IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.04.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.7520 of 2023
&
Crl.M.P.No.4805 of 2023

1.Franklin Templeton Asset Management,
(India) Private Limited,
Having its registered office at:
Indiabulls Finance Centre, Tower-2,
12th and 13th Floor, Senapati Bapat Marg,
Elphinstone Road(West), Mumbai-400 013,
Rep.by its Authorised Signatory
Mr.K.V.Venkatakrishnan

2.Franklin Templeton Trustee Services Private Limited,
Having its registered office at
Indiabulls Finance Centre, Tower-2,
12th and 13th Floor, Senapati Bapat Marg,
Elphinstone Road(West), Mumbai-400 013,
Rep.by its Authorised Signatory
Mr.K.V.Venkatakrishnan .. Petitioners

/versus/

1.State of Tamil Nadu,
Rep.by Inspector of Police, Economic Offences
Wing-II(HQRS)
Thiru.Vi Ka Industrial Estate, Guindy,
Chennai 600 032.

3.Mr.Premnath K.Shanker

3.Mrs.Usha Premnath

4.Directorate of Enforcement
Chennai Zonal Office-II,
Government of India,
5th Floor, III Block,B-Wing,
Shastri Bhavan, Haddows Road,
Chennai 600 006,
Represented by its Assistant
Director. .. Respondents
(R4 impleaded as per order dated
23.04.2024 in Crl.M.P.No.123992
of 2023 in Crl.O.P.No.7520 of 2023
by Dr.GJJ)

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.12 of 2020, dated 23.09.2020 pending on the file of the 1st respondent police and quash the same.

For Petitioners :Mr.V.Karthik, Senior Counsel
for Mr.P.Giridharan

For Respondents :Mr.K.M.D.Muhilan
Government Advocate
(Crl.Side) for R1
Mr.Nithyaesh Natraj for
Mr.Anirudh A.Sriram for R2
Mr.N.Ramesh,
Spl.PP (ED) for R4
Service Awaited for R3

ORDER

This Criminal Original Petition is filed to call for the records relating to First Information Report in Crime No. 12 of 2020, dated 23.09.2020 pending on the file of the first respondent and to quash the same.

2. The sum and substance of the complaint for the alleged offence under Sections 420, 409 120(b) and 34 of IPC is that, Franklin Templeton Asset Management (India) Private Limited((in short "FTAMIL") and its Directors hatched a criminal conspiracy to defraud by causing wrongful loss to the investors and unlawful gain to themselves. The criminal law was set into motion by one Premnath K.Shanker and Usha Premnath, who are the respondents 2 and 3 in this quash petition.

3. The gist of the complaint is that, the accused company involved in the Mutual Fund Trade floated units for the investors and in the course of their trade, it had unilaterally wound up six debt schemes, out of eight debt schemes, contrary to the Regulations governing the Mutual Fund Trade. Few days prior to commencement

of the winding up process, substantial units has been liquidated by the Directors, causing breach of trust. As far as the defacto complainant concerned, a tune of Rs.49,47,000/- has been cheated.

4. The first respondent police has taken up the investigation and the investigation is under progress. Meanwhile, certain proceedings been initiated in the High Courts of Madras as well as Karnataka, challenging the decision of the Directors to wind up six schemes. In this connection, the Hon'ble Supreme Court had made certain observations and incidentally, appointed SBI, Funds Management Limited as a Liquidator to liquidate the assets of the company and to distribute it prorata to the unit-holders.

5. The learned Senior Counsel appearing for the petitioners submitted that 109% has been repaid to the unit-holders through the Liquidator. The investment in the Mutual Fund is at the risk of the investors and there cannot be any assured returns for the investors. Due to Covid pandemic, six schemes were closed and wound up, based on the majority decision. There is no element of cheating or

breach of trust neither criminal conspiracy involved in this case. Therefore, the complaint is bound to be quashed.

6. The learned Special Public Prosecutor (ED), who has filed a petition in Crl.M.P.No.12392 of 2023 for impleading itself and the same has been allowed by this Court today (i.e.) 23.04.2024, brought to the notice of this Court that few days prior to winding up of six schemes namely, (i)Franklin India Ultra Short Bond Fund; (ii)Franklin India Low Duration Fund; (iii)Franklin India Dynamic Accrual Fund; (iv)Franklin India Credit Risk Fund; (v)Franklin India Income Opportunities Fund; and (vi)Franklin India Short Term Income Plan, the Insiders, who were controlling the affairs of the "FTAMIL" shelled out their holdings approximately to the tune of Rs.40 crores and had also diverted the fund to the tune of Rs.824 crores to dubious companies like, SBFC Finance, whose earlier annual profit was barely Rs.24.4 crores. Since preliminary investigation had revealed violation of PMLA Act, case has been registered in ECIR/MBZO-I/10/2021. Material collected through search and seizure belongs to the following nine persons viz., (i) Franklin Templeton Asset Management India

Pvt. Ltd.,; (ii)Franklin Templeton Trustee Services Private Limited; (iii)Sanjay Vishwanath Sapre, Whole time Director FTAMIL; (iv)Jayaram Subramaniam Iyer, Director, FTAMIL; (v)Vivek Kudva, Director, FTAMIL; (vi) Radhakrishnan Venkata Subramaniam, Director, FTAMIL; (vii) Pradip Panalal Shah, Director FTAMIL; (viii) Tabassum Abdulla Inamdar; and (ix) Santosh Das Kamath, MD & Chief Investment Officer disclosed, they fraudulently siphoned the fund of the investors and diverted to the dubious companies.

7. The learned Senior Counsel appearing for the petitioners referring communications between the accused persons as well as certain pleadings before the Hon'ble Supreme Court and the observations made by the Hon'ble Supreme Court emphasis that nothing survives for the first respondent to proceed with the investigation after settling the unit-holders. The learned Senior Counsel also submitted that the respondents 2 and 3, who are the defacto complainants, have no legs to oppose the quash petition, since they have withdrawn their complaint.

8. The learned Government Advocate (Crl.Side) submitted that out of 42 complaints alleging cheating to the tune of Rs.4.9 crores, except 13 complaints, others have withdrawn their complaints. 13 complainants have been called for further enquiry, but they have not turned up sofar.

9. This Court, after going through the documents presented before this Court and after considering certain observations made by the Hon'ble Supreme Court in a writ proceedings along with the caveat that those observations will not bind on the going investigation, finds that it is the case, where under the garb of disclaimer and risk factors made in the prospectus while inviting the investment, the promoters have dubiously diverted the fund, just a few days before winding up. This is the reason why the Director of Enforcement had registered the case and taken up the investigation.

10. Prorata distribution as per the direction of the Hon'ble Supreme Court with the help of SBI Funds Management Ltd., as a

Liquidator has nothing to consider at this juncture, when the investigation is under way.

11. This Court, on reading the materials, finds two elements involved in this case. Firstly, the winging up of six schemes detrimental to the interest of the unit-holders and secondly, the diversion of the fund before taking the decision to wind up and liquidate, the Directors holding in the company. It is for the police who is empowered to investigate the case of fraud and breach of trust, to conduct the investigation and complete it in the manner known to law. Any observation made by the SEBI, which has given a clean chit to the promoters, can only be in respect of any SEBI Regulation. It will not of any impediment to the police from investigating the case of fraud and breach of trust.

12. This Court is of the view that when a *prima facie* case is clearly made out for investigation, which has affected the investors

and also the trust of the investors in the mutual funds, the same cannot be quashed by conducting mini trial under Section 482 of Cr.P.C.

13. The learned Senior Counsel appearing for the petitioners wants this Court to look into certain communications and observations of the Hon'ble Supreme Court in a collateral proceedings which has no relevancy, while considering the quash petition filed under Section 482 of Cr.P.C.

14. This Court also holds that this petition has been filed only to stale the proper investigation by the first respondent by abusing the process of law. The Directorate of Enforcement has collected materials revealing siphoning the investors fund attracting offence under PMLA Act.

15. For the above said reasons, this Criminal Original Petition is dismissed with a cost of Rs.50,000/- payable to the legal Services

Authority, High Court Campus, Chennai. Consequently, connected Miscellaneous Petition No.4805 of 2023 is also dismissed.

23.04.2024

Index:yes/no
Neutral Citation:yes/no
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To:

1.The Inspector of Police, Economic Offences
Wing-II(HQRS) Thiru.Vi Ka Industrial Estate, Guindy,
Chennai 600 032.

2.The Inspector of Police,
State of Tamil Nadu,
Economic Offences Wing-II(HQRS),
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600 032.

DR.G.JAYACHANDRAN,J.

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