IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition No.8660 of 2013

1.P.G.Fortune Agrictech Ltd.
Reg Office: 301, Eswar Homes
Dwaraka Nagar
First Lane
Vishakapatnam

2.T.Upendra Reddy

3.Dr.KSPN Varma

4.K.G.Krishnam Raju .. Petitioners

.. Vs ..

Securities and Exchange Board of India
Office"D'Monte Building, 3rd floor
32, D'Monte Colony
TTK Road, Alwarpet
Chennai-600 018

Rep.by its Assistant General Manager
Mr.Pradeep Ramakrishnan .. Respondent

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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the complaint in S.C.No.135/2011 pending on the file of XIX Additional City Civil Court, Collector's Office at Chennai for offences under Sections 12(1B) of the Securities and Exchange Board of India Act, 1992 and Regulation 5(1) r/w.Reg.68(1), 68(2), 73 and 74 of the Securities and Exchange Board of

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India (Collective Investment Schemes) Regulations, 1999, punishable under Section 24(1) of the Securities and Exchange Board of India Act, 1992.

For Petitioners : Mr.A.Ramesh, Senior counsel
for Mr.S.C.Arun kumar

For Respondent : Mr.N.P.Kumar, Special Public Prosecutor
for SEBI.

ORDER

The 1st petitioner is the company. Petitioners 2 to 4 are the Directors of the Company. The 1st petitioner company is involved in a collective investment scheme of developing agricultural land through plantations. Accordingly, the company invited the investors and also collected funds and deposited in the lands as per the schemes of investment i.e., Each investor would be allotted a certain sq.yard of land consisting of Mangium wood trees. The 1st petitioner company had invested the amount in the interest bearing deposit and after maturity, the investor would be repaid either by registration of lands or repayment of cash.

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2. The petitioner company was incorporated in December 1996 under the Companies Act, 1956. The petitioner company, by its letter dated 14.02.2000 to its Unit Holders, informed that SEBI (Collective Investment Scheme) Regulations, 1999, came into force on October 15,

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1999 requiring either Certification of Registration from SEBI to continue with the existing schemes or winding up of the schemes. It is stated that one of the conditions to be fulfilled in order to continue with the scheme is :-

> "The applicant shall meet the minimum net worth of Rupees one crore within one year from the date of grant of provisional registration which shall be increased by Rupees one crore each within two years, three years, four years and five years from the date of grant of provisional registration."

The petitioner company however stated it is not possible to attain the aforesaid minimum net worth of Rupees three crores in three years and so on and that the company is not planning for any new schemes. The company is left with the choice of winding up of the scheme alone. It is further stated that

> *'We propose to repay the investor by way of distribution of assets i.e., to allot and register the land with the existing trees and irrigation system to all the investors @ Rs.125 per sq.yd. In proportion to their investment in the units after making the necessary lay-out. Company has already sold a part of the land @ Rs.125 per sq.yd in 1997. Hence, we have decided neither to increase the selling price nor to provide interest on the investment. A resolution to this effect has been passed.*
>
> *We are sending this Information Memorandum for winding up in accordance with SEBI (Collective Investment Scheme) Regulations. We request you to send the "Acceptance*

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form" duly filled and signed before 15th March 2000".

3. It is seen that since the Petitioner company could not comply with the regulations of SEBI on or before the cut off date and therefore, they have to repay the amount to the investors.

4. The respondent/Securities and Exchange Board of India (SEBI) filed a private complaint under Section 200 Cr.PC., before the XXIII Metropolitan Magistrate, Chennai, seeking to take action against the company and its Directors for non compliance of the directions of SEBI and for the offence under Section 24(1) of Securities and Exchange Board of India Act, 1992.

5. Subsequently, in view of the amendment to Section 24 of SEBI Regulations, the punishment for the offence has been substituted for one year, or with fine, or with both by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002 and it reads as follows:-

> "24. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or

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with both]. "

In view of the amendment, the case was committed to Sessions Court. During the pendency of the case before Sessions Court, in C.C.No.880 of 2002, it has been transmitted to XIX Additional Principal Sessions Court, Chennai.

6. During the pendency of the case, the petitioners filed petition under Section 482 of Cr.P.C., to quash the proceedings. It is submitted by the learned Senior counsel for the petitioners that subsequently, during the pendency of the complaint before the Sessions Court, they settled the entire winding up procedure and repayment was made to all the investors by July 2005 itself in the three schemes and the investors had been repaid either by registration or through payment of cash. Therefore, in view of the matter having been settled, the case pending against these petitioners in S.C.135 of 2011, is to be quashed.

7. The learned Senior counsel appearing for the petitioners would submit that though SEBI Regulations required the existing companies under collective investment schemes to show the compliance of the requirements with SEBI, they would not be able to settle the issues within the time stipulated period. But subsequently, after filing the complaint before the respondent, even during the year 2005, they

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settled the investors and there was some difficulties in tracing out the investors and therefore, they could not comply with the directions of the SEBI before December 2000. They have subsequently settled the matter and therefore, they filed a memo with affidavit before the Sessions Judge, to compound the matter. Since there is a bonafide reason for compounding the offence and that they settled and repaid all the amounts, it is submitted by the learned Senior counsel for the petitioners that in such circumstances, the petitioners need not undergo the ordeal of trial which will be only a futile exercise. In order to show bonafide of the petitioners, they also filed Auditor's Report in the year 2005 stating that they settled the matter.

8. The learned Senior counsel, at the time of concluding his arguments, would draw the attention of this court to the issue of jurisdiction of the court, where the private complaint filed. The learned Senior counsel submits that the court has no jurisdiction as none of the transactions in the matter has taken place in Chennai and no cause of action arose in Chennai. The learned Senior counsel pointed out that when no part of cause of action arose in the city, the Magistrate concerned had no jurisdiction to deal with the matter. In support of his contention, the learned Senior counsel placed reliance on the following decisions of the Honourable Supreme Court.

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(i) (2004) 8 Supreme Court Cases 100 [Y.ABRAHAM AJITH AND OTHERS VS. INSPECTOR OF POLICE, CHENNAI AND ANOTHER].

(ii) MANU/SC/7450/2008 BHURA RAM AND OTHERS VS. STATE OF RAJASTHAN AND OTHERS. Criminal Appeal No.587 of 2008 (Arising out of Special Leave Petition (Crl.No.79 of 2006) Dated 02.04.2008.

9. The learned Senior counsel further submits that in the place where cause of action arisen, that court has only got jurisdiction and therefore, the court where complaint filed where no cause of action arose, could not deal with the matter.

10. On the other hand, the learned Standing counsel for SEBI placed reliance in the judgment of the Honourable Supreme Court in the case of ***Securities and Exchange Board of India Vs. M/s.Vipra Farms (India) Ltd., and others [Criminal Appeal Nos.1761-63 of 2017 (Special Leave Petition (Crl).Nos.2471-2473 of 2010),*** wherein, the Honourable Supreme Court observed that in the impugned order, there is no averment in the complaint indicating any act or omission at Chennai which may amount to offence, is not factually correct and accordingly set aside the impugned order and restored the complaint filed before the Court of XXIII, Metropolitan Magistrate, Chennai.

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11. The learned Standing counsel submits that the above referred to decision is squarely applicable to the facts of the present case. Since the facts are similar and that in the present case on hand, the accused being a company in Andhra Pradesh and all the investors also in Andhra Pradesh, no cause of action arisen in Chennai, but the Regional Office of the complaint/Securities and Exchange Board of India, is in Chennai and therefore, filed complaint. In view of the decision of the Honourable Supreme Court, the jurisdiction point raised by the learned Senior counsel appearing for the petitioners is not acceptable.

12. The learned Standing counsel for the respondent Department would further submit that the Petitioners have stated that they settled the matter. Subsequently, on the directions of the learned XIX Additional Judge, City Civil Court, the respondent also appointed Auditor. But the Auditor could not find all the papers and they have no proof to show that the Petitioners settled the entire amount collected from the investors. In these circumstances, this court need not quash the proceedings in S.C.No.135 of 2011 and the matter has to be decided by the trial court.

13. Heard and perused the records.

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14. It is not in dispute that the 1st petitioner company and the petitioners 2 to 4 who are the Directors of the 1st petitioner company, were involved in the business of collecting funds from the public under a Collective Investment Scheme. Pursuant to the same, the company had evolved three schemes under which the public could register a certain sq. yard of land consisting of Mangium wood trees ie., plantations. The minimum period of investment was 10 years and thereafter, the investor would be repaid either by registration of lands or repayment of cash. It is also not disputed that the petitioner company invested the money in Mutual Funds and waited for the maturity amount.

15. Subsequently SEBI (Collective Investment Scheme) Regulations, 1999, came into force on October 15, 1999, requiring either Certification of Registration from SEBI to continue with the existing schemes or winding up of the schemes. One of the conditions to be fulfilled in order to continue with the scheme is "the applicant shall meet the minimum net worth of Rupees one crore within one year from the date of grant of provisional registration which shall be increased by Rupees one crore each within two years, three years, four years and five years from the date of grant of provisional registration", otherwise, they have to settle the amount. The petitioners company could not raise the above said investment and the amount in the scheme was not more than

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the limit fixed by the SEBI Regulations and therefore, they wanted to inform its Unit Holders/investors for winding up in accordance with SEBI Regulations. The Petitioners have paid the entire amount between May 2000 and July 2005. Therefore, they have settled the amount to the investors ie., even before the respondent filed the private complaint before Magistrate under Section 200 Cr.P.C., and hence, the process of repayment commenced.

16. During the pendency of the complaint, the Petitioners are stated to have settled the matter. But according to the respondent, the petitioners have not settled the matter. There is no proof to show that the petitioners settled the money. Further, the petitioners themselves have admitted they could not comply with the SEBI Regulations and they could not settle the amounts to the investors on or before the date specified by SEBI. Therefore, private complaint was pending.

17. In view of the decision of the Honourable Supreme Court, in the case of ***Securities and Exchange Board of India vs M/s.Vipra Farms (India) Ltd., and others***, [SLP.(Crl).No.2471-2473 of 2010) referred to above, this court is of the view that the XIX Additional Judge, City Civil Court, has got the jurisdiction to try the case.

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18. Though the petitioners have stated that they settled the money, the respondent has subsequently disputed the fact that the petitioners have not produced any documentary proof to show that the amount was settled. In these circumstances, prima facie, whether the petitioners have complied with SEBI Regulations on or before the date mentioned in the Regulation and therefore, the complaint is subsequently filed and thereafter the matter has been settled or not and whether the offence is compoundable or not are the questions to be decided in the trial by putting forth evidence. Under these circumstances, this court did not find any ground to quash the proceedings. Accordingly, this Crl.O.P., is liable to be dismissed, granting liberty to the petitioners to take all their defence before the trial court.

19. However, the learned Senior counsel appearing for the petitioners would further submit that the matter is already settled and the petitioners filed a memo and affidavit to compound the offence before Additional Judge XIX City Civil Court, Chennai, and so far, the learned Judge has not passed any order in the said memo.

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20. It is further informed that neither the memo was rejected nor the order passed therein. It is understood that the trial court will normally not pass any speaking order in the memo; either it would

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record or reject the memo. Whereas in this case, no order is passed by the learned Judge in the said memo. If memo is still pending, the petitioner is at liberty to file a petition for compounding the offence. It is further informed that now the matter is pending before Principal Judge, City Civil Court, Chennai. Therefore, in case, the petitioner file any petition for compounding the offence, learned Principal Judge, City Civil Court, is directed to receive the petition for compounding the offence and dispose of the same in accordance with law. In any case, the proceedings has to be completed on or before 27.02.2020. Compliance report to be filed before this court on 28.02.2020.

21. With the above directions, this Criminal Original Petition is dismissed.

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Index: Yes/No

Note: Issue order copy by 20.01.2020.

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P.VELMURUGAN, J.

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