

M.O.Roy vs R. Subramanian on 28 October, 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.09.2018

Delivered on: .02.

CORAM

THE HONOURABLE Mr.JUSTICE P. RAJAMANICKAM

Crl.OP.Nos.28787, 29041 to 29043 of 2013

and

M.P.Nos.1+1+1 of 2013

M.O.Roy

...Pe

Crl.O.P.No.2878

A.K. Verma

...Pet

Crl.O.P.Nos.29041 & 29042

2.Dr.Baljit Singh IPS

3.Nilimesh Baruah

4.D.K.Mittal

...Petitioners/

Crl.O.P.Nos.28787, 29041 &29042

Vs.

R. Subramanian

...Respondent/complainant

Crl.O.P.Nos.28787, 29041 &29042

Crl.OP.No.29043 of 2013

Dr. Baljit Singh IPS

... Petition

Vs.

Subhiksha Investments Madras Pvt. Ltd.,

Rep. By its Director Mr.P.Ram Mohan

Basement, Kalyan

4, Jyothi Venkatachallam Road,

Vepery, Chennai 600 007.

...Respondent/comp

COMMON PRAYER: Criminal Original Petitions are filed under Section

of Cr.P.C., to call for the records of criminal complaint in E.O.C

131,132 and 142 of 2013 on the file of the Additional Chief Metrop

<http://www.judis.nic.in>

Magistrate (E0-I) at Egmore, Chennai and quash the same as against

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accused.

For Petitioners in Crl.OPs. : Mr.D. Simon,
Central Government Standing

For Respondent in Crl.OPs. : Mr.Prakash Gokulaney

COMMON

ORDER

Crl.O.P.No.28787 of 2013 has been filed by the accused Nos.1 to 4 to quash the proceedings against them in C.C.No.141 in 2013 on the file of the Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai. Crl.O.P.No.29041 of 2013 has been filed by the accused Nos.1 to 4 to quash the proceedings against them in CC.No.131 of 2014 on the file of the Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai. Crl.O.P.No.29042 of 2013 has been filed by the accused Nos.1 to 4 to quash the proceedings against them in C.C.No.132 of 2013 on the file of the Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai. Crl.O.P.No.29043 of 2013 has been filed by the accused to quash the proceedings against him in C.C.No.142 of 2013 on the file of the Additional the Chief Metropolitan Magistrate, (EOI) Egmore, Chennai.

2. The respondent viz., Mr.R.Subramanian in Crl.O.P.Nos.28787, 29041 & 29042 of 2013 has filed private complaints stating that in W.P.No.5696 of 2011, 6790 of 2011 & 6291 of 2011, the first accused has filed counter affidavits on his behalf and also on behalf of the Accused Nos.2 to 4 with the false averments and hence they have committed an offence punishable under Section 629 of the Companies Act, 1956. Based on the said complaints, the learned Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai, has taken the cases on file in C.C.No.141 of 2013, <http://www.judis.nic.in> 131 of 2013 and 132 of 2013 respectively.

3. The respondent in Crl.O.P.No.29043 of 2013 viz., M/s.Subhiksha Investment Madras Private Ltd., has filed a private complaint stating that the said Company recently came to know from certain High Court records that a notice dated 28.10.2010 was issued to M/s.ICICI Bank, Chennai, a banker of the complainant and the complainant finds from the said notice that the same has been issued in connection with the investigation under Section 235 of the Companies Act of one M/s.Subhiksha Trading Services Ltd.(STSL). In the said notice, the accused therein has made a false statement as though there has been permission for investigation of the complainant company under Section 240 of the Companies Act and has attempted to use such a false statement to obtain the bank records of the complainant and hence, the accused therein has committed an offence punishable under Section 629 of the Companies Act. Based on the said complaint, the learned Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai, has taken the case on file in C.C.No.142 of 2013.

4. The accused persons have filed these Criminal Original Petitions under Section 482 Cr.PC., to quash the proceedings against them in the aforesaid cases viz., C.C.Nos.131, 132, 141 and 142 of 2013 on the file of the first Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai.

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5. When the above matters came up for hearing on 20.08.2018, both side counsel present and the learned counsel for the petitioners has submitted his arguments and for respondents' side arguments, at the request of the learned counsel for the respondents, adjourned to 27.08.2018. On 27.08.2018, the learned counsel for the respondents made a request to adjourn the case and hence,

the case was adjourned to 29.08.2018. On 29.08.2018, both side counsel present and at the request of the learned counsel for the respondents, the case was adjourned to 05.09.2018 for respondents' side arguments as no further adjournments. On 05.09.2018 also, the learned counsel for the respondents made a request to grant some more time for submitting his arguments. Considering the fact that already three adjournments were given for respondents' side arguments, the request made by the learned counsel for respondents was rejected and the matters reserved for orders. However, liberty was given to the respondents to file written arguments on or before 10.09.2018. But even thereafter, they have not filed written arguments. Hence considering the arguments advanced by the learned counsel for the petitioners and perusing the records, order is being passed in these petitions.

6. The learned Central Government Standing Counsel for the petitioners has submitted that the petitioners were in the services of the Serious Fraud Investigation Office (SFIO) on deputation from various departments. He further submitted that the inspection of M/s.Subhiksha Trading Services Ltd., was ordered by the Ministry vide letter No.7/23/209-CL. II dated 15.06.2009 on priority basis <http://www.judis.nic.in> to find out the allegations of financial irregularities, mismanagement and siphoning of funds. He further submitted that in pursuance of the said order, an inspection was carried out by the Inspection Wing of Regional Director (SR), Chennai under Section 209-A of the Companies Act comprising of Joint Director and Assistant Director from the Office of Regional Director (SR). He further submitted that subsequently, the Inspecting Officer had sent a letter dated 15.01.2010 communicating the preliminary findings of the inspection carried out, to M/s.Subhiksha Trading Services Ltd., and in reply to the said communication, M/s.Subhiksha Trading Services Ltd., vide their letter dated 25.01.2010 had sent a reply along with details in respect of the points so mentioned in the preliminary findings of inspection. He further submitted that as the preliminary finding had disclosed that M/s.Subhiksha Trading Services Private Ltd., had controlling interest in a number of related companies and therefore, the approval of the Competent Authority, for investigating into the transaction of the related companies, was obtained as per the provisions of the Indian Companies Act, 1956.

7. Learned Central Government Standing Counsel for the petitioners further submitted that the Central Government on receipt of information about allegation of frauds allegedly committed by M/s.Subhiksha Trading Services Private Ltd., had ordered an investigation into the affairs of the company vide order No.F.I/81/2010/CL-II dated 23.07.2010. He further submitted that the letter dated 09.08.2010 was sent to the Chairman of the ICICI Bank, Mumbai, requesting the said bank to furnish the <http://www.judis.nic.in> information related to bank transactions of STPL and the list of companies as enclosed therein. In the said list, M/s.Fast Software Services Pvt Ltd., M/s.Shevaroy Holiday Resorts Pvt. Ltd, M/s.Visram Financial Services Pvt. Ltd., were mentioned. He further submitted that aggrieved over seeking of information about the said Companies by SFIO, the said companies have filed writ petitions in W.P.Nos.6790 of 2011, 6791 of 2011 and 5696 of 2011 respectively before this court for declaring the letter issued to ICICI Bank in SFIO/75/INVSTSL/2010-11/1902 dated 09.08.2010 as void and illegal.

8. Learned Central Government Standing Counsel for the petitioners further submitted that SFIO has filed counter affidavits in the said writ petitions appraising the facts. He further submitted that the respondent in CrI.O.P.Nos.28787, 29041 and 29042 of 2013 viz., Mr.R.Subramanian had filed a

private complaint stating that the petitioners herein have filed counter affidavits in the aforesaid writ petitions with false averments and hence they are liable to be punished under Section 629 of the Companies Act, 1956 and based on the said complaints, the learned Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai, has taken the cases on file in C.C.Nos.131, 132 and 141 of 2013 and issued summons to the accused persons.

9. Learned Central Government Standing Counsel for the petitioners has further submitted that the writ petitions in W.P.Nos.6790, 6791 and 5696 of 2011 are still pending and no finding has been recorded by this <http://www.judis.nic.in> court in the said writ petitions as the petitioners herein have filed false counter affidavits and in such a case, the complaints are premature and they are not maintainable. He further submitted that in the aforesaid writ petitions, if this court comes to the conclusion that the petitioners herein have filed false counter affidavits, then it is for this court to take steps for prosecuting the petitioners for filing false affidavits before this court and it is not open to the respondent viz., Mr.R.Subramanian, who is totally a stranger to the proceedings to file any criminal complaint against the petitioners herein. He further submitted that the petitioners herein are public servants and they can be removed from their service only with the sanction of the Central Government and hence for prosecuting them, prior sanction of the Central Government is necessary as mandated under Section 197 of Cr.P.C., but in this case, no such sanction has been obtained.

10. Learned Central Government Standing Counsel for the petitioners has further submitted that a conjoint reading of Sections 621 to 631 of the Companies Act would give meaning that only the Company or any Officer thereof could be the accused or offender under the Companies Act and the complaint could only be by Registrar or Shareholder of the Company or a person authorized by the Central Government and therefore, the complaint by a Company against the public servant/official of Government, that too, against its investigators is not envisaged under the Companies Act. He further submitted that the prosecution against the petitioners is not maintainable in view of the specific bar under Section <http://www.judis.nic.in> 635-A of the Companies Act and therefore, he prayed to quash the proceedings against the petitioners herein in the aforesaid C.Cs.

11. Learned Central Government Standing Counsel for the petitioners has further submitted that the respondent in CrI.O.P.No.29043 of 2013 has filed a private complaint stating that the accused therein has made false statement in his letter No.SFIO/75/INV-STSL 2010-11/2691 dated 28.10.2010 addressed to the ICICI Bank, Chennai, as though there has been permission for investigation against the respondent/complainant and has attempted to use such false statement to obtain the bank records of the respondent/complainant and it amounts to an offence under Section 629 of the Companies Act, 1956. He further submitted that admittedly the Central Government had ordered an investigation into the affairs of the M/s.Subhiksha Trading Services Ltd., vide letter dated 23.07.2010 and appointed the Additional Director of SFIO as the Inspector and as such, he is entitled to issue such a letter in the course of investigation. He further submitted that the contents of letter dated 28.10.2010 addressed to the ICICI Bank does not amount to false statement/evidence at all under Section 629 of the Companies Act as the same was neither given upon any examination upon oath, or solemn affirmation nor was it an affidavit, deposition or solemn affirmation. He further submitted that no sanction has been obtained to prosecute the accused therein as mandated under Section 197 of Cr.P.C., and therefore, he prayed to quash the proceedings against the

petitioner in Crl.OP.Nos.29043 of 2013 in C.C.No.142 of <http://www.judis.nic.in> on the file of the Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai.

12. In so far as the Crl.O.P.Nos.28787, 29041 and 29042 of 2013 are concerned, according to the respondent/complainant viz., Mr.R. Subramanian, the petitioners /accused have filed counter affidavits in W.P.Nos.5696, 6790 and 6791 of 2007 on the file of this court with false averments and hence they have committed offence punishable under Section 629 of the Companies Act, 1956.

13. Before going into the facts of the case, it would be relevant to refer to Sections 621, 622,624 and 628 to 631 of the Companies Act, 1956 which are read thus:

“621. Offences against Act to be cognizable only on complaint by Registrar, shareholder or Government.

(1) No court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under section 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf: Provided that nothing in this sub- section shall apply to a prosecution by a company of any of its officers.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (5 of 1898) where the complainant under sub- section (1) is the Registrar or a person authorised by the Central Government, the <http://www.judis.nic.in> personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.] (2) Sub- section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections

622. Jurisdiction to try offences. No Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any offence against this Act.

624. Offences to be noncognizable. Notwithstanding anything in the Code of Criminal Procedure, 1898 (5 of 1898) 2, every offence against this Act shall be deemed to be noncognizable within the meaning of the said Code.

628. Penalty for false statements. If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement-

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material; he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

629. Penalty for false evidence. If any person intentionally gives false evidence-

(a) upon any examination upon oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act; he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

630. Penalty for wrongful withholding of property. (1) If any officer or employee of a company-

(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to one thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

Section 631- Penalty for improper use of words “Limited” and “Private Limited”.

If any person or persons trade or carry on business in any name or title of which the word “Limited” or the words “Private Limited”, or any contraction or limitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, be punishable with fine which may extend to five hundred rupees for every day upon which that name or title has been used.”

14. A conjoint reading of Sections 621, 622, 624 and 628 to 631 of the Companies Act, 1956 would give meaning that only the company or any officer thereof could be prosecuted under the Companies Act and the complaint could be only be by the Registrar or the Shareholder of the company or a person authorised by the Central Government in that behalf. In other words, the court can take cognizance in respect of the offences against the Companies Act only on the complaint made by Registrar of the Company or Shareholder of the Company or a person authorised by the Central Government in that behalf. Therefore, the complaint by a company or by any person on behalf of the company against the public servants or officials of government, that too, against its investigators is

not envisaged under the Companies Act. Therefore, the respondent/complainant viz., Mr.R.Subramanian cannot file a complaint against the petitioners (investigators) who were duly authorised by the Central Government to investigate the matter.

15. It is also relevant to refer to Section 635-A of the Companies Act, which reads thus:

“635-A: Protection of acts done in good faith:

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the <http://www.judis.nic.in> publication by or under the authority of the Government or such officer, of any report, paper or proceedings.”

16. A plain reading of the aforesaid provision of law would show that no suit, prosecution or other legal proceedings shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done in pursuance of the said Act or any rules or orders made therein. In this case, admittedly, the petitioners were directed by the Central Government to investigate the matter and only in obedience to the said order, they have discharged their official duties and therefore, they cannot be prosecuted in view of the bar created under Section 635-A of the Companies Act, 1956.

17. It is also to be pointed out that admittedly, the writ petitions in W.P.Nos.5696, 6790 and 6791 of 2011 are still pending before this court. So far, no finding has been given in the said writ petitions as to whether false counter affidavits have been filed. Under such circumstances, this court is of the view that complaints are premature.

18. If the petitioners herein have filed false affidavits before this court in W.P.Nos.5696, 6790, 6791 of 2011, this court is of the view that the provisions of Section 629 of the Companies Act, 1956 would not attract; on the contrary, Section 191 of IPC alone would attract. Section 191 of IPC reads as follows:

“191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state <http://www.judis.nic.in> the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know. “

19. A plain reading of the aforesaid provision would show that whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false is said to give false evidence. The penal provision for giving false evidence is Section 193 of IPC. Therefore, if any false affidavit is filed before the court, the provisions of Section 193 of IPC alone would attract.

20. As per Section 195 (1) (b) (i) of Cr.P.C., no court shall take cognizance of any offence punishable under Sections 193 to 196 of IPC. When such offence is alleged to have been committed in, or in relation to, any proceeding in any court except on the complaint in writing of that court or by such officer of the court as that court may authorise in its writing in this behalf or of some other court to which that court is subordinate.

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21. In this case, as already pointed out that according to the respondent/complainant, the petitioners herein have filed false counter affidavits in W.P.Nos.5696, 6790, 6791 of 2011 before this court and they are still pending. In view of the bar created under Section 195 (1) Cr.P.C., the learned Additional Chief Metropolitan Magistrate, (EOI) Egmore, Chennai, should not have taken cognizance based on the complaint filed by the private persons.

22. It is also to be pointed that the petitioners were working in various departments of the Central Government and they were deputed for the purpose of serious fraud investigation and they can be removed from their office only by the Central Government. As per Section 197(1) of Cr.P.C., When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the appropriate Government.

23. In this case, the petitioners are the Central Government employees, and they can be removed only by the Central Government and for prosecuting them, no sanction has been obtained from the Central Government and therefore in view of the bar created under Section 197(1) of Cr.P.C., the complaints against the petitioners herein are not maintainable.

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24. In so far as the Crl.O.P.No.29043 of 2013 is concerned, according to the respondent/complainant, the petitioner therein has made false allegation in the notice which was sent by him to ICICI Bank on 28.10.2010.

25. As rightly contended by the learned counsel for the petitioners that the contents of the said notice/letter dated 28.10.2010 addressed to the ICICI Bank seeking information by the investigators cannot be considered as false evidence within the meaning of 629 of the Companies Act as the same was neither given upon any examination, upon oath or solemn affirmation, nor was it an affidavit,

deposition, solemn affirmation.

26. For filing the said complaint also, previous sanction of the Central Government is required as per Section 197(1) of Cr.P.C. Admittedly, no such sanction has been obtained by the respondent/complainant and therefore, the said complaint is also not maintainable.

27. For the aforesaid reasons, this court is of the view that the continuance of the proceedings against the petitioners in the aforesaid C.Cs., would amount to abuse of process of the court and hence, this court is inclined to allow these petitions.

28. In the result, the Crl.OP.Nos.28787, 29041 to 29043 of 2013 are allowed. The proceedings against the petitioners herein in C.C.Nos.141, 131, 132 and 142 of 2013 on the file of the Additional Chief Metropolitan Magistrate (EO-I) at Egmore, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed.

.02.2019 Speaking / Non-speaking order Index:Yes/No gv To The Additional Chief Metropolitan Magistrate (EO-I), Egmore, Chennai.

P.RAJAMANICKAM., J.

gv <http://www.judis.nic.in> Pre-delivery order made in Crl.OP.Nos.28787, 29041 to 29043 of 2013 and M.P.Nos.1+1+1 of 2013 .02.2019 <http://www.judis.nic.in>