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Crl.O.P.No. 31706 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.31706 of 2019

and

Crl.M.P.Nos.17351 & 17353 of 2019

- 1.S.Ranganathan
- 2.R.K.Gopalan @ R.Hariharagopalan
- 3.R.Subramanian
- 4.P.Dhayalan
- 5.S.Krishnan
- 6.K.Sasikala
- 7.S.Viswanathan
- 8.D.Yoganathan

... Petitioners

Vs.

- 1.State rep. By its
The Inspector of Police,
Namakkal PS, Namakkal,
(Crime No.717 of 2014)

- 2.A.Subramani

... Respondents

PRAYER :- Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code to call for the records relating to C.C.No.429 of 2016 from the file of the Judicial Magistrate-1, Namakkal, quash the same.



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For Petitioners : M/s.D.Sivakumaran
For Respondents : Mr.A.Damodaran, Addl. Public Prosecutor [R.1]
: M/s.Arun Anbumani
for M/s.Aral Selvam Associates [R.2]

ORDER

The petition is to quash the final report for the alleged offences under Sections 120(b), 468, 420, 506(ii) IPC r/w 120(b), 109 IPC.

2. It is alleged in the final report that the 2nd respondent/de facto complainant held 2400 shares in the company in which the 1st accused/petitioner is a Managing Director and the petitioners 2 to 4 are Directors; that the 2nd respondent/de facto complainant came to know that his shares were sold to third parties by forging his signature and hence the petitioner have committed the aforesaid offences.

3(a). The learned counsel for the petitioners submitted that this is a dispute primarily between one of the founders of the company, namely, Mr.R.Palanisamy and the petitioners. Since the said Palanisamy could not prosecute the petitioners in spite of his best efforts, he had instigated the



2nd respondent who is his close relative to lodge this FIR which has resulted in the impugned final report.

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3(b). The learned counsel further submitted that since the allegation relates to affairs of the company, the 2nd respondent ought to have resorted to the provisions of the Companies Act, 2013. The learned counsel also took this Court through the provisions of Chapter XIV of the Companies Act, 2013, to submit that the complaint ought to have been made before the Registrar of Companies.

3.(c). The learned counsel further submitted that even assuming that the allegations are true, there is nothing in the impugned final report to suggest that the petitioners had committed the act of forgery and hence prayed for quashing of the proceedings.

4. The learned counsel for the 2nd respondent/de facto complainant and the learned Additional Public Prosecutor submitted that since there are allegations of forgery and the allegations do not pertain to the affairs of the company, the 2nd respondent is entitled to approach the police to redress his grievances.



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5. The learned counsel for the 2nd respondent/de facto complainant submitted that the materials collected during the investigation and the report of the forensic expert would show that the 2nd respondent's signature was forged and this has to be adjudicated only before the Trial Court. He further submitted that since the offence took place in the year 1997, the provisions of the Companies Act, 2013, are not applicable.

6. It is the case of the prosecution that the 1st petitioner was the Managing Director of the company and the petitioners 2 to 4 were Directors of the company at the relevant point of time and petitioner 5 is the brother of A.1 who had allegedly entered into a conspiracy with the 1st accused to transfer the shares of the 2nd respondent. This Court finds that since the allegation is that the 2nd respondent's signature was forged and there is prima facie material to show that the signature was forged. According to the learned counsel for the petitioners, petitioners 2 and 3 had resigned from the Directorship of the company in the year 1998 and the petitioner 4 had resigned from the company in the year 2003 and the 5th petitioner was never a Director in the company. As stated earlier, this Court finds that since there is prima facie material to show that the 2nd respondent's signature was forged, the proceedings as against the petitioners 1 to 5



cannot be quashed as this Court cannot conduct a mini trial to ascertain their involvement.

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7. As against the petitioners 6 to 8, this Court finds that there is no material to implicate them in the alleged offences. The petitioners 7 and 8 are admittedly share holders of the company and they cannot be held liable for the offences said to have been committed by the company or its representatives. The only allegation against the petitioner 6 is that when the shares were sold, the same were transferred to her. The said allegation by itself is not enough to show that she was part of the conspiracy to commit the offence of forgery. The judgement of the Hon'ble Apex Court in ***Sheila Sebastian Vs. R.Jawaharraj and another – (2018) 7 SCC 581*** is applicable in so far as her case is concerned. The relevant observations are extracted hereunder:-

" Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person



is the maker of the same, otherwise the accused person is not liable for the offence of forgery."

Therefore, this Court is inclined to quash the impugned final report in so far as the petitioners 6 to 8 alone are concerned.

8. Since the petitioners are all aged persons, their personal appearance before the Trial Court is dispensed with, unless the learned Magistrate deems their presence necessary for the progress of the trial.

9. With the above observations, the Criminal Original Petition is partly allowed, in respect of the petitioners 6 to 8 alone. Consequently, connected Criminal Miscellaneous Petitions are closed.

21.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

1. The Inspector of Police,
Namakkal PS, Namakkal.

2. The Judicial Magistrate-1, Namakkal.



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SUNDER MOHAN. J.

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