IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	***06.01.2023***
Delivered on	***23.02.2023***

CORAM:

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

Crl. O.P. No.18495 of 2021
and Crl.M.P. Nos.10144, 10145 & 10416 of 2021

1. Dhakshayini
2. G.Lucas … Petitioners /Accused 4 & 5

Versus

1. State rep. by
The Inspector of Police (Crime),
North Beach Police Station,
Chennai.

2. Devanthiran
...Respondents

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the proceedings against the petitioners / accused A4 & A5 in C.C. No.1087 of 2021 (pending on the file of Learned VII Metropolitan Magistrate, George

Town, Chennai).

For Petitioner	:	Mr.A.P.Suryaprakasam
For Respondent 1	:	Mr. A.Gopinath Government Advocate
2	:	Mr.A.S.Aswin Prasanna

ORDER

This Criminal Original Petition has been filed to call for the records in C.C. No.1087 of 2021 pending on the file of learned VII Metropolitan Magistrate, George Town, Chennai and to quash the same as against the petitioners.

2. The petitioners are the accused 4 and 5. The first petitioner is employed as a Senior Technical Assistant at the office of the Official Liquidator, High Court, Madras in the department of Ministry of Corporate Affairs, Government of India. The second petitioner is working as a Cashier in the same office. Dr.Charulatha, who is the daughter of the defacto complainant is running a company by name M/s. Universal Security Services situated at No.11, Dhoksha Business Centre, Radha Tech Tower Street, Rajiv Gandhi Salai, OMR Thuraipakkam, Chennai. As she is residing at London with her husband, the management of M/s. Universal Security Services was taken care of her father, who is the *de facto* complainant herein. As the *de facto* complainant is aged 65 years, his elder daughter's brother-in-law Praveen Kumar was also assisting the *de facto* complainant and working in the said company. Dr.Charulatha would come occasionally to India to check the company's account. The transaction of the company is being done in the name of the company in account No.439011009538 at Kotak Mahindra Bank, Nungambakkam Branch. The salary of the employees will be credited in their respective bank account from the company's account.

2.1 After the month of November 2017, no transaction had happened in the company's account and the said Praveen Kumar had not visited the company regularly. So the *de facto* complainant informed the said fact to his daughter Dr.Charulatha who was at abroad. Dr.Charulatha asked the *de facto* complainant to check and verify at the office of the Official Liquidator. On enquiry he came to know that Praveen Kumar and his wife Nithya had conspired together and created records and they are conducting the company in the same name (M/s. Universal Security Services) at Plot No.4 & 5, B1 Varnalaya Apartment, Padmavathi Nagar, Puzhal, Chennai-01. When the *de* *facto* complainant enquired about the same, the said Praveen Kumar abused him. The *de facto* complainant went to the original company's premises and checked the documents, he found some of the important documents were stolen and the CCTV Cameras were tampered. Praveen Kumar managed to transfer the company in his own name by creating false records and opened a parallel account in the name of the company in Indian Bank, Vinayagapuram Branch, by making use of the false documents, and enabled it to be operated by him. He had also paid income tax in the name of the company. The petitioners who are working in the office of the Official Liquidator had also played an active role and assisted the petitioner in the said occurrence.

2.2 On the strength of the parallel account opened by him at Indian Bank, Vinayagapuram Branch, the said Praveen Kumar with the help of the petitioners who are working in the office of the Official Liquidator, had diverted the amount due to the second respondent's daughter to the new account opened by him. By opening such a fake parallel account in the name of the company, the amount which is due to be paid to the genuine company got diverted to the said account opened by the first and second accused in the name of the company. By stealing the company's document the accused had misappropriated a sum of Rs.32,00,000/- payable to the original company's original account. After opening the fake account, A1 to A3 had created a letter in the name of the company and gave it to the office of the Official Liquidator to transfer the money due to the company to the fake account at Indian Bank, Vinayagapuram Branch A/c. No.6565797866. The petitioners knowing pretty well that the fake account has been opened by manipulation and falsification of records and by stealing essential records, have managed to illegally transfer the income of the company to the said account. Though the original company has not sent any communication, the petitioners have acted on the fake letter sent by A-1 to A-3 and transferred the funds to their fake account created in the name of the company. On the basis of the above allegation, a case has been registered in Cr. No.1860/2020 for the offences under Section 294(b), 461, 468, 471, 474, 477 A, 420 IPC against A-1 & A-2. After investigation, charge sheet has also been filed in C.C. No.294(b), 468, 471, 477A, 420, 419, 465, 406, 109 & 34 IPC, against A-1, A-2, A-3 & A-4.

3. The learned counsel for the petitioners submitted that neither in the First Information Report nor in the statements of P.W.1 to 3, the names of these petitioners have been mentioned as accused; the petitioners are entitled to immunity from legal actions for any of the acts done by them in good faith during the course of their official work as per Section 635 (A) of Companies Act, 1956; the *de facto* complainant and the accused 1 to 3 have family quarrel among themselves and only because of that petitioners were roped into this; even without obtaining the previous sanction under Section 197 Cr.P.C., the charge sheet has been filed; the petitioners being staffs in the office of the Official Liquidator have just carried out the instructions of their superiors; the petitioners have acted in their official capacity and hence in the absence of mandatory sanction from the Central Government, cognizance cannot be taken by the Court; the Official Liquidator of the High Court had also taken out an application and filed a report in SR61482/20-21 dated 19.07.2021 by which he sought protection to his Sub-ordinate Officer including the petitioners from harassment by the police; the petitioners are innocent and they have been unnecessarily implicated in this case; the first respondent had wantonly suppressed the fact that the petitioners are Government employees; hence the proceedings should be quashed.

4. In support of his above contention, he relied upon the judgment of the Hon'ble ***Supreme Court in Municipal Corporation of Delhi Vs. Ram Kishan***

Rohtagi and others reported in ***1983 1 SCC 1.***

5. The learned Government Advocate (Crl. Side) submitted that the proceedings cannot be quashed for want of sanction because the sanction can be obtained at any time; even in this case, the first respondent had submitted a request for sanction to the Regional Director, Southern Region, Ministry of Corporate Affairs.

6. The learned counsel for the second respondent submitted that sufficient incriminating materials are available against the petitioners to prove that they have colluded with the other accused and enriched themselves with the money obtained unlawfully by fabricating and forging the documents; these petitioners, without the proprietor's consent and approval, had transferred the dues to the original company, to the fake account opened by A-1 to A-3; even though the petitioners are Government employees, it is unbecoming on their part to overlook the essential facts like genuineness of the signature of proprietors without scrutinizing the papers thoroughly; the first accused had committed criminal offence by changing the RTGS mode of transfer to cheque mode by issuing cheques in favour of M/s. Universal Security Services by furnishing the details of fake account opened by A1 to A3; since the second respondent's daughter is staying abroad, the accused 1 to 5 have colluded together and committed the offence; the amount swindled by the accused have not been remitted to the genuine account of the company; the petitioners / A-4 & A-5 cannot be set scot free for doing their job in a careless manner; as per the decision of the Hon'ble Supreme Court reported in *199 Crl.L.J.3696 SC,* if the accused is a public servants, he cannot claim immunity for want of sanction; even though the petitioners have got no authority to demand passport from the second respondent's daughter, they have threatened the second respondent's daughter to produce her passport which is totally absurd and unnecessary; in fact on 04.01.2023, the Junior Technical Assistant (Administration) had demanded the second respondent to produce the documents pertaining to the ownership of the security agency and the passbook; the said letter has been signed by a Junior Technical Assistant by showing the reference of the request made by the first respondent for sanction; since the petitioners continue to be in service, they made use of their official position and caused such letters to be sent to the second respondent and his daughter: the conduct of the petitioners shows their high handedness; since there are grounds to suspect the involvement of the petitioners, the proceedings should not be quashed.

7. The first petitioner is the Senior Technical Assistant at the Office of the Official Liquidator, Madras High Court and the second petitioner was working as a Cashier in the same office. The second respondent's daughter Dr.Charulatha is living at London and her company by name and style M/s.Universal Security Services was being managed by her father, the second respondent/ *de facto* complainant in view of her absence in India; the second respondent's daughter Dr.Charulatha is still in United Kingdom and she is managing her business from there.

8. It is not in dispute that the money in question was transferred on various dates to the fake account opened by the accused 1 to 3 in the name of the Company. The real company M/s.Universal Security Services has not closed its original account. However, a fake account was opened by the accused 1 to 3 by misusing the documents stolen from the company and by falsifying the records. The accused 1 to 3 managed to divert the payments to their fake account opened at the Indian Bank, Vinayagapuram branch. The submission of the second respondent is that without the connivance and the cooperation of the petitioners, the amount would not have been diverted from the genuine account of the company lying with Kotak Mahindra Bank, Nungambakkam Branch to the dubious account opened falsely by fabricating the records. The petitioners could not have played any role in opening the account at Indian bank by fabricating the records.

9. The allegation against the accused 1 to 3 is that they have fabricated the documents and impersonated for the purpose of opening a fake account in the name of the company in some other bank. The evil design of the accused 1 to 3 is to divert the money due to the original company to the fake account opened by them at Indian Bank, Vinayagapuram. The transactions have been made after the approval obtained from the office of the Official Liquidator. Instead of transferring the money through the usual RTGS mode to the company's account, it was transferred by issuance of the cheques in the name of the M/s.Universal Security Services on the basis of a letter sent by the accused 1 to 3 to the office of the Official Liquidator, by forging the signature of authenticated persons.

10. The first petitioner being the Senior Technical Assistant and the second petitioner being the Cashier ought to have verified the signatures of the sender before acting on the same. Since the office of the official liquidator involves lot of money transaction, the officials holding significant positions in the office of the Official Liquidator ought to have scrutinized the papers before passing any bill or transferring any money.

11. In the report of the Official Liquidator, it is stated that the request for change of address, change of petitioner's account along with bills for the month of November 2017 were sent by the authorised signatory with only one set of bills and they were examined in a routine manner and they did not have the occasion to suspect the transaction.

12. The offences have been committed as early as in the year 2017 but the complaint has been given on 12.11.2020. It is stated that the complaint has been given after the commission of the offence came to the knowledge of the company's proprietor Dr.Charulatha. The absence of the proprietor of the company at India was taken advantage by A1 to A3 to commit the offence of fraud. The second respondent's daughter had noticed the fraud from the 'TDS deduction' from 'Form-16' of the Income Tax return.

13. However, for any negligent actions on the part of the petitioners, they are liable to face disciplinary actions. In order to fasten criminal liability by attributing criminal intention, some prima facie material should be produced. The second respondent and his daughter were mute and insensitive about the non-receipt of any money to their accounts from the month of November 2017.

14. Though the petitioners were guarded with immunity in view of their employment in the Government department, prosecution can be made only by obtaining sanction.

15. The charge sheet has been laid as early as on 08.03.2021. Even though the first respondent is aware that the petitioners are Government employees, he has not requested the Government to accord sanction for prosecuting the petitioners. None of the witnesses have spoken or given any materials to prove the criminal intention on the part of the petitioners. Even at the time of filing the charge sheet no sanction was obtained. No doubt the sanction is only a formality and it can be obtained at any stage of proceedings.

But it should not be the deliberate omission on the part of the Investigating Agency. The delay in obtaining sanction should be incidental to the investigation and it is due to any unavoidable and acceptable reasons. Prosecution can not willingly create a ground to quash the proceedings for the accused, due to its prolonged inaction in obtaining sanction and then come and say that sanction can be obtained at any point of time. The liberty to get sanction at any time during the proceedings is in the interest of justice and not to encourage the prosecution to enjoy an unlimited uncertainty. In the case in hand except the lethargy on the part of the prosecution, no other incidental circumstances have been shown to explain the inability to apply and get sanction before the charge sheet was filed. Further the alleged offence is committed by the petitioner during the course of their official duty. In this regard it is relevant to cite the decision of the Hon'ble Supreme Court held in ***N.K.Ganguly Vs. Central Bureau of Investigation, New Delhi*** reported in ***(2016) 2 SCC 143***, wherein it has been categorically held that obtaining sanction under Section 197 of Cr.P.C is imperative if the alleged offence is committed during the course of discharge of official duty. Without sanction, the Court cannot take cognizance. The rationale of the above judgment is squarely applicable to the facts and situation of this case. The relevant paragraphs of the judgment is extracted as under:

"34. The learned senior counsel also placed reliance on the three judge bench decision of this Court rendered in the case of Shreekantiah Ramayya Munipalli, referred to supra, wherein it was held as under:

> *"18. ....If Section 197 of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act because an official act can be performed in the discharge of official duty as well as in dereliction of it....*
>
> *19. Now an offence seldom consists of a single act. It is usually composed of several elements and as a rule a whole series of acts must be proved before it can be established.... Now it is evident that the entrustment and/ or domino here were in an official capacity and it is equally evident that there could in this case be no disposal, lawful or otherwise, save by an act done or purporting to be done in an official capacity...."*

35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to *examine the allegations contained in the final report against the Appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence."*

16. No statement of any independent witness is available to show that the petitioners had an intention or design and they conspired with the other accused to cheat the second respondent and her daughter. Without these materials, if the petitioners are subjected to trail, even without any contrary evidence, the prosecution against these petitioners cannot succeed.

17. Criminal The intention on the part of the petitioner cannot be presumed for doing something in their routine course of their official duties. As discussed already, the petitioners could have been more cautious. But to attribute criminality to the negligence there should be some materials to show that the petitioners have some deliberate intention or they got benefitted in some way by giving active co-operation for the criminal actions of the other accused. Since the request for change of address and change of accounts have been given in a routine fashion, the petitioners seemed to have acted on those letters in good faith.

18. The learned counsel for the second respondent stated that amount misappropriated was not reverted to the authenticated account of the company. Since the amount has been paid to the accused 1 to 3, such recovery can be made only from them. Even though there is a gross negligence on the part of the petitioners, I do not find any criminal intention on the part of the petitioners. They acted in a routine fashion without doubting the genuineness of the letter issued in the name of the company. As rightly stated, there is no second set of papers or the bills submitted by the second respondent or his daughter in order to prompt the petitioner to suspect the transactions routed in the name of the company.

19. The request for sanction was also made very belatedly on

05.12.2022. Prior to that, the prosecuting agency does not seem to have any intention of getting sanction. The materials available on record do not disclose any intention on the part of the petitioners to rope them in this criminal case. The careless act of an official is different from an act done with criminal intention. Unless there is any possibility to presume criminality from the acts of the petitioners or from the statements of any other witnesses or from some other materials, the lapse on the part of the petitioner can be considered only as acts done with negligence *simpliciter*. Even for a negligent act done during the course of the official duty, but in good faith, the petitioners are entitled to the immunity as provided under the Companies Act.

20. No recovery seems to have been made from the petitioners on the ground that they have monetarily benefited through the impugned transactions. Even the charge sheet does not state that the petitioners have also enjoyed a share in the criminal proceeds. Even though the second respondent's daughter has stated that she had sent a mail to the office of the Official Liquidator in the year 2018, the said mail has not been recovered and produced as a document.

21. In the absence of any materials to show any criminal intention against the petitioners, it is unnecessary to subject them to undergo trial. In this regard, it is relevant to extract the judgement reported in ***(1992) SCC Crl. 426*** in the case of ***Bajanlal v. State of Haryana*** wherein it is held as under:

> *"....102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
>
> *(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
>
> *(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
>
> *(4) where the allegations in the FIR do not constitute a cognizable offence bu constitute only a non-cognizable offence, no*

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can every reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

22. Beside the merits of the matter, it is also submitted by the learned counsel for the second respondent that from the office of the Official Liquidator a letter has been sent directly to the second respondent and his daughter asking them to produce documents in connection with the sanction requested by the Investigative agency. Sanctions would be normally given or rejected only on the basis of the records collected by the investigation agency during the course of investigation and produced before the appropriate Authority. Strangely the second respondent and his daughter were required to produce materials before the Official Liquidator by sending 'summons like letters'. The Officials of the Official Liquidator’s office ought not to have acted like an Investigative Agency. Instead of considering the materials placed before it by the Investigative Agency for according sanction, the victims have been unnecessarily harassed. Such action from the office of the Liquidator would amount to arrogating the powers of the Investigating agency. Again the above act cannot be construed as a criminal offence, but an act done in excess of authority and for which the concerned has be dealt through administrative means only.

23. In view of the above stated reasons, this Criminal Original Petition is allowed and the proceedings in C.C. No.1087/2021 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai is quashed as against the petitioners. Consequently, connected miscellaneous petitions are closed.

23.02.2023

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

To:

1.The VII Metropolitan Magistrate,
George Town, Chennai.

2. The Inspector of Police (Crime),
North Beach Police Station,
Chennai.

3. The Public Prosecutor,
High Court of Madras.

R.N.MANJULA, J.,

bkn

Pre-delivery order made in
Crl. O.P. No.18495 of 2021

23.02.2023