IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.No.22015 of 2021 and
Crl.MP.Nos.11944, 11945 of 2021 & 13552 of 2022

1.Dr.Philson Joseph Mukkada
2.Dr.Meenakshisundaram Soundaram
3.Dr.Nirmala
4.Dr.Franklin Teenu
5.Aloyce Franklin Fernandez ... Petitioners

Vs.

Dr.Rema Barathi.J ... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the entire records in CC.No.7306 of 2021 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For Petitioners : Mr.N.R.Elango,
Senior Counsel
for Mr.P.Ciridharan

For Respondent : Mr.Vimal Babby Crimson

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.7306 of 2021 pending on the file of the learned II

Metropolitan Magistrate, Egmore, Chennai thereby taken cognizance for the offence under Sections 420, 463, 405 r/w 120B of IPC as against the petitioners.

2. The respondent filed the private complaint alleging that she is the Director and shareholder of M/s.Reontgen Scans World Private Limited (hereinafter called as 'company'). She is holding 22.5 % shares right from the inception of the said company. She had invested Rs.45 lakhs in her name for the commencement of business. The accused are the Managing Director and other Directors of the Company. From the year 2014 onwards, she found suspicious cash transactions that were being subjected to fraudulent billing and also unacceptable accounting practices which were directly benefiting those directors who were also working doctors at the company. False accounting and intentional deletions of cash bills at the end of the day were projected to the respondent in spite of complainant's objections, depicting as if huge cash commissions were being made in the name of various referral doctors. The other directors are having very less number of share and as such they are not entitled to derive any extra benefit to themselves by denying the same to the respondent. All the accused persons colluded with each other and conspired

together along with the father in law of the first accused and dishonestly misappropriated more than Rs.6,50,00,000/- which amount is lawfully entitled by the respondent. There is consistent dishonest misappropriation by all the accused persons for the past 10 years. The said amount was generated at the only centre of the company at Nungambakkam. Therefore, the accused should be put to strict proof to prove before this Court that the payments made to the respondent were equal to similarly placed directors and shareholders. Further alleged that they have sufficiently documented the same and minuted it from time to time under the signature of the respondent. They also have forged the respondent's signature on the documents and used the same as genuine for filing forms and compliances before the Registrar of Companies. On receipt of the said complaint, after recording sworn statement and on perusal of records, the trial court had taken cognizance in CC.No.7306 of 2021 for the offence under Sections 420, 463, 405 r/w 120B of IPC.

3. The learned Senior Counsel appearing for the petitioners submitted that all the allegations are civil in nature. There were issues between the Directors with regards to sharing their profits. The respondent mainly alleged that she was not paid her share as per her investments since she has

22.5% of shareholding with the company Therefore, if at all any issue with regards to share their profits, she has to file appropriate suit before the civil court. In order to attract any of the offence as alleged by the prosecution, there are no prima facie materials even as per the allegations made by the respondent. Further, she ought to have approached the Company Law Board for oppression and mismanagement of the other Directors.

4. The learned counsel appearing for the respondent would submit that the petitioners forged the signature of the respondent and filed so many particulars before the Registrar of Companies. They also cheated the respondent without giving her share by fabricating accounts. There are specific allegations as against each petitioner and as such, the trial court rightly had taken cognizance for the offence under Sections 420, 463, 405 r/w 120B of IPC. That apart, the grounds raised by the petitioners can be considered only before the trial court during the trial since all are mixed questions of facts.

5. Heard, the learned counsel appearing on either side.

6. On perusal of records, revealed that there are totally five accused, in which the petitioners are arrayed as A1 to A5. The first petitioner is the Managing Director. The fifth petitioner is none other than the father in law of the first petitioner and the father of the fourth petitioner. Except the fifth petitioner, all are Directors and they are having respective shares in the company. Their respective shares are as follows:

S.No.	Name of Shareholder	No. of shares	% of Shareholding
1	Meenakshisundaram Soundaram	20,000	10%
2	Philson Joseph Mukkada	5,000	2.5%
3	Rema Barathi	45,000	22.5%
4	Umapathy Jayarama Mudaliar	45,000	22.5%
5	Vivekananthan Nirmala	45,000	22.5%
6	Teenu Philson	40,000	20%
	Total	**2,00,000**	**100%**

7. As per the allegations, the petitioners failed to pay her share properly. They have failed to account the money properly and cheated her. In short, the respondent alleges mismanagement of the affairs of the company and oppression of the respondent who is a Director and Shareholder of the company. Though the respondent made allegations that the petitioners had

forged her signature and filed so many accounts before the Registrar of Companies, all the allegations are bald and vague and no documents produced to show that the petitioners had forged her signature and filed documents before the Registrar of Companies. There are no specific allegations as against each petitioner. Further, it is also seen that the company was incorporated on 08.02.2010 and it is engaged in the business of healthcare and provides radiology, imaging services like x-ray, ultrasound, MRI, flouroscopy, interventional procedures, ultrasound and diagnostic mammography, computed tomography (CD) with 3D etc. The entire company was managed by the first petitioner as the Managing Director until his resignation from 15.02.2020. Admittedly, the respondent does not professionally contribute anything to the company and she is being a shareholder, she is entitled to get dividend as declared by the company. The respondent alleged that she was not paid her share and not divided properly in respect of the profits from the company.

8. Insofar as the offence under Section 420 of IPC, It is relevant to extract the provisions under Section 420 of the Penal Code as follows :-

> *420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to*

deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

(i) A person must commit the offence of cheating under Section 415 and

(ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

9. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others*** reported in (***2006) 6 SCC 736***, held that the civil

liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

10. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Honourable Supreme Court of India held as follows:-

> *"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to*

be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

11. Therefore, there is no prima facie material available to attract the offence under Section 420 of IPC. As rightly pointed out by the learned Senior Counsel appearing for the petitioners, instead of filing a petition before the Company Law Board for mismanagement of affairs of the company and oppression of the respondent, the respondent filed private complaint. It is also seen that she lodged complaint before the City Crime Branch. On receipt of the said complaint, detailed enquiry was conducted and found that all the allegations are civil in nature and closed the complaint by the proceedings dated 18.12.2020. Further, the trial court failed to follow the procedure laid down under Section 202 of Cr.P.C. since the fifth petitioner is residing at Nagerkoil and not within the jurisdiction of the trial court. Though it is curable defect, the learned Magistrate without even perusal of the allegations and supporting materials, mechanically had taken cognizance as against all the accused persons and issued summons. Insofar as the other offences are concerned, all the allegations are bald and vague and essential requirements for the offences are not forthcoming in the complaint. Further all the allegations made in the complaint are civil in nature which have been given a cloak of criminal offence. Therefore, the present complaint is nothing but arm twisting

method to extract more money from the petitioners. In the absence of any shred of material against the petitioners, it would prejudice them if further proceedings are allowed to be continued before the trial court in CC.No.7306 of 2021. Therefore, the present complaint is nothing but clear abuse of process of law and it is liable to be quashed.

12. Accordingly, the entire proceedings in CC.No.7306 of 2021 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

21.11.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
lok

To

The learned II Metropolitan Magistrate,
Egmore, Chennai

G.K.ILANTHIRAIYAN, J.

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Crl.OP.No.22015 of 2021

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