IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.10.2024

Pronounced on : 03.01.2025

CORAM : JUSTICE **N.SESHASAYEE**

Crl.O.P.No.16754 of 2024
and Crl.M.P.Nos.10107 & 10108 of 2024

1.M/s.Springfield Shelters Pvt. Ltd.,
Coimbatore, Rep. by its Director
C.Raja John
Regd. Office : No.101, Renga Vilas
New Dhamu Nagar
Coimbatore - 641 037.

2.Chairman Dorai Raja John
S/o.Late K.Chairman Durai
Director
M/s.Springfield Shelters (P) Ltd.,
No.18, Thasami Park Residency
GVK Nagar, Singanallur
Coimbatore - 641 005.

3.Chillara Venkateswara Rao
S/o.Sathyanarayana Murthy
Director
M/s.Springfield Shelters (P) Ltd.,
No.F-1, Rampriya Residency
Lakshmi Nagar, Mogal Rajapuram
Vijayawada, Krishna District - 520 008.

4.Rajeswari Dinakaran
W/o.R.Dinakaran
Director
M/s.Springfield Shelters (P) Ltd.,

Block II, I Floor,
FK Jains Abhishekh Apartments
Velacherry Main Road
Selaiyur - 600 073. ... Petitioners / A1 to A4

Vs

1.Deputy Superintendent of Police
CBI, ACB, Chennai
(Charge Sheet No.08/2022 &
FIR No.RC MA1 2021 A006) ...1st Respondent / Complainant

2.L.N.Suresh
S/o.R.Lakshmi Narasimhan
Regional Head / Dy. General Manager
Central Bank of India
Regional Office, Coimbatore. ...2nd Respondent /
Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., (Sec.528 of BNS) praying to call for the records and quash the C.C.No.52/2023 pending on the file of Chief Judicial Magistrate, Coimbatore.

For Petitioners : Mr.R.Rajarathinam, Senior Counsel
Assisted by Mr.K.Shanker &
Mr.R.Vignesh

For Respondents : Mr.K.Srinivasan
Special Public Prosecutor (CBI) for R1

Mr.T.S.Vijayakumar for R2

ORDER

The petitioners herein are a registered company and its Directors, and they have alleged to have defrauded the Central Bank of India, Coimbatore. A case has been duly registered and investigated by the first respondent for offences U/s.120(B) r/w 420 and 420 I.P.C.

2. The final report of the C.B.I. has been filed and the accused persons have now approached this Court with the present petition for quashing final report on the ground that the entire loan dues have been settled in OTS and NOC too has been issued by the 2nd respondent.

3.1 The CBI has filed its counter, but not the 2nd respondent. The allegation of the prosecution is that the first petitioner is a developer of villas, and that it had obtained a loan of Rs.5.0 crores for purchase of construction materials necessary for the construction of 26 houses/villas *inter alia* on the security of an equitable mortgage created over its immovable property. This amount was not utilised fully as only 3 or 4 incomplete villas alone are available, and that substantial loan amount was diverted for other purposes. On 12.04.2018, the loan itself was declared NPA and on 03.11.2018, the loan account was declared fraud. And the second respondent bank had suffered a wrongful loss of about Rs.6.07 crores. A FIR came to be registered against the petitioners and two others plus an unknown public servant (presumably a bank official) for offences under Sec.120B r/w Sec.420 IPC and Sec.13(2) r/w Sec.13(1)(d) PCA

3.2 After completing the investigation, a final report has been laid in which the CBI had dropped the name of the 6th accused in the FIR and also the 'unknown' public servant, for offences under Sec.120B r/w 420 IPC.

4. Be that as it may, M/s Shriram City Union Finances, a financial creditor of the petitioner-company, had instituted a CIRP before the NCLT, Chennai, and a Resolution Professional was appointed by the Committee Creditors. The first petitioner being a MSME, it participated in the resolution process and offered an OTS with a view to revive the company. While this application was rejected by NCLT, the petitioner moved NCLAT, and it allowed the offer fo OTS. This Order of NCLAT was challenged by the Resolution Professional before the Hon'ble Supreme

Court and it directed that the resolution offer of the first petitioner be considered but within a period of two months.

5. As part of the scheme, the second respondent bank was offered Rs.3,36,89,685/- about 50% of the loan liability when the loan account of the first petitioner was declared NPA and fraud. On 25.03.2024, this amount was paid too.

6. It is in this backdrop, the second respondent had addressed a communication dated 22.05.2024 to the CBI about the closure of loan account of the first petitioner following the OTS approved by it. On 04.06.2024, the Regional Office of the second respondent bank addressed a communication to CBI for release of documents which were produced as securities by the first petitioner, but it underscored that "***the criminal proceedings shall continue and the criminal complaint will not be withdrawn.***"

7. Heard both sides. The loan dues which the petitioners owed to the second respondent, as stated above, was settled at around 50% of the total amount due, and the fact remained that the remaining 50% represented the

public money, and that would mean that the public had eventually lost the money. It is in this scenario, the petitioners seek to quash the final report laid by the CBI. Admittedly, since the first petitioner is a MSME and some of its promoters and Directors continued to be in the management of the affairs of MSME, they will not be entitled to a relief against prosecution under Sec.32A of IBC., Now the issue is, dehors Sec.32A of IBC, are the petitioners entitled to have the final report quashed merely because they have paid the second respondent the loan dues through OTS?

8. The arguments essentially revolve around an understanding of the judgements of the Hon'ble Supreme Court in ***CBI Vs Jagjit Singh*** [(2013)10 SCC 686], ***State of Maharashtra through CBI Vs Vikram Anantrai Doshi and Others*** [(2014) 15 SCC 29] and ***Kothari Polymers Ltd., and Others Vs CBI*** [(2022) SCC OnLine SC 2078].

9.1 Both in ***Jagjit Singh case*** and ***Vikram Anantrai Doshi*** case, the Hon'ble Supreme Court has held that merely repayment of money which was fraudulently obtained from the bank will not relieve the person accused of committing an offence of his or her criminal liability. And even in

Kothari Polymers case, the Hon'ble Supreme Court has arrived at a similar conclusion but eventually relieved the appellants before it of the criminal liability by directing them to pay a sum of Rs.20.0 lakhs in the Court, which was required to be bifurcated and appropriated at a certain ratio for those specific purposes it has indicated.

9.2 Now so far as the ratio in ***Kothari Polymers case*** is concerned, the ratio as such is one against the petitioners, yet the relief is granted by the Supreme Court to the accused. After all, the Hon'ble Supreme Court has powers under Article 142 of the Constitution which powers this Court does not have. Therefore, this Court is bound by the dominant view of the Supreme Court that an offence vis-a-vis the accusation of bank fraud cannot be compounded as it is an offence against the society. This apart in its communication dated 04.06.2024, the Regional Office of the second respondent-bank had clearly indicated its intent not to compound the offence.

10. For an offence to be compounded with a leave of the Court, first atleast the parties must compound the offence and leave of the Court comes later. Here, the bank is seen in no mood to lend its consent to compound the

offence. Therefore, this Court cannot force the decision on the banker when the criminal procedure is not against the choice which the banker has under Sec.320 Cr.P.C.

11. In conclusion, this criminal petition is dismissed. Consequently, connected miscellaneous petitions are closed.

.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

kas/ds

To:

1. The Chief Judicial Magistrate
   Coimbatore.

2. The Public Prosecutor
   High Court, Madras.

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
Crl.O.P.No.16754 of 2024

.01.2025