



Crl.R.C.No.1632 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.12.2024

Pronounced on : 03.01.2025

CORAM : JUSTICE N.SESHASAYEE

Crl.R.C.No.1632 of 2024
and Crl.M.P.Nos.13523 & 13525 of 2024

S.Venkatraman

.... Petitioner / Accused No.1

Vs

State represented by
The Inspector of Police
Central Bureau of Investigation
Chennai.

[R.C.No.5 & 6/E/2001/CBI/EOW/Chennai] Respondent /
Complainant

Prayer : Criminal Revision Petition filed under 442 of Bharatiya Nagarik Suraksha Sanhitha, 2023 praying to set aside the order dated 03.09.2024 made in Crl.M.P.No.6997/2020 in C.C.No.9825/2005 pending on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai.



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For Petitioner : Mr.V.Raghavachari
Senior Advocate
Assisted by Mr.S.Rajendra Kumar

For Respondent : Mr.B.Mohan
Special Public Prosecutor [CBI]

ORDER

A1 in C.C.No.9825 of 2005 on the file of Additional Chief Metropolitan Magistrate Court, Egmore, has preferred this revision challenging an order dismissing his petition in CrI.M.P.No.6997 of 2020, filed U/s.239 Cr.P.C.

2.The quintessence of the prosecution case is that A1 to A8 and A9, the company whose affairs A1 and A2 presided as directors, are alleged to have committed offences U/s.406 and 420 I.P.C. The other relevant facts are:

- a) A1 to A8 were the directors of certain financial institution known by the name Synergy Financial Exchange Limited (SFEL), A1 and A2 were also the directors of A9 Company. Both SFEL and A9 company were engaged in financial services of accepting deposits



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which *inter alia* included accepting deposits and advancing loans.

- b) SFEL had gone into liquidation and today it has been fully liquidated.
- c) According to prosecution, part of the funds of SFEL had been diverted by the directors of that company to A9 and this invited registration of a F.I.R. by the respondent / C.B.I.

3.The final report in this case has been laid, charges too have been framed against A1 to A8 for offence U/s.406 and 420 I.P.C. It is in this scenario, A1 had preferred CrI.M.P.No.6997 of 2020 before the trial Court for his discharge. The trial Court had dismissed it and its line of reasoning is that there the materials made available show a triable case. As stated earlier, this revision is directed against the aforesaid order of the trial Court.

4. Mr.V.Raghavachari, the learned Senior Counsel for the petitioner made the following submissions:

- a) It is not in dispute that SFEL had gone into liquidation, and today the liquidator had discharged all its liabilities. If at all any part of



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the amounts belonging to SFEL had been diverted by A1 to A8 to A9, then it is the job of the liquidator to proceed against A9 to realize whatever sum which is alleged to have been diverted from SFEL to A9 company, for the benefit of the creditors of SFEL. It can never form a foundation for crime. After the depositors have received their dues *pro rata* from the liquidator, there can never be a prosecution for something done by a liquidated company when the depositors have no qualms in receiving their dues *pro rata*. If at all something still remains to be realized, it is the job of the liquidator to realise it.

- b) The petitioner has been charged with for committing offences U/s.406 and 420 I.P.C., but the ingredients of both can never sail together. To constitute an offence U/s.420 I.P.C., the *mens rea* to cheat must be there right at the inception, whereas when money is entrusted it becomes very obvious that there is no *mens rea* to cheat. The petitioner can never be tried simultaneously for both the charges.
- c) Interestingly enough, SFEL was not arrayed as an accused.



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Reliance was placed on authorities in *Delhi Race Club (1940) Ltd., and others Vs State of Uttar Pradesh and another* [2024 SCC OnLine SC 2248]; *Aneeta Hada and others Vs Godfather Travels and Tours Pvt Ltd., and others* [MANU/SC/0335/2012] and *M.E.Shivalingamurthy Vs Central Bureau of Investigation, Bengaluru* [MANU/SC/0012/2020].

5.1 The learned prosecutor makes the following submissions:

- a) SFEL was liquidated and the liquidation proceedings itself concluded on 11.09.2000. A year before the conclusion of the liquidation proceedings, two of the depositors of SFEL preferred separate complaints based on which CTCB had registered cases in Crime Nos.277 and 1216 of 1999 for offences U/s.406 and 420 I.P.C. Later this Court had transferred the investigation to C.B.I. vide its order dated 19.12.2001. And, merely because the company is under liquidation it does not absolve its erstwhile directors of the company of criminal liability.



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b) After transfer of investigation, C.B.I. consolidated both the F.I.Rs into one and laid its final report on 14.05.2004. The learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, had taken cognizance of the case and took it on record the very next year in C.C.No.9825 of 2005.

5.2 Proceeding to argue further, the learned prosecutor submitted that an accused had absconded and is yet to be traced and another accused has preferred some application. Eventually, the charges came to be framed as recently as on 19.10.2024, and the trial Court has fast tracked the trial process after hibernation and has since then examined P.W.1 and P.W.2 in chief examination. Now, even though this revision was filed prior to framing of charges, inasmuch as trial of the case has commenced this Court may not set the charges as framed aside. He added that:

a) the process of liquidation of companies may end the civil liability of the company to its depositors, but not the criminal liability of those who are responsible for management of its affairs in cases registered prior to liquidation.



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- b) So far as the present petitioner plus other Directors of SFEL are concerned, even specific overt acts are alleged against them.
- c) So far as charges under Section 406 I.P.C or 420 I.P.C. are concerned, the petitioner may have to wait for the trial to conclude, and that this Court may not preempt a decision on that.

6.Replying to the same, Mr.V.Raghavachari, the learned Senior Counsel submitted :

- a) It is SFEL, which is alleged to have received deposits and alleged to have diverted its funds to A9. The vicarious liability of directors does not extend to the extent of undertaking liquidated company's criminal liability.
- b) Alternatively, even if some kind of liability can be fastened on the directors, which in law is still not available, yet it cannot follow the directors of any company. Directorship of a company will end with the death of a director, or the directors inviting any disqualification prescribed under the Company's Act, or he is just removed by the General Body. But the company continues and its liability to its



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depositors continue. Therefore, in fitness of things the liquidated company should have been represented by the liquidator to address its criminal liability to its depositors. After all, the directors are mere agents of the principal and agents cannot be proceeded against sparing the principal.

- c) Today, SFEL is fully liquidated and the foundation for alleged criminal liability is based on a certain breach of contract vis-a-vis the civil liability of the company, but when the company is discharged of its civil liability legitimately through the process of law, then the criminal liability may not survive.

Discussion & Decision

7.1 The principle issue involved in this case is whether the Directors of a liquidated company can be criminally liable for offence under Sec.406 IPC or 420 IPC. This issue was settled long time back by the Hon'ble Supreme Court in ***R.K.Dalmia Vs. Delhi Administration*** [AIR 1962 SC 1821], where it held the Directors of a liquidated company can still be criminally prosecuted for criminal breach of trust. Therefore, the principle argument of



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the learned senior counsel fails. Turning to the second aspect vis-a-vis, the sustainability of charge under Sec.406 and Sec.420 IPC is concerned, as held in ***Delhi Race Club (1940) Ltd. and others Vs State of Uttar Pradesh and another*** [2024 SCC OnLine SC 2248], both cannot co-exist.

7.2 Therefore, the trial Court is still required to revisit which one of the two charges can be framed based on the materials and accordingly is directed to amend the charges it has already made. In other words, it is required to retain only that charge which can be framed based on the materials and not to include the contradictory and conflicting charges. In this regard, on such amended charges all the accused persons are required to be questioned, and if so required, the trial court has to commence the trial *de novo*, if any of the witnesses so far examined have not specifically spoken to any overt act of the petitioner involving any of the charges so framed.

8. In view of the above, the revision is allowed. The charges alleged as against the revision petitioner / A1 are set aside and the matter is remanded back to the trial Court. The trial Court is required to re-ascertain which are



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the charges are supported by the materials available before it and amend the charges accordingly. Consequently, connected miscellaneous petitions are closed.

03.01.2025

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

kas/ds

To:

1.The Additional Chief Metropolitan Magistrate
Egmore, Chennai.

2.The Public Prosecutor
High Court, Madras.



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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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