IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.15217 of 2017
and
Crl.M.P.Nos.9580 & 9581 of 2017

1.P.Subramani
2.S.Ramanujam
3.V.S.Venkataraman ... Petitioners

Vs.

The Reserve Bank of India
Rep. by its Authorised Officer,
Shri R.Parthasarathy, Asst. Manager,
Department of Non-Banking Supervision,
Chennai. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in EOCC.No.14 of 2001, pending on the file of the Additional Chief Metropolitan Magistrate (EOI), Egmore and quash the same.

For Petitioners : Mr.R.Parthasarathy
For Respondent : M/s.T.Poornam
Assisted by Mr.V.S.Rishaanth
and Mr.H.Vishal

O R D E R

This petition has been filed to quash the EOCC.No.14 of 2001, pending on the file of the Additional Chief Metropolitan Magistrate (EOI), Egmore, in which cognizance was taken for the alleged offence punishable under Sections 58E (i), 45 QA, 58B (4AAA) & 58 C of Reserve Bank of India Act 1934, against the petitioners.

2. The case of the prosecution is that the complaint was filed by the respondent, the Reserve Bank of India for the alleged offence under Sections 58E (i), 45 QA, 58B (4AAA) & 58 C of Reserve Bank of India Act 1934, against the petitioners. In the above complaint these petitioners have been arrayed as accused Nos.2,4 & 5 in the representative capacity as a Directory of Accused -1 company viz., Krest Finlease Limited, having office at 312, Anna Salai, (formerly known as MCDowell Drest Finlease Ltd) Chennai, represented by its Authorised signatory. It is pertinent to note that on 12.011.2010 this Court was pleased to take note of the memo filed by the respondent / complainant and thereby had split up this case against the accused No.3,6 to 9 and had assigned a separate new EOCC

No.136/2010. Hence, the hierarchy of the petitioners has been changed and presently arrayed as Accused Nos.2,3 & 4.

3. The learned counsel for the petitioners submitted that the company is not a Non-Banking finance Company within the meaning of Section 45-I of the Reserve Bank of India Act, 1934, as the respondent Bank had prohibited the said company from accepting deposits with effect from 9th December, 1997, which further culminated in an order rejecting the application of the said company for grant of certificate registration as a NBFC under the said Act with effect from 24.06.1998. In view of this, the learned Additional CMM was not appraised with the crucial factual and legal position by the respondent bank, that it was duty bound to do, which led to process being issued on the persons named which would not have occurred had the respondent bank made the Court aware. Thus on the date of filing of the complaint Krest Finlease Limited was not an NBFC and no complaint could have been filed. He further submitted that the petitioners were unaware of this position as they had not been associated with Krest Finlease limited after their resignations much earlier, nevertheless filed discharge petition in Crl.M.P.No.3050 of 2010 on other grounds which

principally related to the petitioners not being in charge of and responsible for the affairs of the company during the relevant time and the same was dismissed by the learned Additional Chief Metropolitan Magistrate (EOI), Egmore, Chennai, Vide its order dated 18.03.2011. Aggrieved by the order dated 20.02.2017, dismissed the said Criminal Revision Petition on the principal ground that only a prima facie view is to be taken by the Magistrate at S.245(2) Cr.P.C. stage when the discharge was filed. It was only thereafter that the petitioners became aware of certain serious legal infirmities upon being provided with documents and are therefore preferring this petition and prays to quash the proceedings.

4. To support his contention, the learned counsel for the petitioners submitted the authority reported in ***(2022) 10 SCC 152, Sunita Palita vs.Panchami stone quarry, in which stated as follows:***

"*42. Liability depends on the role one plays in the affairs of the company and not on designation or status alone as held by this Court in S.M.S.Pharmaceuticals. The materials on record clearly show that these appellants were independent, non-executive Directors of the company. As held by this court in Pooja Ravinder Devidasani vs. State of Maharashtra a* *non- executive Director is not involved in the day to day affairs of the company or in the running of its business. Such Director is no way responsible for the day-to-day running of the accused company. Moreover, when a complaint is filed against a Director of the company, who is not the signatory of the dishonoured cheque, specific averments have to be made in the pleadings to substantiate the contention in the complaint, that such director was in charge of and responsible for conduct of the business of the company or the company, unless such director is the designated Managing Director or Joint Managing Director who would obviously be responsible for the company and / or its business and affairs."*

5. The learned Government Advocate (Crl.Side) appearing for the 1st respondent submitted that the respondent has filed a Criminal complaint against the company Krest Finlease Limited (hereinafter referred to as the 1st accused company) and 14 others, before the ACMM (EO-I), under section 200 Cr.P.C. and Section 58E (1) of the RBI Act, 1934 for the offences committed under Section 45QA read with 58B (4AAA) and Section 58C of the RBI Act. He further submitted that the petitioners have been arrayed as 2nd, 4th and 5th accused in the complaint EOCC.No.14 of 2001. At some of

the hearing of the instant matter, it was submitted on behalf of the petitioners that the 1st petitioner died. The 1st accused company is a non-banking Finance Company and accepted deposits from the public and in view of the its failure, to repay the said deposits with time, appropriate orders were passed by the Company Law Board on 28.04.1998 (2 orders), 22.06.1998, 23.07.1998, 05.10.1998 (2 orders) and 01.12.1998 under Section 45QA of the RBI Act.

6. As per the terms of the said orders passed by the Company Law Board, the company, it directors and officials concerned were directed to ensure compliance with the orders within the stipulated period. As set out in paragraph 7 of the complaint, the respondent had received several complaints from the depositors that the 1st accused company had failed and neglected to comply with the directions issued by the company Law Board. Admittedly the 1st accused company has failed to repay the depositors within the time stipulated in the orders passed by the Company Law Board. The First Accused company having failed to comply with the orders of the Company Law Board, is liable to be prosecuted under Section 58B(4AAA). Section 58B(4AAA) reads as follows:

> *"58B.Penalties*
> *(4AAA) Whoever fails to comply with any order made by the Company Law Board under Sub-section (2) of Section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues"*

7. The learned counsel for the respondent further submitted that every person who, at the time of contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be prosecuted in terms of Section 58B(4AAA) read with Section 58C(1) of the RBI Act. He also submitted that the petitioners were Directors of the 1st Accused company till 21.10.1998 when the orders dated 28.04.1998 (2 order), 22.03.1998, 23.07.1998, 05.10.1998(2 orders) were passed by the company Law Board, have failed to comply with the said orders dated 28.04.1998 (2 orders), 22.06.1998, 05.10.1998 (2 ordes), passed by the Company Law Board. He also submitted that the petitioners have filed this petition only to protract and delay the proceedings before the trial Court. The petitioners have earlier filed Crl.M.P.No.3050 of 210 before the trial Court for

discharging themselves from the proceedings. The said petition was dismissed by the trial Court. The petitioners had filed Crl.R.C.No.533 of 2011 before this Court against the order passed by the learned trial Judge in Crl.M.P.No.3050 of 2010 and the same was dismissed vide order dated 20.02.2017. The petitioners have filed the present Crl.O.P. Solely to delay and protract the proceedings before the Trial court. The grounds raised by the petitioners are identical and therefore deserve to be dismissed.

8. The learned counsel for the petitioners further submitted that the petitioners are directors of the 1st accused company till 21.08.1998. Already the company had passed an order to repay the deposit amount, but the petitioners have failed to comply with the order. The petitioners are actively involved in the said business transaction. During the month of August 1998 onwards the Company Law Board had received the complaints, that about 990 applications from the depositors to whom the money to be paid after the maturity of the deposit, and during such time only the petitioners were directors and they were stated to be resigned only on 21.10.1998. Before that the order passed by the law Board on 28.04.1998 (2 orders), 22.06.1998, 23.07.1998, 05.10.1998 (2 orders) all these were pertaining to

the repayment of the deposit by the Company Law Board and the same was complied with so these petitioners are actively participated in the continuous offence. Even after retirement, they are bound to face the trial.

9. Considering both side submissions and on a perusal of the records, it reveals that the Company Law Board passed an order to repay the deposit amount dated 28.04.1998 (two orders), 22.06.1998, 23.07.1998, 05.10.1998 (two orders) and 01.12.1998(Suo motu order). The resignation was made by the petitioners on 21.10.1998. The petitioners Prima facie actively participated in the said offence. Liberty is granted to the petitioners to work out their remedy before the trial Court.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

26.02.2024

Index: Yes/ No
Neutral Citation: Yes/No

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T.V.THAMILSELVI, J.
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To

1.The Additional Chief Metropolitan Magistrate (EOI),
Egmore.

2.The Public Prosecutor,
High Court of Madras.

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and
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