



CrI.OP.Nos.27456 & 27512 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.02.2023
Pronounced on	28.04.2023

CORAM

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

CRL.O.P.Nos.27456 &27512 of 2019

AND

CRL.MP.Nos. 14613 &14693 of 2019

CRL.O.P.No.27456 of 2019

1.Chandra Ramesh

2.D.V.Ramesh

... Petitioners/ Accused 1 and 2

Vs.

1.The Inspector of Police,
City Crime Branch,
Chennai City Police ,
Vepary, Chennai-7.

... 1st Respondent / State

2.S.Usha

Managing Director of IFCI

Financial Services Limited (IFIN) ... 2nd Respondent/ defacto complainant

PRAYER:- This Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records and quash the entire proceedings pursuant to FIR in Crime No.238 of 2019 on the file of the 1s respondent



Crl.OP.Nos.27456 & 27512 of 2019

dated 27.08.2019 on the file of the respondent.

WEB COPY

CRL.O.P.No.27512 of 2019

1.Chandra Ramesh

2.D.V.Ramesh

... Petitioners/ Accused 1 and 2

Vs.

1.The Inspector of Police,
City Crime Branch,
Chennai City Police ,
Vepary, Chennai-7.

... 1st Respondent / State

2.S.Usha

Managing Director of IFCI

Financial Services Limited (IFIN) ... 2nd Respondent/ defacto complainant

PRAYER :- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the entire proceedings pursuant to FIR in Crime No.238 of 2019 on the file of the 1s respondent dated 27.08.2019 on the file of the respondent.

(In both Crl.O.Ps')

For Petitioners : Mr.Nithyaesh and Vaibhav

For Respondent-1 : Mr. A.Gopinath
Government Advocate

For Respondent-2 : M/S.K.R.Ramesh Kumar



WEB COPY



Crl.OP.Nos.27456 & 27512 of 2019

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in FIR in Cr.No.238 of 2019 pending on the file of the first respondent police and FIR in Cr.No.239/2019, which has also been given on the very same set of facts with an addition that the accused had entered into agreement with various companies and has caused wrongful loss.

2. The petitioners are the accused 1 and 2 in both cases and they are husband and wife. The first accused is the Managing Director and the second accused is the Chief Operative Officer for their company by name ' C.R. Finance & Securities (P) Limited'. The defacto complainant is the Managing Director of 'IFCI Financial Services Limited (IFIN)'.

3. As per the complaint given by the second respondent's company, it is carrying on business in shares and stocks; the defacto complainant's company M/s.IFIN is a subsidiary of IFCI, a deemed government company. The petitioners 1& 2/A1 and A2 are husband and wife and they were carrying



out business in retail brokerage in shares and stocks in the name and style of 'C.R. Finance & Securities (P) Limited'. The first accused was the full time director and the second accused was a director of the company.

3.1. Under a scheme of amalgamation ordered by the High Court of Delhi vide its order dated 21.10.2008, the company of the accused was amalgamated with 'IFCI Financial Services Limited (IFIN). The company of the accused was amalgamated with an impression that the accused are well versed in business in share market. Subsequent to the amalgamation, the first accused was appointed as the Managing Director of 'IFCI Financial Services Limited (IFIN) with effect from 01.09.2008 and his annual remuneration is Rs.1,22,54,167 and the second accused was appointed as the Chief Operating Officer of the complainant's company on 01.10.2009 and the total annual remuneration of Rs.60,00,000/- along with other benefits. Both the accused were in-charge of the day to day affairs of the defacto complainant's company. Initially the first and second accused were appointed for a period of three years and later they were re-appointed for a further period of three years



with effect from 01.09.2011. At that time the second accused was given with hike in remuneration.

3.2. Right from taking over the business and administration of the complainant's company by the first and second accused, there was no transparency in their business dealings and everything was kept under secret and the employees were carrying out their instructions blindly. But the accused acted detrimental to the interest of the complainant's company. The first and second accused resigned with some malafide intention and they stopped coming to office even when they were not relieved. Since the conduct of the accused created doubts, the defacto complainant scrutinised the accounts. When the accounts were scrutinised it came to be known that the first and second accused dishonestly misappropriated a huge sum and enriched themselves by fabricating documents. The malpractice was done in respect of trading the accounts of the following clients (a) Shri Sanjay Kawde, (b) Shri. Pitambar and (c) Shri Roshan Kumar.



WEB COPY

3.3. The above clients were introduced by one T.Sheetal Pyari who was a SEBI registered sub-broker. The accused persons under the above three trading accounts were provided exposures against the stocks of unapproved and weak companies like SVC Resources and GCV Services. The accused persons who had experience in their trade ought to have got better exposure about security. The accused allowed the above three accounts to be operated by one Shri Sanjay Kawde. One B.Natarajan, the then Sr.Vice President of the company vide his email dated 07.07.2011 advised the Risk management and Surveillance Department (RMSD) of the complainant's company and during that time the accused had given false statement.

3.4. On 25.07.2011 one Parameshwar Rao requested the complainant's company on behalf the sub-broker had requested the complainant company that the price of the share has been increased and the company should sell the stocks to recover the outstanding dues. When the complainant's company sold the shares and recovered its losses, there would have been money left over to refund the clients. But the accused persons did not permit to sell the



shares and recover the outstanding. On 02.01.2011 Sanjay Kowde came forward to settle all the three accounts and gave three post dated cheques dated 11/2/2011, 20/02/2011 and 28/02/2011 for Rs.50,00,00/- each. But the accused did not allow the officials of the complainant's company to deposit the said cheques for realization of the dues.

3.5. The above irregularities were taken to the notice of the accused. The accused have caused wrongful loss to the company to the tune of Rs. 1 Crore. On these allegations the complaint has been given under Sec.156(3) Cr.P.C and on direction it came to be registered.

4. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

5. The learned counsel for the petitioners submitted that the share holder agreement was entered into between the petitioners company and the defacto complainant's company 'IFCI Financial Services Limited, which is



holding the company of IFIN. It was agreed that the petitioners could have two of the petitioners' nominees on the Board; the petitioners were denied their rightful place on the Board. They worked hard for the company and did their best to ensure that the company is growing in every possible way. M/s IFIN is the subsidiary of the IFCI, which is a government promoted company and major decisions were taken by the majority shareholders at New Delhi. Their only interest was to earn profits. Unnecessary pressure was given to the petitioners and they were unable to bear the harassment meted out to them. Hence the petitioners resigned on 08.12.2011. The complainant's company did not pay the salaries of the petitioners. Even though the petitioners had invested a sum of Rs. 5 Crores in their own company of 'C.R. Finance & Securities (P) Limited, they got nothing in return because of the merger and they were left with only 5% of the stake in the company. The IFCI is now a government controlled company. Since they have to take shareholders' approval for the sale, they need petitioners consent and hence they resorted to cheating tactics and pressurised them. The petitioners are the shareholders of the company and majority shareholders of IFCI were



somehow intending to acquire petitioners rights in the company and for this purpose they tried to insert fear in the petitioners' mind. The petitioners have given separate criminal complaint for the harassment caused to them.

5.1. It is further submitted by the learned counsel for the petitioners that the second respondent had given a similar complaint before the Delhi police and the same was closed as being civil in nature. Having failed in New Delhi, they have filed this present complaint once again. Similar threats were inflicted on the petitioners from the year 2015. Hence the petitioners filed a petition for anticipatory bail application in Crl.OP.No.3071/2015. The defacto complainant intervened and made submissions. This criminal original petition was disposed in view of the fact that the complaint was closed as civil in nature and once again the second respondent has given this complaint under Sec.156(3) Cr.P.C. The petitioner has filed a civil suit in C.S.No.174/2015 for recovery of money and this complaint has been filed once again just as a counter blast. By giving the complaint, the second respondent has started a second round of litigation for the very same issue



which has already been closed. The petitioners were not entrusted with any property or money and hence invoking Sec.406 will not arise. A civil commercial issue has been given with criminal colour. The petitioners are law abiding persons against whom, there is no criminal antecedents. The petitioners were part of the de facto complainant's business, which was run entirely independently and whose administration was subject to the provisions of the Companies Act. The defacto complaint is trying to use his money and muscle power. It has been repeatedly held by the Hon'ble Supreme Court that mere failure to satisfy civil liabilities and failure to keep up a promise to pay civil transactions will not fasten a criminal liability. There is no prima facie material available to make out a criminal case against the petitioners and hence it should be quashed. In support of his above contentions, the learned counsel for the petitioners cited the judgment rendered in the case of ***Priyanka Srivastava and Another Vs.State of Uttar Pradesh and others*** reported in **(2015) 6 Supreme Court Cases 287**.

6. The learned Government Advocate (crl.side) for the first respondent



police submitted that investigation in this case is still pending.

WEB COPY

7. However the learned counsel for the second accused submitted that the accused opened three trading companies in the name of (a) Shri Sanjay Kawde, (b) Shri. Pitambar and (c) Shri Roshan Kumar. The accused did not allow one Sanjay Kowde who was offered to settle all his three accounts on 02.01.2012. Even the cheques issued by one Sanjay Kowde was also not allowed to be deposited for realization. Originally the complaint was given on 08.1.2014 before the Commissioner of Police and the same was forwarded to the Inspector of Police CCB after eight months. Since there was no progress the second respondent has given a complaint under Sec.156(3) of Cr.P.C., and the same was forwarded to the Deputy Commissioner of Police CCB on 26.09.2014. On coming to know that the complaint was forwarded under Sec.156(3), the accused approached the Court for seeking anticipatory bail in Crl.OP.No.30717 of 2014. During that time the Investigation officer hurriedly filed a report stating that the matter is civil in nature. Against the report, the complainant's company filed a protest petition before the learned



Crl.OP.Nos.27456 & 27512 of 2019

Chief Metropolitan Magistrate, Egmore in Crl.MP.No.4549 of 2015 and in the said proceedings the petitioners have filed their counter. Even after a direction was issued under Sec.156(3) Cr.P.C, no FIR was registered. Even without filing the FIR a closure report was given. In support of his above contentions, the learned counsel for the second respondent cited the following judgements:

Sl. No	Citations submitted by the second respondent counsel	Reported in
1	Neeharika Insrastructure Pvt.Ltd Vs.State of Maharashtra and Ors	AIR 2021 SC 1918
2	State of M.P. Vs. Kunwar Singh	MANU/SC/0849/2021
3	State of Odisha Vs. Pratima Mohanty Etc.	2021 SCC Online SC 1222
4	State of U.P. & Anr Vs. Akhil Sharda and Ors	2022 SCC Online SC 820
5	State Vs.M.Maridoss and Anr	2023 SCC Online SC 47
6	G.Prabakaran Vs.The Superintendent of Police, Thanjavur District and Ors	2018(5) CTC 623
7	In RE: Abdul Khaleque	MANU/WB/1717/2019

8. The second respondent / defacto complainant as the Managing Director of the company in the name and style 'IFCI' has given complaints pertaining to both petitions. The complainant's company is a government company incorporated under the provisions of the Companies Act, 1956 and it is involved in the business of shares and stocks brokers, depository participant, Underwriters, Merchant & Investment banking business, loan



syndication, corporate insurance agent and retail distribution of mutual fund products etc., The petitioners/accused 1 and 2 are husband and wife and they are the promoting directors of M/s.C.R.Finance & Securities (P) Limited. Under a scheme of amalgamation sanctioned by the Hon'ble High Court vide its order dated 21.10.2008, the said company of the petitioners was amalgamated with various other companies. After amalgamations, taking into consideration of the educational qualifications and experience of the petitioners they have been appointed as Managing Director and Chief Operating Officer of IFCI with effect from 01.09.2008 to 01.10.2009 respectively. Subsequent to their appointments, they are managing the affairs of the company. Now the allegations of the second respondent is that during the period when the petitioners 1 and 2 were functioning as Managing Director and chief Operating Officer, they opened three trading accounts in the name of (a) Shri Sanjay Kawde, (b) Shri. Pitambar and (c) Shri Roshan Kumar. The above persons were introduced by one Ms.T.Sheetal Pyari , who is a SEBI registered sub-broker and her husband Mr.Parrameshwawr Rao. The above three trading were provided frequent exposure against stocks of



unapproved and fundamentally weak companies like SVC Resources and GCV Services. The above accounts were active from June, 2010. The second accused had granted exposure limit of Rs. 5 Crores on 27.07.2010 and the clients through sub broker, were permitted by the second accused to take exposure in SVC Resources and GVC Resources when trading shares of the above companies was engaged and the stocks were high at Rs.260/- and Rs.48/- respectively.

9. During the course of such trading, the fundamentals of the stocks ought to have been examined but it was wilfully neglected and that had caused huge loss to the company. The further allegation is that even when one of the trading account holder by name Shri.Sanjay Kawde came forward for himself and on behalf of other two clients that he was willing to settle the outstanding dues and gave three post dated cheques for Rs.50,00,000/- each, dated 11.02.2011, 20.02.2011 and 28.02.2011, the accused did not allow the officials of the company to deposit the three cheques for realization and that had resulted in huge loss. On the basis of the above allegations a case in



Cr.No.238 of 2019 was registered.

WEB COPY

10. With regard to the other case it is alleged that the petitioners had boosted the business profile of the company even when the company was not actually performing well. According to the balance sheet furnished by the accused as on 31.03.2011 the book income was Rs.3,15,47,580/-. But the income was booked even without carrying out the work partially. The books of account would show that Rs.23,68,538/- was spent as on 30.06.2011 as income towards insurance booking. But the break up details pertaining to the above transactions was not found. There are certain trade losses that were shown in respect of the companies listed in the complaint. On the above allegations the other case in FIR in Cr.No.239/2019 was registered.

11. The appointment of petitioners 1 and 2 as Managing Director and Chief Operating Officer was done by the second respondent's company during due diligence. The company had vested its powers with the petitioners 1 and 2 to take charge of the company's affairs. The petitioners had resigned



from their respective posts during the month of December-2011. However it is claimed that the resignation was not accepted. It is admitted that after the resignation was tendered the petitioners did not come to office. The accounts were scrutinised in the absence of the petitioners after they resigned and the allegations are made on the basis of such scrutiny. The learned counsel for the petitioners submitted that the auditor's report dated 11.4.2012 was accepted by the Board of Directors as well as the shareholders of the company in its Annual General Body Meeting held on 26.07.2012.

12. Even though it is stated by the complainant that the resignation letter submitted by the accused 1 and 2 during the early December-2011 was not accepted, the petitioners have produced the resignation acceptance letter dated 08.12.2011 to show that the resignation of the petitioner 1 and 2 were accepted by the company and they were relieved from services from the Forenoon of 8th December 2011. The letters of the second respondent dated 08.12.2011 have been sent to the accused 1 and 2.



WEB COPY

13. An audit report dated 11.04.2012 would also show that no fraud has been committed by the company. From the audit report, it is seen that there are certain losses sustained by the company during the financial year as on 31.03.2012. However, the company earned profits during the previous financial year. When there is no ground materials to suspect any fraud, the profit and loss account of the company cannot be considered as the prima facie reason for imputing criminal intention upon the persons who were managing the affairs of the company.

14. The petitioners themselves have filed a suit in C.S.No.174 of 2015 for recovery of money. In fact, the investigation has been done in pursuant to the order of the learned Chief Metropolitan Magistrate, Egmore made under Sec.156(3). The final report has been filed by the CCB Police that the matter is civil in nature. In the order dated 15.12.2014 made in Crl.OP.No.30717 of 2014 itself the said fact has been recorded. However, the defacto complainant was given with a liberty to file a protest petition and the earlier complaints on the very same allegations was given by the second



Crl.OP.Nos.27456 & 27512 of 2019

respondent's company against the petitioners before the Inspector of Police, Pondybazsar Police Station, dated 09.10.2014.

15. Even according to the defacto complainant the petitioners have been given with liberty to take decisions at their discretion. The company was able to earn profits during the previous financial year. The petitioners are booked under a criminal case for the loss sustained in the subsequent financial year. In fact the earlier private complaint filed by the second respondent before the learned Chief Metropolitan Magistrate, Egmore in Crl.MP.No.6842 of 2014, the petitioners have filed a petition for anticipatory bail. During the hearing of the anticipatory bail application the defacto complainant filed an intervening petition. While hearing the anticipatory bail application, a report was filed by the investigative Agency by closing the complaint as civil in nature on an enquiry made in pursuant to the order of this Court under Sec.156 (3) Cr.P.C. However the learned counsel for the second respondent submitted that the original complaint was filed on 08.01.2014 before the CCB police and even after a lapse of more than 8



months, there was no progress in the investigation

WEB COPY

16. The complaint filed under Sec.156(3) of Cr.P.C. in Crl.MP.Nos.6842/2014 and 6843/2014 has been forwarded by the learned Chief Metropolitan Magistrate, Egmore to the Deputy Commissioner of Police CCB on 26.09.2014. It is submitted by the learned counsel for the petitioners that after conducting enquiry only, the complaints have been closed as civil in nature. The learned counsel for the second respondent submitted that the above report has been filed even without registering a case in accordance with the direction given by the learned magistrate under Sec.156(3). It is further submitted that the protest petition itself is not maintainable because it is not a case where an FIR is registered.

17. Records show that the final report has been filed without registering the FIR and hence the Magistrate has chosen to reject the report. And on the protest application filed by the petitioner, once again the Magistrate has passed an order to register the FIR and conduct the



Crl.OP.Nos.27456 & 27512 of 2019

investigation. The order of the Magistrate to the effect has been passed on 02.08.2019 in Crl.MP.No.4549/2015.

18. It is the submission of the learned counsel for the petitioners that the magistrate ought not to have directed to register an FIR for fresh investigation, when the petitioners have filed a civil suit. However, the petitioners had not chosen to challenge the order of the learned Magistrate dated 2.8.2019. The learned magistrate had chosen not to accept the report because the investigation has been done without collecting evidence and documents and the above reasons have been recorded in the order itself.

19. Even before the civil suit has been filed by the petitioners 1 and 2 the second respondent have filed criminal complaint in Crl.MP.No.4549/2019 and whatever order passed by the Chief Metropolitan Magistrate, Egmore on this complaint is to do proper investigation. And that too after opting to reject the report filed by the police without registering the FIR. Hence there can not be any suppression of material facts like the



pending civil suit.

WEB COPY

20. The learned counsel for the petitioners submitted that two complaints have been given for one cause of action. It has been made clear that the earlier complaint filed by the second respondent was closed without registering the FIR. Though the petitioners were discharged from their functions as Managing Director and Chief Operating Officer and during their tenure, the company had earned both profit and loss and the auditor has also given a report that his audit has revealed that no fraud on or by the company has been noticed.

21. However, the second respondent has stated that there are materials available to show that the petitioners have acted with criminal intention. Only if those materials are collected and due investigation is conducted, it can be known whether the said transactions are the regular business transactions done by exercising due discretion or the intentional actions committed by the petitioners with some ulterior intention. At the time of



Crl.OP.Nos.27456 & 27512 of 2019

exercising the powers of this Court under Sec.482 Cr.P.C, the Court has to exercise caution and it can not conduct any roving enquiry to decide the merits of the entire case.

22. The learned Government Advocate (Crl.side) submitted his report by stating that the investigation is still pending and some of the witnesses have been examined. In that case the petitioners can also take the liberty to furnish all those materials which they want to rely on. Since the direction of the court was not followed by the first respondent police, that has been taken serious note by the learned Magistrate, Egmore. Since the FIR has been registered after repeated directions and materials are yet to be collected, I feel it is premature to quash the proceedings.

In the result, these Criminal original Petitions are **dismissed**.
Consequently, connected miscellaneous petitions are closed.

28.04.2023

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking
Jrs



WEB COPY



Crl.OP.Nos.27456 & 27512 of 2019



WEB COPY



Crl.OP.Nos.27456 & 27512 of 2019

R.N.MANJULA, J.

jrs

To

1. The Inspector of Police,
City Crime Branch,
Chennai City Police ,
Vepary, Chennai-7.
2. The Public Prosecutor
High Court of Madras.

**CRL.O.P.Nos.27456 &27512 of 2019
AND
CRL.MP.Nos. 14613 &14693 of 2019**

28.04.2023