IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.09.2024

Pronounced on :10.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.6537 of 2024
and
Crl.M.P.Nos.4801 & 4803 of 2024

R.R.Aroonkumar .. Petitioner/Accused-6

/versus/

1.The State represented by
Deputy Superintendent of Police,
Economic Offences Wing-II, Admiralty
Building, Govt.Estate,
Chennai 600 002. ..Respondent/Complainant

2.S.Rajendran .. Respondent/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the case in C.C.No.4670 of 2006 pending trial on the file of the Learned Chief Metropolitan Magistrate at Egmore, Chennai, and quash the same as far as the petitioner is concerned.

For Petitioner :Mr.M.Sathya Kumar

For R1 :Mr.S.Udayakumar
Govt.Advocate (Crl.Side)

ORDER

On the complaint given by one S.Rajendran dated 26/08/1999, the Economics Offence Wing II, Chennai registered FIR in X Crime No: 993/1999 against Alwarpet Benefit Fund Limited (hereinafter referred to "ABFL"), Chennai for alleged failure to repay the money deposited.

2. The EOW II, through investigation found that the Directors of ABFL along with others conspired to cheat the public with common intention issued pamphlets for its various deposit schemes to the effect that interest upto 20% p.a. will be paid and collected Rs.118 crores by way of deposits from 46,989 depositors as on 31/03/1999 through its 20 branche which spread over Tamilnadu, Andrapradesh, Karnataka and Pondicherry. From out of the money collected as deposit from the public, short term loans were given to the Directors of ABFL and their benami's without security. However, with false certification by the Statutory

Auditors as if the STL were fully secured, the funds of the ABFL were diverted to number of sister companies started by the Directors of ABFL resulting in their personal gain. While a "Nithi" permitted to grant loan on mortgage properties like land and building, advances were made to two persons against security of shares. Jewel loans were granted to spurious jewels based on false certificate given by the appraiser of the Company.

3. On completion of investigation, final report filed against 14 persons for offences under Sections 120B r/w 420, r/w 34 and 409 r/w 34 IPC and 109 IPC and taken on file in C.C.No.4670/2006. The petitioner herein was arrayed as 8th accused. Subsequently, on the demise of A-1 KSPV.Shanmugam and A-4 Nachiammai Achi, this petitioner is now ranked as 6th accused in C.C.No.4670/2006 pending trial before the Learned Chief Metropolitan Magistrate, Egmore.

4. The overt act attributed to this petitioner is that he facilitated the Directors of ABFL to divert the fund to its sister concerns and other

binami's in the following manner:-

The accused A2 appointed R.R.Aroon Kumar (A-8) (the petitioner herein) as a mandate-holder to operate the current account No.1253 with City Union bank and so also the said Krishnan appointed Aroon Kumar as a mandate-holder to operate the current account No.1252-to issue cheques, purchase drafts, deposit monies etc.. so as to, facilitate the share transactions. The specimen signature of Aroon Kumar was attested by A-2 Harshavardhan/Krishnan. In his letter dated 14.06.2000 Navaneethakrishnan stated that Aroon Kumar was introduced to him by A-2 Harshavardhan as "Krishnan" and as a Manager working in his company, hence, accepted him as such for share purchase. Thus, A-8 Aroon Kumar appears to have accquittance t the transaction relating to the purchase of shares. Since it was suspected that the name Krishnan was used by Harshavardhan (A-2) to have another account, the account opening forms for the both accounts have been sent to the Asst.Director of Forensic Science for comparison and report.

Diversion of Fund to Happy Home Profit Ltd.

Investigation discloses that Happy Home Profin Ltd (HHPL) was promoted by A1 KSPV.Shanmugam and A2 S.Harshavardhan as a Housing Finance Company, HHPL went for public issue of shares 06.12.1995. To makeup for the shortfall in the share issue the above two promoters connivingly diverted a sum of Rs.1.88 Crs from ABFL by submitting share applications on behalf of 21 employees.

Sl. No.	***Name of the applicant***	***Cheque No.***	***Drawn on***	***No.of shares***	***Application money Rs.***
1.	R.Krithika	37557	GTBL	89700	500000
2.	T.M.Lakshmi	37766	GTBL	89700	500000
3.	S.Geetha	37765	GTBL	89700	500000
4.	S.Thygarajan	37760	GTBL	89700	500000
5.	T.Malathy	37763	GTBL	89700	500000
6.	E.Kanchana	37762	GTBL	89700	500000
7.	G.Premalatha	37769	GTBL	89700	500000
8.	V.S.Prabhakaran	37771	GTBL	89700	500000
9.	S.Hemamalini	37772	GTBL	89700	500000
10.	B.Ejoumale	37775	GTBL	89700	500000
11.	R.R.Aroon Kumar	96329	GTBL	134500	750000
12.	S.Priya	37776	GTBL	89700	500000
13.	R.Arvazhi	37774	GTBL	89700	500000
14.	M.Jaishankar	37773	GTBL	89700	500000
15.	S.Balaraman	37767	GTBL	89700	500000
16.	Jayandan	37764	GTBL	89700	500000
17.	S.Rajalakshmi	37558	GTBL	89700	500000
18.	M.Karpagam	37761	GTBL	89700	500000
19.	N.SElvi	37770	GTBL	89700	500000

Sl. No.	*Name of the applicant*	*Cheque No.*	*Drawn on*	*No.of shares*	*Application money Rs.*
	Thaianayaki				
20.	K.V.Narayanan	37660	GTBL	89700	500000
21.	Radhika Narayanan	37559	GTBL	89700	500000

Note:-

1.Item No.5-T.Malathy, was not an employee but W/o S.Thygarajan (Item No.4 former General Manager of Alwarpet Benefit Fund Ltd.)
2.ItemNo.11-R.R.Aroon Kumar(Accused) was an employee of HHPL
3.Item No.10-B.Ejoumale was an outsider.

The action of A1 and A2 in diverting the funds from ABFL is gross violation of the Companies Act-1956 and “Nidhi' rules.

5. The petition is filed to quash the case on the ground that case against one of the accused by name Mahesh has been quashed by this Court in Crl.O.P.No.7580/2019 and he is also similarly placed therefore case against him also to be quashed. That apart, justifying the loan availed by him and 20 employees of Happy Home Profin Limited by the certificate given by the Auditor that the loans advanced by ABFL to the employees of HHPL were cleared, it is contented that there is no evidence to attract the offences punishable under Sections 120-B and 420

IPC. The petitioner also denies his position as 'Advisor' to A-2 and nor the mandate holder of the bank accounts in the name of A-2 at City Union Bank.

6. The Deputy Superintendent of Police, EOW-II. In the counter affidavit had specifically highlighted the role of the petitioner herein in the schem of crime and his complicit in manipulation of records to facilitate the commission of crime.

7. The Learned Government Advocate(Crl.Side) submitted that the trial of the crime committed between 1996 -1999, is pending since 2006 due to the dubious design of the accused persons, after prolonged delay due to the discharge petitions and quash petitions filed by the accused one after another in turn, the trial is now posted for examining the witnesses and summons to witnesses been issued. At this juncture, with untenable grounds, the quash petition is filed by this accused to stale the progress of the trial. The fact that the lengthy petition canvassing the facts which are to be tested in trial is sufficient to dismiss

the quash petition. As far as the quash of co-accused is concerned, the Learned Government Advocate submitted that accused-Mahesh being a non functional Director, relying upon the judgement of the Hon'ble Supreme Court in *Aneeta Hada –vs- Godfather Travels and Tours (P) Ltd.* reported in *[2012(5) SCC 661],* the High Court quashed the case against accused/Mahesh, holding that in the absence of active participation in the affairs of the company, non functional Director cannot be vicariously held liable. Whereas the role of this petitioner in the crime been explicitly found and evidence laid before the Court for testing its verocity.

8. Heard both the counsels.

9. The documents relied by the prosecution discloses that S.Harshavardhan (A-2) is the Director of Happy Home Profin Ltd (HHPL) and this petitioner designated as Chief Executive Officer in HHPL. On his instruction and request, a loan of Rs.1.88 crores disbursed by ABFL to him and 20 persons whom he had claimed to be the

employees of HHPL. In the quash petition, the petitioner admits that he utilised the funds to settle the corresponding loan with ABFL thereby aligning his actions with the overarching directives from the corporate hierarchy. Using all sort of corporate jargons, the petitioner tries to justify his crime by placing the sin at the doors of the other accused.

10. The letter from ABFL dated 22/02/2000 to the IGP, EOW during the course of investigation speaks volume about the overt act of the petitioner in the crime under trial. Hence, the same is extracted below:-

> "During the course of our functioning, it is brought to our notice that loans were granted at the rate of Rs.8,97,000/- for 20 employees and Rs.13,45,000/- to Mr.R.R.Aroon Kumar, who is presently working as Chief Executive Officer of HHPL to enable them to participate in the public issue of share capital floated by the above company. Shri Arronkumar has stated in his letter dated 06.01.2000 that he has repaid the entire loan of Rs.13,45,000/- by way of pay order No.295183, dated 08.10.97 drawn on Global Trust Bank Ltd., Dr.Radhakrishnan Salai, Mylapore, Chennai-4. In respect of other employees, we have in our letter dated 07.02.2000 wanted to know whether they have received the share

> certificates of HHPL, out of 20 employees, 3 are presently in service and remaining 17 either resigned the post or terminated from the service or left the service after the crisis started during August '99. In this connection, the reply received from M.Karpagam, E.Kanchana, and G.Premalatha are forwarded herein for your kind perusal. We are also enclosing the details of payment made to HHPL amounting to Rs.188.88 lakhs on 03/12/75 and 27/6/96 through various cheque numbers drawn on Global Trust Bank Limited, Dr.Radhakrishnan Salai, Mylapore, Chennai-4. We therefore request you to kindly take appropriate actions against Thiru.R.R.Aroon Kumar, Chief Executive Officer, HHPL."

11. The petition reading on entirety indicates that the petitioner without any remorse about his involvement in the crime, had come out with a theory of 'faithful execution of directives within his purview'. The diversion of the public money, by manipulation of documents , is implicitly admitted by the petitioner in this petition. A nicely drafted petition with flamboyant language to camouflage the crime can be appreciated only for the felicity of language. In the presence of overwhelming material disclosing his involvement in diversion of fund and misuse of it, necessarily requires trial the charges framed against

him.

12. In the result, **this Criminal Original Petition stands dismissed.** Consequently, connected Miscellaneous Petitions are closed

10.09.2024

Index:yes
Neutral citation:yes/no
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To:

1.Chief Metropolitan Magistrate at Egmore, Chennai,

2.Deputy Superintendent of Police, Economic Offences Wing-II,
Admiralty Building, Govt.Estate, Chennai 600 002.

3.The Public Prosecutor, High Court,Madras.

DR.G.JAYACHANDRAN,J.

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delivery Order made in
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and
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