



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.19290 of 2021

and

Crl.MP.No.10583 of 2021

1. M/s.Achievers Agri India (P) Ltd.,
Rep.by its Managing Director,
S.Sivakumar
S/o.Sengaraj
N.Uchanapalli, Naganoor (PO),
Denkanikottai TK., Krishnagiri District.
2. M.S.Sivakumar
3. R.Madesh
4. R.Narayanappa
5. V.Padmanabasoundappan

... Petitioners

-Vs-

1. State represented by
The Deputy Supdt. Of Police,
Economic Offence Wing II, Salem.
2. K.Jayanthi
3. The Official Liquidator,
High Court,
Madras.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records in connection with



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

C.C.No.11 of 2015 on the file of the learned Special Judge, Special Court, TNPID, Coimbatore and quash the same in so far as the petitioners/A1 to A5 are concerned.

For Petitioners : Mr.M.Mohamed Riyaz

For Respondents : Mr.A.Gopinath
Govt. Advocate (Crl.Side) for R1
R2-Served. No Appearance
Mr.B.Dhanaraj for R3

ORDER

On 03.12.2021 while admitting this petition, this Court passed the following order:-

“This Criminal Original Petition has been filed to quash the proceedings in C.C.No.11 of 2015, on the file of the Special Court, TNPID, Coimbatore.

2.The learned counsel for the petitioner submitted that in this case, totally 75 innocent depositors have deposited their hard earned money to the tune of Rs.41,23,420/- with the petitioners/A1 to A5 and thereafter, the money was not repaid. He further submitted that the Official Liquidator had taken over the assets of the 1st petitioner company viz., M/s.Achievers Agri India Private Limited, Denkanikottai, Krishnagiri as per order of this Court, dated 21.04.2015 in C.P.No.54 of 2015 initiated by the petitioners. The Official Liquidator has initially taken over the possession of the 1st petitioner company



Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021

WEB COPY

including three schools and further steps have been taken for revaluation of both the schools at Hosur and Dharmapuri by ITCOT. Around 4,439 claims were received from the depositors/creditors of the company in provisional liquidation. Periodically, the official liquidator had approached this Court and taken steps to liquidate the property of the 1st petitioner company. Finally, one of the immovable property situated at Sungarahalli Village, Sillarahalli Post, Pappireddipatti Taluk, Dharmapuri District of the 1st petitioner company was brought for sale. The sale notice was published and the upset priced fixed for the property is to the tune of Rs.6.40 Crores.

3.The learned counsel further submitted that the Official Liquidator had conducted inspection and found the 1st petitioner company holding 11 properties. The list of properties is given in the typed set, page No.122. Already 4,349 depositors/creditors of the 1st petitioner's company are before the Official Liquidator and 75 depositors are now before this Court. If they are directed to approach the official Liquidator, their deposited money can be repaid to them. Since the 1st respondent Police as well as the trial Court are aware about the Official Liquidator taking over the property and assets of the 1st petitioner company, no attachment proceedings initiated and no Original Application filed before this Court.



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

WEB COPY

4.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, originally 75 depositors/creditors, of which 19 depositors have been settled. It would be appropriate that the Official Liquidator may be made as a party to this petition, so that appropriate orders can be passed. The endeavour of the 2nd respondent is that the depositors are paid back their deposited amount and if there is sufficient money available with the Official Liquidator, it can be paid to them.

5.Finding merits in the submissions of the learned counsel for the petitioner, this Court admits this Criminal Original Petition. Notice.

6.This Court suo-motu impleads the Official Liquidator, High Court, Madras as 3rd respondent in this Criminal Original Petition.

7.Notice to the 3rd respondent/Official Liquidator returnable by 22.12.2021. Private notice is also permitted.

8.Post the matter on 22.12.2021.”

2. Consequent to that, the status report has been called for from the third respondent and he has filed the same.



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

WEB COPY

3. The learned counsel for the petitioners submitted that the Company has assets and liability, but the claims of the victims in this case cannot be settled in view of the appointment of Official Liquidator in the Company Petition filed by the petitioner in CP.No.54 of 2015. Since the Official Liquidator is in-charge of the liquidation process, the petitioner is not able to sell any of the Company's property in order to settle the claims of the depositors.

4. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the petitioners had knowingly knocked the doors of the Company Court after the criminal complaint was given against them. The Official Liquidator has to follow the due process and no property cannot be segregated individually to raise money for settling the depositors involved in this case.

5. The learned counsel for the third respondent-Official Liquidator has also submitted his arguments in the same line and has further submitted that even the efforts taken by the Official Liquidator to sell some of the properties by observing the due process was also not materialised. Even if some of the properties are sold, the sale proceeds cannot be automatically appropriated



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

WEB COPY towards settling the claims of the victims in this case without any order of the Company Court.

6. Though the intention of the petitioners is well taken, the process is not so easy. Since the petitioners have approached the Company Court for winding up the Company, the Company Court has appointed Official Liquidator to be in-charge of the affairs of the Company especially to liquidate its assets. The third respondent-Official Liquidator has listed out certain properties belonging to the Company, which have been taken up for provisional liquidation.

7. The learned counsel for the petitioners submitted that there are more properties available and that can also be utilized for settling the dues of the depositors. But from the status report filed by the Official Liquidator, it is seen that the efforts taken by the Official Liquidator to sell one property is not materialised and the process of the liquidation can not gain momentum. In the existing state of affairs and in the absence of any orders of the Company Court, the Official Liquidator on his own cannot come forward and work in tandem with EOW to settle the dues of the victims of this case.



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

WEB COPY

8. As rightly pointed out by the learned counsel for the third respondent-Official Liquidator, it is not known whether the victims of this case have also filed their respective claim before the Company Court. Only if the victims filed their claim petition before the Company Court, the victims/claimants can also be included in the process of settlement based on the directions given by the Company Court in accordance with the provision minding the winding up process of the Company. Since the settlement has to be done only in accordance with the water tight compartment method and by giving preference to certain type of creditors, it is impractical at the moment to pass any orders directing the third respondent to do any act by joining with the first respondent for disbursing the deposits of the victims involved in this case. Hence, I feel it is appropriate to impress the first respondent to promote the depositors/victims involved in this case to raise their claims in the Company Court in accordance with the Company Law apart from participating in the criminal proceedings.

9. Since the case is of the year 2015 and it is pending for a long time, I feel no useful purpose will be served by keeping this Criminal Original Petition pending by stopping the proceedings before the trial Court. Even



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

while the proceedings before the Trial Court is progressing, the petitioners are at liberty to take whatever possible steps they can take by filing appropriate applications before the Company Court and seek permission, direction etc., in order to settle the claims of the victims/depositors of this case in accordance with law.

10. With the above observations, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

22.02.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation Case: Yes/No
kmi

To

1. The Deputy Supdt. Of Police,
Economic Offence Wing II,
Salem.
2. The Official Liquidator,
High Court,
Madras.
3. The Special Judge,
Special Court, TNPID,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras
Chennai-600 104.



WEB COPY



*Crl.O.P.No.19290 of 2021
and Crl.MP.No.10583 of 2021*

R.N.MANJULA, J

kmi

Crl.O.P.No.19290 of 2021
and
Crl.MP.No.10583 of 2021

22.02.2023