



Crl.O.P.No.20003 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.20003 of 2023
and Crl.M.P.Nos.13580 and 13581 of 2023

1. Archit Sarogi
2. Avinash Sarogi

... Petitioners

Vs

1. State Rep. By,
IOP,
Central Crime Branch -I,
Chennai.
(CCB Crime No.106/2022)

2. Ammu Bansal ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C/Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records, in CC.No.4677 of 2023 on the file of the Special Metropolitan Magistrate Exclusive for CCB and CBCID cases, Egmore, Chennai in Crime No.106 of 2022 on the file of the respondent and quash the same.

For Petitioners : Mr.K.P.Anantha Krishna

For R1 : Mr.A.Gopinath
Government Advocate (Crl.side)

For R2 : Mr.K.P.Sathish Kumar



Crl.O.P.No.20003 of 2023

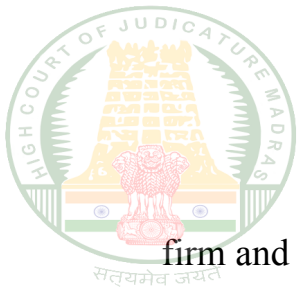
ORDER

WEB COPY

This Criminal Original Petition has been filed challenging the proceeding in CC.No.4677 of 2023 on the file of the special Metropolitan Magistrate Exclusive for CCB and CBCID cases, Egmore, Chennai and to quash the same.

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

3. The case of the prosecution is that on the complaint lodged by the second respondent, the first respondent registered FIR in Crime No.106 of 2022 for the offences punishable under Sections 420 and 409 of IPC alleging that M/s Aridnam Work Wear Concept LLP -a Limited Liability Partnership concerned was incorporated on 30.10.2019. The petitioners, the second respondent and her daughter one Mandira Bansal are partners in the said partnership firm. While being so, the petitioners had tendered their resignation on 21.11.2021 before finalization of any financial year account of the partnership firm. During their period as partners, the petitioners have made numerous transactions which were not related to the partnership firm, thereby they had misappropriated huge funds of the partnership firm which resulted almost bankrupt. After conducting forensic analysis of the partnership firm, it was revealed that the petitioners had misappropriated funds of the partnership



firm and utilized the capital of the firm to meet their personal obligations which had also resulted in bringing disrepute to the firm as many cheques issued by the partnership firm got dishonoured.

4. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in CC.No.4677 of 2023 on the file of the Special Metropolitan Magistrate Exclusive for CCB and CBCID cases, Egmore, Chennai.

5. The learned counsel for the petitioners would submit that there is no specific allegations to attract the offences under Sections 409 and 420 of IPC as against the petitioners. There is no *prima facie* material against the petitioners as being involved in any criminal act as alleged by the prosecution. The cash transaction is only between the petitioners and the second respondent. Therefore, the said transactions would not amount to misappropriation of funds. It is completely civil in nature and if at all any grievance over the transaction of the amount, the second respondent ought to have approached the civil Court for appropriate relief. He further specifically contended that the transaction between the partners and the money transferred to the personal account of the



Crl.O.P.No.20003 of 2023

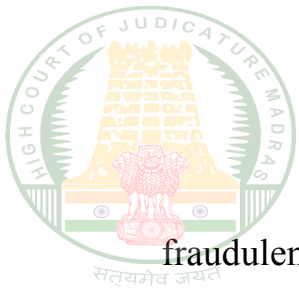
petitioners would not amount to misappropriation.

WEB COPY

6. In support of his contentions, he relied upon several judgments.

The Hon'ble Supreme Court of India in the case of reported by **1964 SCC online SC 185** in the case of ***Velji Raghavji Patel Vs. State of Maharashtra*** held that the sale proceeds of the partner goods exported and the duty draw back thereon were credited to proprietorship account instead of partnership account. Since there is no specific agreement between the partners to the effect that they will hold the partnership property in trust, the question of criminal breach of trust does not arise. Further, the partners hold property as a joint owners so the question of misappropriation under Section 406 also does not arise. It is ultimately a question of rendition of accounts. It is further submitted that there is no element of deception at inception. Therefore, the offence under Section 420 of IPC is also not attracted as against the petitioner.

7. A perusal of the counter filed by the second respondent and also on the submissions made by the learned counsel for the second respondent revealed that the petitioners were the partners of M/s Aridnam Work Wear Concept LLP and its partnership firm and it is a registered one. There was



fraudulent transactions which had taken place between 29.11.2019 and 08.10.2021 by the petitioners. During that period, the petitioners transferred a sum of Rs.76,76,824/- through online to several third persons who are not at all connected to the partnership firm from the account of the partnership firm. That apart, a sum of Rs.29,53,800/- was transferred from the partnership firm account to IDFC Bank current account to the third parties.

8. Further, they had also issued cheques in the name of the partnership firm to the third parties. The petitioners borrowed loan on their personal capacity. In total a sum of Rs.1,06,29,000/- has been looted by the petitioners from the partnership firm and also the petitioners ought to have returned the money to the tune of Rs.33,71,189/- to one of the partners. Therefore, it is not the case of the petitioners that they have transferred the amount from the partnership firm to their personal account. Hence, the Judgment relied upon by the learned counsel for the petitioners is not at all applicable to the case on hand. There is clear evidence of emburserment of funds from the partnership firm to various third parties account. Till their resignation, their acts of fraud and misappropriation of funds were not noticed and only after their resignation, on enquiry, misappropriation committed by the



petitioners came to light. Therefore, these transactions are not civil in nature and do not attract civil liability.

9. Therefore, when there are specific materials available as against the petitioners to attract the offences under Section 409 and 420 of IPC, the entire criminal proceedings swirled at the initial stage. The final report *prima facie* proves that the petitioners have been involved in various criminal activities and this Court is not inclined to quash the impugned proceedings.

10. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be



WEB COPY



Crl.O.P.No.20003 of 2023

done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

11. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after



WEB COPY



Crl.O.P.No.20003 of 2023

appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

12. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the



WEB COPY



CrI.O.P.No.20003 of 2023

preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered in quash petition under Section 482 Cr.P.C.

13. In view of the above, this Court is not inclined to quash the proceeding in CC.No.4677 of 2023 on the file of the Special Metropolitan Magistrate Exclusive for CCB and CBCID cases, Egmore, Chennai. The Trial Court is directed to complete the Trial in CC.No.4677 of 2023, within a period of six months from the date of receipt of a copy of this order.



CrI.O.P.No.20003 of 2023

14. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous petitions are closed.

25.03.2025

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

mn



WEB COPY



Crl.O.P.No.20003 of 2023

G.K.ILANTHIRAIYAN. J.

mn

To

1. The Special Metropolitan Magistrate Exclusive
for CCB and CBCID cases,
Egmore, Chennai.
2. The Inspector of Police,
Central Crime Branch -I,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.20003 of 2023

25.03.2025