



Crl.O.P.(MD)No.12400 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.(MD)No.12400 of 2022

and

Crl.M.P.(MD)No.7844 of 2022

Ashok Muthana

... Petitioner/A1

vs.

1.State represented by the Deputy Superintendent of Police,
Economic Offences Wing – II,
Kumbakonam, Thanjavur,
Thanjavur District

... 1st Respondent

2.The Inspector of Police,
Economic Offences Wing,
Kumbakonam, Thanjavur District

... 2nd Respondent/Complainant

3.Ajmal Hussain

... 3rd Respondent/De-facto
Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records of the impugned proceedings in C.C.No.20 of 2003 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Ms.L.Maithili

For R1 & R2 : Mr.Thanga Aravindh.B
Government Advocate (Crl. Side)

R3 : Unserved, Died



Crl.O.P.(MD)No.12400 of 2022

ORDER

WEB COPY

This petition has been filed challenging the proceedings pending in C.C.No.20 of 2003 on the file of the Additional Chief Judicial Magistrate Court, Kumbakonam.

2. The 3rd respondent filed a complaint before the respondent police to the effect that he had deposited a sum of Rs.17,638/- (Rupees Seventeen Thousand Six Hundred and Thirty Eight only) in Fidelity Finance Limited which was a Non-Banking Finance Company (NBFC). The amount that was deposited by the 3rd respondent accrued to the tune of Rs.20,073/- (Rupees Twenty Thousand and Seventy Three only). This amount was not repaid back even after the expiry of the period. The same resulted in the complaint given before the respondent police, based on which, a First Information Report came to be registered in Crime No.1 of 2001 on 24.11.2001. On completion of investigation, the police report has been laid before the Court below as against eight accused persons for the alleged offence under Sections 409, 420, 409 r/w 34 and 420 r/w 34 of IPC. The petitioner was arrayed as A1 on the ground that he was the Chairman of the Company. He has challenged the proceedings before the Court below in this quash petition.



Crl.O.P.(MD)No.12400 of 2022

WEB COPY

3. The 2nd and 3rd respondents have filed a counter. In the counter, they have taken a stand that totally 108 persons had deposited the amount in the Company to the tune of Rs.61,70,436/- (Rupees Sixty One Lakhs Seventy Thousand Four Hundred and Thirty Six only) and when the depositors demanded the money on maturity, it was not repaid back.

4. It was brought to the notice of this Court that steps were taken to serve the 3rd respondent and ultimately, it came to light that the 3rd respondent died during the pendency of this case.

5. Out of the eight accused persons, A2, A4 and A6 died during the pendency of the criminal case. The proceedings were quashed insofar as A5 and A7 are concerned, and insofar as A8, who is the Branch Manager, the case was split up. Thus, effectively, the criminal case is now pending against A1 and A3.

6. Heard Ms.L.Maithili, learned counsel appearing for the petitioner and Mr.B.Thanga Aravindh, learned Government Advocate (Crl. Side), appearing for the 1st and 2nd respondents.



Crl.O.P.(MD)No.12400 of 2022

WEB COPY

7. The main ground that was urged on the side of the petitioner is that the petitioner has been added as an accused even without making the Company as an accused in this case. That apart, it was contended that the petitioner is a Non-executive Chairman of the Company, and that the concept of vicarious liability cannot be applied against the petitioner for the alleged offence committed under the Indian Penal Code.

8. It was also brought to the notice of this Court that all the Companies virtually went into the hands of the official liquidator appointed by this Court and thereafter, the official liquidator started consolidating the assets and started the process of repayment to the depositors.

9. In the instant case, the charge against the petitioner is for offence under Section 420 r/w 34 of IPC and Section 409 r/w 34 of IPC. The entire materials that have been placed before this Court does not, anywhere, indicate as to how the petitioner has acted in furtherance of the common intention between the accused persons. It must be kept in mind that when it comes to offences under Indian Penal Code, the concept of vicarious



Crl.O.P.(MD)No.12400 of 2022

WEB COPY

liability can never be employed. The law and this issue was settled by the apex Court in ***S.K.Alagh vs. State of U.P. & Ors. [2008 (5) SCC 662]***. It was made clear that vicarious liability cannot be fastened against the Managing Director, Director and other officers of the Company automatically except where such liability is imposed by the special statutes like the Negotiable Instruments Act, the Essential Commodities Act, etc. This Court has also taken note of the judgment of the apex Court and followed the same in ***K.Suresh vs. State and Ors. [2021 (2) MLJ(Crl) 22]***.

10. In the case in hand, the Company has not been made as an accused and therefore, the Chairman of the Company cannot be automatically made as an accused. That apart, the person holding the post of the Chairman by itself cannot lead to the commission of the offence under the Indian Penal Code, since the concept of vicarious liability cannot be invoked. The charges for which the police report has been filed is for the offence under Sections 420 and 409 of IPC, and the petitioner is roped in as A1 by invoking Section 34 of IPC, and there is no material to show as to how the petitioner has acted in furtherance of the common intention.



Crl.O.P.(MD)No.12400 of 2022

WEB COPY

11. In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner will lead to abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure.

12. In the result, the proceedings in C.C.No.20 of 2003 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam is hereby quashed insofar as the petitioner is concerned. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

03.12.2024

mkn

Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral citation : Yes/No



Crl.O.P.(MD)No.12400 of 2022

WEB COPY

To

- 1.The learned Additional Chief Judicial Magistrate,
Kumbakonam
- 2.The Deputy Superintendent of Police,
Economic Offences Wing – II,
Kumbakonam, Thanjavur,
Thanjavur District
- 3.The Inspector of Police,
Economic Offences Wing,
Kumbakonam, Thanjavur District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.12400 of 2022

N. ANAND VENKATESH, J.

mkn

Crl.O.P.(MD)No.12400 of 2022
and
Crl.M.P.(MD)No.7844 of 2022

03.12.2024