



Crl.O.P.No.2717 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.2717 of 2021
and Crl.M.P.Nos.1500 & 1502 of 2021

1. K.V.Rama Moorthy
2. Prakash Chandra Pada

... Petitioners

Versus

N.C.Pandian

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the complaint in Spl.C.C.No.2 of 2020 on the file of the learned XVI Additional Sessions Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.John Sathyan, Senior Counsel
for Mr.P.Divakar

For Respondent : Mr.K.Mohanmurali

ORDER

This petition has been filed to call for the records and quash the complaint in Spl.C.C.No.2 of 2020 on the file of the learned XVI Additional Sessions Judge, City Civil Court, Chennai.



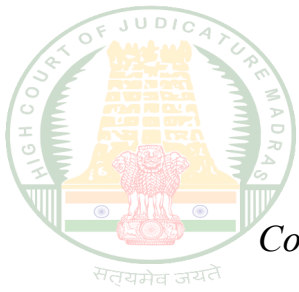
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WEB COPY 2. The crux of the allegations in the private complaint is that the complainant is having 500 equity shares in Folio No.00032997 in Tamilnadu Mercantil Bank and the petitioners had misused their position in the Bank and had wilfully and wantonly denied and cheated the complainant of the bonus shares issued by the bank on 25.05.2016 in the ratio of 500:1. On 27.02.2020, the shareholders list released by the petitioners, that only 500 shares stood in the name of the complainant depriving the complainant of 2,50,000 shares. Thus, the accused have committed an offence under Sections 447 and 448 of the Companies Act, 2013.

3. Heard both sides and perused the materials placed on record.

4. The facts of this case are covered by an order of this Court in the case of *Upendra Hosdrug Sundar Kamath and others vs. K.G.Inian* made in *Crl.O.P.No.18951 of 2017* dated 12.01.2022. In similar circumstances, this Court has elaborately dealt with the issues and ultimately in paragraph 14 of the order dated 12.01.2022 has held as follows:

“ 14. *The judgment in Shivajee Singh Vs. Nagendra Tiwary and others reported in [2010] 7 Supreme Court Cases 578, the Apex*



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Court in para 14 has held as follows :

“14. Although, Shah, J. and Thomas, J. appear to have expressed divergent views on the interpretation of proviso to Section 202(2) but there is no discord between them that non examination of all the witnesses by the complainant would not vitiate the proceedings. With a view to clarify legal position on the subject, we deem it proper to observe that even though in terms of the proviso to Section 202(2), the Magistrate is required to direct the complainant to produce all his witnesses and examine them on oath, failure or inability of the complainant or omission on his part to examine one or some of the witnesses cited in the complaint or whose names are furnished in compliance of the direction issued by the Magistrate, will not preclude the latter from taking cognizance and issuing process or passing committal order if he is satisfied that there exists sufficient ground for doing so. Such an order passed by the Magistrate cannot be nullified only on the ground of non-compliance of proviso to Section 202(2).?”

The above case relate to noncognizable offence. Whereas Section 447 is a cognizable offence and there is a specific provision under section 212 [6] in the proviso for cognizable offences.

Much emphasis is made on the judgment of the Karnata High Court in W.P.No.10142 of 2020 Order dated 18.01.2021 in Azim and others Vs. India Awake for Transparency. Whereas in the present case, the case is governed by a Special Act which deals with the



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procedure to inquire, investigation and inspection and only on a finding recorded by such authorities and the persons are found guilty, he can be prosecuted under section 447 of the Companies Act. Merely on the basis of the petitioner's inferences and presumptions, the entire Directors of the company cannot be prosecuted. The contention of the learned counsel that the shareholders can any time file complaint against the directors is accepted, any minority shareholder and that too without any proof of the alleged mismanagement or oppression or fraud committed by the company can subject the running company into a criminal prosecution. Only in order to prevent such things, such safeguards have been made in the Companies Act to find out the irregularities in the company. Therefore, this Court is of the view that the without any finding as to fraud by the authorities under enquiry or investigation as contemplated under the Companies Act, the prosecution is not maintainable. In such view of the matter, taking cognizance for the offence under sections 447 and 448 is not according to law.”

Emphasis supplied

5. In the above judgment, it is also held that if at all the complainant is really interested to unearth the mismanagement, oppression or irregularities, the complainant has to give a complaint before the authorities constituted under the Companies Act, 2013. Thus, this Court is of the view that the present complaint is



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nothing but abuse of process of law and not maintainable.

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6. Accordingly, this criminal original petition is allowed and the private complaint in Spl.C.C.No.2 of 2020 on the file of the learned XVI Additional Sessions Judge, City Civil Court, Chennai filed against the petitioners is quashed. Consequently, connected miscellaneous petitions are closed.

21.08.2025

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Index : Yes
Internet : Yes

To

XVI Additional Sessions Judge, City Civil Court, Chennai.

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