect the application of mind.

6. In this case, there is no specific averments or materials to show that there is any specific entrustment, with any specific direction to deal with the property entrusted. Admittedly, the petitioners are the erstwhile Directors of the company. As Directors as per the Board Resolution, they were carrying on with the work assigned to them. The business carried out during the relevant period, all reflected in the Profit and Loss account, business done report and Income Tax returns. The Chartered Accountant, who prepared the Profit and Loss account confirms, particulars were verified from the documents of the company and the bank statements and other records. Thus there is no question of any entrustment. Added to it, there is no false representation made by the petitioners in any manner. The only questionable objection by the de-facto complainant is that the registered office has been

shifted, which the Managing Director done so after informing the Board, which cannot be faulted. Further, the company itself is run by a set of procedure, for which motive cannot be attributed and now questioned.

7. On 04.06.2011 in the Annual General Body Meeting, the petitioners not opted for Directorship and got relieved from the Directorship along with the incumbent Directors/de-facto complainant acknowledged the same and minutes drawn in the Annual General Body Meeting, which would stand testimony to the same, wherein the assets and liabilities clearly enlisted. Since the petitioners were demanding for refund of their invested money, as a counter blast, present complaint lodged. Further, there is a delay of 7 months in launching the complaint. No reason given for the same. On this score alone the complaint can be quashed. Further, the petitioners have filed a typed set of papers showing the Income Tax returns dated 30.09.2009, Profit and Loss account dated 31.03.2009, Balance Sheet dated 31.03.2009 and 31.03.2010, Income Tax Returns for the financial year 2010-2011 filed on 13.10.2010,

Form-32 filed with Registrar of Companies dated 04.06.2011, the Minutes of Annual General Body Meeting dated 04.06.2011 signed by the former Directors and present Directors including the de-facto complainant.

8. He further relied on the decisions of the Hon'ble Apex Court in the case of ***Chunduru Sivaram Krishna and another Vs. Peddi Ravindra Babu and another*** reported in ***(2009) 11 SCC 203*** for the preposition that uncontraverted allegations in the complaint filed does not *prima-facie* establish any offence, the case of ***M.N.Ojha and others Vs. Alok Kumar Srivatsav and another*** reported in ***(2009) 9 SCC 682*** for the preposition of malicious prosecution, the decision of Gauhati High Court in the case of ***Sri Jinendra Vs. State of Assam and others*** in Crl.O.P.No.396 of 2009 for the preposition of breach of contract and civil liability cannot be given a criminal colour, the decision of the Hon'ble Apex Court in the case of ***Velji Raghavji Patel Vs. State of Maharashtra*** reported in ***AIR 1965 SC 1433*** for the preposition that the partners/Directors cannot be charged and proceeded for

misappropriation, the case of ***Kishan Singh (Dead) through Lrs. Vs. Gurpal Singh and others*** reported in ***(2010) 8 SCC 775*** for the preposition that deliberate delay in lodging the complaint is always fatal. Further relied on the judgment of this Court in the case of ***R.Duraisamy and others Vs. State and others*** reported in ***MANU/TN/9532/2021***, wherein the criminal complaint has been filed after the arbitration award.

9. Thus the learned counsel for the petitioners submitted that a civil dispute has been given criminal colour, to wreak vengeance, a false complaint has been lodged against the petitioners. The first respondent without considering all these facts, mechanically filed charge sheet on the complaint of the de-facto complainant. Hence, prayed for quashing of the complaint.

10. The first respondent filed counter affidavit, which reads as follows:

3. It is further submitted that based on the above complaint, a case was registered in City Crime Branch, Coimbatore City, Crime No 06 of 2012, U/s. 120(b),408,420 IPC on 02.02.2012 at about 11.00 hours by the then Sub Inspector of Police took up for investigation.

4. It is further submitted that during the course of investigation, the then Sub Inspector of Police went to the scene of occurrence, examined the following witnesses and recorded their statements.

1) Tr.Radhakrishan-Defacto complainant
2) Tr.Balasundram- one of the Director of the company
3) Tr.Rajagopal- one of the Director of the company
4) Tr.Vijayasree- Auditor of the said company
5) Tr.Senthil kumar- Employee of the company
6) Tr.Ramesh Kumar- Earth rods seller
7) Tr.Deepak Mehtal-Electrical goods seller
8) Tr.Thomas-Bank Manager
9) Tr.Prasanna Venkadesh- Employee of Civil and Electrical work
10)Tmt. Susithra-Bank Manager

All of them corroborate the same version of the complaint.

5. It is further submitted that A-1 to A-4 filed Crl.OP.No.4890 of 2012 and Crl.OP.No.3071 of 2012

Anticipatory Bail before this Hon'ble High Court and same was obtained.

6. It is further submitted that after completion of elaborate and detailed investigation in Crime No.06/2012, based on the witnesses statement and material evidences on 25.02.2014, the Sub Inspector of Police filed a Charge Sheet against the accused [A-1 to A-4] before the Learned Judicial Magistrate IV, Coimbatore vide C.C.No. 190/2014 and same was transferred into the Judicial Magistrate VII vide C.C.No.2760/2019. The next hearing date of this case is posted to 15.11.2022 for stay pending before Hon'ble High Court. The A1 and A2 are filed quash petition before this Hon'ble High Court.

7. It is further submitted that at this stage, the Petitioners / Al & A2 filed this quash Petition before the Hon'ble High Court for stay vide Crl. MP.No.1 of 2014 in Crl.OP.No.25859 of 2014 and same was obtained on 14.03.2022.

8. It is further submitted that at this stage, the Petitioners / Accused filed this Petition before the Hon'ble High Court for quash / stay in all trial proceedings of the case in C.C.No.2760 of 2019 is only with an intention to escape from the clutches of law and drag on the trial proceedings. The LW1 to LW-3 are supports the prosecution case and further the contention of the petitioner's grounds only establish before the trial court. This petitioners having specific overact against them in this crime.

9. It is further submitted that the respondent police registered the case, investigated and the same in a free, fair and impartial manner and after completion of investigation, filed charge sheet against the petitioners / accused before the competent court in accordance with law and the same is posted to 15.11.2022.

Under the above circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to accept my Counter and dismiss the petition filed by the Petitioners / Accused as devoid of merits and thus render justice."

11. This Court ordered notice to the de-facto complainant to be served through the concerned learned Judicial Magistrate, who caused notice through the Inspector of Police, CCB, Coimbatore. The de-facto complainant was served on 02.02.2022 and the acknowledgement was received from the learned Judicial Magistrate, Coimbatore. The private notice was also ordered and the same was served to the de-facto complainant on 11.03.2022. Thereafter, there was no representation on behalf of the de-facto complainant and the case was kept pending from the year 2014. Hence, this Court appointed Ms.J.Sree Lekha as Legal Aid Counsel for the second respondent/de-facto complainant, who appeared and made a forceful submission and also filed a counter.

12. It is seen from the counter, that the first petitioner/A1 was incharge of the projects and execution of the company from 20.01.2009 to 13.07.2010. Then he was appointed as Managing Director and managed day to day affairs of the company from 14.07.2010 to 03.06.2011. The second

petitioner/A2 was the authorised sole cheque signatory from 20.01.2009 to 13.07.2010, 14.07.2010 to 03.06.2011. A3/K.G.Sivakumar was the Managing Director for quite some time. A4/S.Rangarajan looked after the sales and marketing for quite some time and later he was assisting A1 on day to day affairs of company.

13. Further it is stated that L.W.1/de-facto complainant/Chairman of the Company, L.W.2/present Director of the company and L.W.3/present Managing Director of the company, all have confirmed about the petitioners and other persons had been in the helm of affairs of the company. The first petitioner/A1 was also owning his personal companies in the name and style of M/s.Abishek Products and M/s.SRS Cell Projects Pvt. Ltd. The accused had diverted the orders, money, materials from the the company. After the resignation of petitioners and other accused as Directors, many vendors approached the de-facto complainant for payment. There was an outstanding due of Rs.17.25 lakhs in the bank as on 24.08.2011. The assets and stocks of

the company, which have been removed by the first petitioner, so far, not returned. Important documents including bank documents not returned to the new Directors. Hence, the petitioners have misappropriated and cheated the de-facto complainant.

14. L.W.4/Auditor support the case of the prosecution. She confirms that it was A2, who approached her, provided particulars to prepare Profit and Loss account. L.W.5 another Auditor state that A2 approached him and requested to issue a certificate regarding outstanding receivable statements for Rs.72,59,699/-. L.W.6 is running a company in the name "Superiance Earthing System" who supplied stocks worth about Rs.9 lakhs to the company. L.W.7 is a vendor running a shop in the name of "PR Prime Tech Electricals" and she supplied goods to the tune of several lakhs. L.W.8 - Senior Manager of Oriental Bank of Commerce and L.W.10 – Chief Manager of Canara Bank confirm that the accounts in Oriental Bank has been closed

and in Canara Bank a sum of Rs.25 lakhs has been withdrawn by A2 and A4 on 26.09.2009.

15. Learned counsel further submitted that the statement of witnesses confirm that the petitioners and other erstwhile directors, not properly maintained accounts and committed cheating, misappropriation of funds of the company and thereafter left the company, due to which, presently the de-facto complainant and the incumbent directors are suffering for the misdeeds of the petitioners, the erstwhile directors. The contentions of the petitioners are factual, which ought to be decided during trial and not in the quash petition.

16. Heard the learned counsels appearing on either side and perused the materials available on record.

17. Considering the rival submissions and on a perusal of the material it is not in dispute that the petitioners and the other two persons, who

are the accused in C.C.No.190 of 2014 were erstwhile directors of M/s.Telecare Infrastructures Limited. The de-facto complainant is the Chairman, the petitioners were the former directors. Thereafter, three new incumbents have been made as Directors by the Annual General Body Meeting of the company held on 04.06.2011. The primary allegation proceeds against the petitioners and the other former directors is that when the first petitioner/A1 took over charge as Managing Director, he shifted the registered office from 33, Sundaram Brother's layout, Trichy Road to Kiruba Complex, MTP Road, Coimbatore. At that time all the company assets worth about Rs.20 lakhs and the stocks worth about Rs.4 lakhs shifted to the new registered office, which was not returned. The other allegation is that Rs.25 lakhs have been withdrawn by A2 and A4 from the Canara Bank and the same has not been properly accounted. Further, though Rs.76 lakhs shown as receivables in the statement of accounts, it is not so. The former Directors have misappropriated and diverted the funds of the company by not paying the vendor dues to the tune of Rs.46 lakhs even though the company made a profit for period ending 31.03.2010. There are dues to be paid to the vendors and suppliers.

18. It is not in dispute that the petitioners were directors from the year 2009 to 2011 more particularly till 04.06.2011. During that period the petitioners and other accused were carrying on the business. L.W.4, Auditor of M/s.Vijayasree & Co. admits that she prepared Profit and Loss account for the period 01.04.2009 to 31.03.2010 and the statement was prepared on perusal of the relevant documents. L.W.5 another Auditor states that a letter has been sought on 10.12.2010 to show that receivables of Rs.72,59,699/- is due to the Telecare Infrastructure Limited. He had given the letter based on the request of second petitioner/A2. L.W.6 and L.W.7 are the suppliers and vendors to whom the company is to make payment. L.W.8 is the Senior Manager of Oriental Bank of Commerce, who states about the company account in his bank closed. L.W.9, the Regional Manager of Vion Network

states that payment of Rs.1,59,87,979/- paid to the company and final payment was paid on 31.12.2010. L.W.10, Chief Manager of Canara Bank confirms about withdrawal of Rs.25 lakhs in cash on 26.09.2009, by A2 and A4.

19. From the statement of witnesses, it is seen the petitioners and other accused were carrying on the company business. During the business, receipts and payments made, these particulars are reflected in the Profit and Loss account. It seen that the Profit and Loss account signed and approved not only by the petitioners but also the defacto complainant/second respondent. Now the second respondent questioning the very same Profit and Loss account, cannot be proper. Added to it, on 04.06.2011, the petitioners, other two accused and the new three incumbent directors, the de-facto complainant all attended the Annual General Body Meeting. Apart from new Directors taking over the Directorship and administration of the company, the liabilities and receivables are clearly enlisted, which is signed, acknowledged

by the de-facto complainant, L.W.2, L.W.3 and other incumbent Directors. Now questioning the same would not be proper. Further, the Hon'ble Apex Court in the case of ***Velji Raghavji Patel Vs. State of Maharashtra***, held that in order to establish entrustment of dominion over property to an accused person, the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. For any criminal breach of trust and misappropriation, the entrustment must be approved. In this case, the act of petitioners while they acted as Directors is being questioned. At that time the de-facto complainant as well as the petitioners and other Directors all have equal rights and responsibilities, nobody had any exclusive ownership of the company as such. It would be opposite to extract the relevant paragraph.

> *"16. It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other*

partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected."

20. Thus the act of the petitioners as Directors along with other two accused now cannot be charged and proceeded for misappropriation. There is no specific entrustment to the petitioners, if at all there is any dispute with regard to the statement of accounts, which could only give civility to the dispute, surely cannot be ascribed with any criminality. There is no false representation at the time of inception. The dispute is after handing over the directorship, in the Annual General Body Meeting on 04.06.2011. The petitioners and the other two accused got relieved from the directorship of the company. The de-facto complainant and the incumbent directors signed a Memorandum of Understanding with liabilities and receivables, which cannot be ignored.

21. Thus, looking the case from any angle, this Court finds no reason or justification to continue the proceedings in C.C.No.190 of 2014

against the petitioners. Further, continuation of prosecution would only amount to abuse of process of Law not only against the petitioners but also the other two accused, who are similarly placed.

22. In view of the above, this Criminal Original Petition is allowed and the complaint in C.C.No.190 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore is hereby quashed against these petitioners and other two accused, who are also similarly placed. Consequently, connected miscellaneous petition is closed.

23. This Court appreciates the strenuous efforts taken by Ms.J.Sree Lakha, learned Legal Aid Counsel appearing for the second respondent/de-facto complainant.

24.02.2023

Index: Yes/No
Speaking order/Non-speaking order
rsi

<u>M.NIRMAL KUMAR, J.</u>

rsi

To

1.The Judicial Magistrate No.VI,
Coimbatore.

2.The Sub-Inspector of Police,
City Crime Branch,
Coimbatore City,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras

Pre-delivery order in
<u>Crl.O.P.No.25859 of 2014</u>

<u>24.02.2023</u>