



Crl.R.C. Nos.1138 & 1140 of 2023

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DATED : 30.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.Nos.1138 & 1140 of 2023

&

Crl.M.P. Nos. 8964 & 8966 of 2023

S. Srividya

...Petitioner in Crl.R.C.No.1138/2023

1. B. Gajendran

2. Rajkumar

3. B. Prema

...Petitioners in Cr.R.C.No.1140/2023

Vs.

T. Arunachalam

... Respondent in both Crl.R.Cs.

Common Prayer : Criminal Revision Cases filed under Section 397 and 401 Cr.P.C. against framing of charges on 09.06.2023 by the learned II Metropolitan Magistrate, Egmore, Chennai 600 008, against the petitioners/accused persons for the offences under Sections 406, 420, 436, 465, 467, 468 r/w Section 34 IPC.



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For Petitioner/s : Mr.V.Ramamurthy (in both cases)

For Respondent : Mr.R.Varadaraj (in both cases)

COMMON ORDER

Challenging the charges framed against the revision petitioners for the offences punishable under Sections 406, 420, 463, 465, 467, 468 r/w Section 34 IPC by the learned II Metropolitan Magistrate, Egmore, Chennai in C.C. No.4492/2013 on 09.06.2023, the present Criminal Revision Cases are filed.

2. The respondent filed a private complaint under Section 200 of the Code of Criminal Procedure in C.C.No.4492 of 2013 before the II Metropolitan Magistrate, Egmore, Chennai against the present petitioners for the alleged offences punishable under Sections 379, 405, 406, 420, 463, 465, 467, 468 read with Section 34 of the Indian Penal Code. The revision petitioners are shown as accused in C.C. No.4492/2013 as A1 to A4.



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3. The case of the complainant in a nutshell is as follows:

3.1. The complainant T.Arunachalam, who is the respondent in these Criminal Revisions was having a company by name Sri Sai Arunachalam Foundations Private Limited, in which, B. Gajendran (1st accused) was a founder-director along with the respondent/complainant. It is contended that both the 1st accused and the respondent had 25,000 equity shares each and were into the business of real estate.

3.2. It is alleged by the complainant that the 1st accused along with the complainant's wife, the 2nd accused and two others forced him to relinquish his position as a director and usurped the company as a whole by illegally transferring the shares in his name to one Prema, the 4th accused, who is the mother of the first accused. It is also alleged that the locker facility, which was in joint names of the respondent/complainant and his wife Srividhya (2nd accused) was operated without the knowledge of the complainant and all the shares and



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jewellery including those belonging to his mother were stealthily removed from the locker and subsequently, these shares were transferred to one Prema, the mother of the 1st accused.

3.3. It is also the allegation of the complainant that the 1st accused's wife one Adhilakshmi had given complaint about the conduct of her husband (1st accused) and even gone to the extent of filing the divorce petition in the family court. According to him, the entire sequence of events has only led to his being driven out of the business venture as well as his matrimonial relationship and was left high and dry. Consequently, the complaint under Section 200 of the Code of Criminal Procedure was filed under Section 379, 405, 406, 420, 463, 465, 467, 468 read with Section 34 of the Indian Penal Code.

3.4. The learned II Metropolitan Magistrate, Egmore, Chennai, on receipt of the said complaint, took cognizance of the offence as alleged in the complaint, recorded the statements of the complainant and other two witnesses and since found a prima facie case against the



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accused, issued summons to them. On appearance of the accused, P.W.1 filed proof affidavit and he was also cross examined by the accused. Similarly, the Manager of TNSC Bank was examined as P.W.2 and the wife of the 1st accused was examined as P.W.3. All these witnesses were cross examined by the accused and thereafter the learned II Metropolitan Magistrate, Egmore, Chennai, had come to a conclusion that there is a prima facie case against the accused for framing charges and accordingly framed charges for the offences under Sections 406, 420, 463, 465, 467, 468 IPC r/w 34 IPC against all the accused on 09.06.2023. Aggrieved over the same, the present Criminal Revision Cases are filed.

4. Mr.V.Ramamurthy, learned counsel for the revision petitioners contended that the trial court judge without perusing the evidence of P.W.1 to P.W.3 properly, had framed charges against the accused. He drew the attention of this court to the evidence of P.W.1 and contended that even though P.W.1 had deposed that he wrote a letter to the Social Welfare Officer, Trichy, stating that his wife (A2) obtained his signature in the company shares for transferring the same in her



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name, he did not mention the same in the present complaint. He also pointed out certain discrepancies in the evidence of P.W.1 and his own complaint and contended that when there is no prima facie case against the accused, the trial court had committed an error in framing the charges. It is also his contention that P.W.1 during the course of cross examination had categorically admitted that he had handed over the share certificates to the 1st accused and that the Memorandum of Understanding dated 23.02.2012 entered into between the complainant and the 1st accused shows that the complainant was relieved from the company and all the governmental procedures would be carried out by the 1st accused. According to him, the complainant had signed the Memorandum of understanding after giving consent to the various terms and conditions, and therefore, the private complaint itself is not maintainable. It is also his contention that the allegation of the complainant that, on 10.11.2011 the 2nd accused took the share certificates of the complainant from the bank locker and handed over the same to the 1st accused is only an after thought and that had the share certificates been removed from the locker as alleged by the complainant,



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the same would have been mentioned in the complaint dated 15.01.2014 given by him against his wife (A2) and his father-in-law. He therefore, prayed for allowing the present revisions.

5. Per contra Mr.R.Varadaraj, learned counsel appearing for the respondent/complainant contended that during the time when the respondent/complainant and the 2nd accused were in good terms, the respondent/complainant had signed in a transfer form with an idea of transferring the shares in favour of his wife (A2), but he did not take any steps with the Registrar of Companies to transfer his shares in favour of his wife since his wife (A2) had eloped with the 1st accused taking away all the share certificates of the complainant from the bank locker which are jointly owned by them. According to the counsel for the respondent, The 2nd accused had not used the transfer form signed by the complainant and on the other hand, the 1st accused prepared a new share transfer form forging the signature of the complainant and had transferred the entire shares in favour of his mother, the 4th accused, and therefore, the trial court rightly framed the charges under Sections 406,



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420, 463, 465, 467, 468 r/w 34 IPC in the present case. It is his further contention that the Memorandum of Understanding (MOU) dated 23.02.2012 was signed only to settle the commercial dispute of the company and that the said MOU does not deal with the transfer of shares of the respondent/complainant in favour of anyone including the mother of the 1st accused. According to the counsel for the respondent/complainant, the complainant had never agreed to forego his rights over his shares in the company as the shares indicated the investment made by the complainant in the company. The complainant had agreed to relinquish his rights and interest in the company properties alone as per the MOU and it is no way connected with the shares. It is his contention that 25,000 equity shares which were in the name of the respondent/complainant are now in the name of the 1st accused's mother, which cannot be dismissed of as a mere coincidence and the operation of the bank locker by the wife of the respondent/complainant and the alleged removal of contents in the locker are all subject matter to be decided only in the trial. His further argument is that this court cannot conduct any roving enquiry to find out the truth or otherwise of the



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allegations made by the complainant in the instant petition and therefore prayed for dismissal of the revisions.

6. On a perusal of the related documents and papers produced before this court, it is evident that the respondent/complainant has lost both his business as well as his matrimonial life. Many of the complainant's allegations centered around the breach of trust allegedly committed by his wife (A2) in the marriage as well as facilitating his business partner (A1) to breach the trust reposed on him by the respondent/complainant. There are allegations about the petitioner (A1) eloping with the complainant's wife (A2) and it is clear from the complaint that 25,000 equity shares which were in the name of the respondent/complainant are now in the name of the 1st accused's mother (A4), which cannot be dismissed of as a coincidence. The operation of the bank locker by the wife of the respondent/complainant and the alleged removal of the contents in the locker have been spoken to by the witnesses examined on the side of the complainant. The specific allegation of the complainant is that the 1st accused forged his signature



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on the share transfer form and transferred all the shares in favour of his mother (A4).

7. It is pertinent to point out that the 1st accused filed a petition before this Court under Section 482 Cr.P.C. in Crl.O.P. No.2410/2015 to quash the entire proceedings in C.C. No.4492/2013 on the file of the II Metropolitan Magistrate, Egmore, Chennai 600 008, and this Court vide orders dated 29.08.2018 dismissed the said petition, as against which a Special Leave Petition was filed before the Hon'ble Supreme Court in SLP (Crl)9687/18. The said petition was also dismissed on 06.09.2021. As rightly contended by the learned counsel for the respondent/complainant, the MOU which was heavily relied on by the revision petitioners to show that the respondent/complainant has relinquished all his rights and interest in the company properties, does not deal with the 25,000 equity shares that stand in the name of the respondent/complainant.



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8. Mr.V.Ramamurthy,learned counsel for the revision petitioners contended that the Magistrate has not framed charges for each offence and the entire versions in the complaint had been reproduced in the charges framed against the accused. It is true that charges were not framed for each offence. However, on this ground the entire case cannot be trashed. The trial court is always at liberty to alter the charges at any point of time, of course, in accordance with Section 216 Cr.P.C. A bare perusal of the depositions of P.W.1 to P.W.3 clearly shows that there is a prima facie case against the accused to frame charges for the offences punishable under Sections 406, 420, 463, 465, 467, 468 r/w 34 IPC and I do not see any reason to allow the present Criminal Revision Cases. It appears from the records that the present revision petitioners are adopting dilatory tactics by way of filing frivolous applications one after the other and therefore, the trial court is directed to dispose of the case as expeditiously as possible.



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9. With the above observations, both the Criminal Revision Cases are dismissed. Consequently connected miscellaneous petitions are dismissed. The framing of charges by the learned II Metropolitan Magistrate, Egmore, Chennai 600 008, on 09.06.2023, against the petitioners/accused persons for the offences under Sections 406, 420, 436, 465, 467, 468 r/w Section 34 IPC, are confirmed.

30.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

bga

To

The II Metropolitan Magistrate,
Egmore, Chennai 600 008



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R. HEMALATHA, J.
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