

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.1771 OF 2019

Between:

M/s.Mathsyra Giri Lakshmi

Narasimha Power Private Limited

& others

... Petitioners/Accused 1-5

And

N.Kiran Kumar and another

... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED :27.09.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 1771 of 2019

% Dated 27.09.2023

M/s.Mathsya Giri Lakshmi

Narasimha Power Private Limited

& others

... Petitioners/Accused 1-5

And

\$ N.Kiran Kumar and another

... Respondent/Complainant

! Counsel for the Petitioner: Sri S.Goush Basha

^ Counsel for the Respondents: Sri Shreyas Yalagari for R1
Public Prosecutor for R2

>HEAD NOTE:

? Cases referred

¹ 2023 SCC OnLine SC 90

² AIR 1998 SC 128

³ (1977) 4 SCC 551

⁴ (2006) 7 SCC 296

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.1771 OF 2019****ORDER:**

1. This Criminal Petition is filed by the petitioners/A1 to A5 to quash the proceedings in Crime No.18 of 2019 on the file of Central Crime Station, Hyderabad registered for the offences under Sections 406, 420, 468 r/w 120-B IPC.

2. The 1st respondent, is the shareholder and additional director, who subscribed 5000 shares of the company in M/s.Mathsyra Giri Lakshmi Narasimha Power Private Limited/A1 company. The company was developed as '*Combined Cycle Power Plant*' for generating electricity. A2, who is the husband of A3 are directors. A4 and A5 are parents of A2. The company purchased land in Sy.No.273 admeasuring Acs.14.01 gts situated at Manimadhe village, Shaligauraram Mandal, Nalgonda District on 16.03.2011. Another property of Acs.12.21 guntas was purchased in the same village on the very same day. The name of the company was reflected in the total extent of Acs.26.22 guntas. The allegation in the complaint is that resolution dated 06.02.2017 was fabricated to defraud the company and its shareholders. In the said resolution, A2 has authorized himself to sell the landed property. The

complainant, who is 50% shareholder was kept in dark regarding the decisions taken by A2. The Board resolution refers to the presence of the complainant during board meeting, however, the complainant was not aware of the meeting. The inclusion of A3 to A5 as Directors was only for the purpose of illegally selling the company's property. The property was sold to A6.

3. On 24.04.2017, A2 mutated his name in the pattadar pass books and title deeds as against company's name for his personal gains. A2 further got mutated his name in the passbook.

4. The said land was sold on 09.05.2017 for Rs.1.00 Crore and the said proceedings were collected by A2 in the form of demand drafts. After purchase of the land, the name of A6 was mutated in the revenue records. The complainant was not aware of any of the transactions and deliberately A2 with fraudulent intention has fabricated the board resolution and sold away the property. Further allegation is that on 08.05.2017, the address of the company was changed on the basis of a letter given by A4.

5. The said complaint was registered by the CCS, Hyderabad for the offences under Sections 406, 420, 468 r/w 120-B IPC.

6. Learned counsel appearing for the petitioners would submit that A2 lodged a complaint with the ROC on 22/03/2018 making

allegations against the defacto complainant. The defacto complainant had filed annual returns and balance sheets with the ROC without the consent of other Board of Directors. The disputes if any are purely civil in nature and offences if any are under the Companies Act. The police does not have jurisdiction to register and file the complaint. Learned counsel further argued that the entire amount was credited to the company's account. Civil suit was also filed for cancellation of the sale deed No.1134 of 2017 dated 09.05.2017. The civil suit was filed by the *defacto* complainant, company and the other director against these petitioners.

7. On the other hand, learned counsel appearing for the 1st respondent/defacto complainant would submit that fabrication of board resolution is criminal offence punishable with cheating and forgery. On the basis of the said fabricated resolution, land was sold. It amounts to misappropriating the company assets. Accordingly investigation has to go on.

8. The *defacto* complainant alleged that without his knowledge, the property of the company was sold. The present criminal complaint was filed on 14.01.2009. On 22.03.2018, a complaint was filed with the ROC by the 2nd petitioner/A2 against the defacto

complainant and others for fabricating annual returns, balance sheets, profit and loss account etc., without any approvals from the Directors and shareholders. The annual general meeting for the years 2014-15, 2015-16, 2016-17 and 2017-18 were also fabricated. The said acts of the defacto complainant amounted to offence under Sections 92, 137, 448 and 449 of the Companies Act.

9. In **Usha Chakraborty and another v. State of West Bengal and another**¹, It was also held as follows:

“ Offence punishable under Section 420 IPC.

To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120-B IPC to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.”

10. The Hon’ble Supreme Court in the case of **Pepsi Food Ltd., v. Special Judicial Magistrate**² while deciding the parameters of quashing of FIR has held that though there are

¹ 2023 SCC OnLine SC 90

² AIR 1998 SC 128

no limits to the powers under Section 482 of Cr.P.C or under Article 226 of the Constitution of India, more care and caution should be exercised for invoking the inherent powers.

11. In **Madhulimaya v. State of Maharashtra**³, the Hon'ble Supreme Court held that when there is miscarriage of justice or abuse of the process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, High Court can exercise inherent powers.

12. In **Popular Muthaiah v. State rep. by Inspector of Police**⁴, the Hon'ble Supreme Court held that powers have to be exercised as it acts *ex debito justitiae* to mean to do real and substantial justice in the *lis* for which alone the power exists inherently. It was further held that inherent power has its roots in necessity and its breadth is coextensive with the necessity.

13. Both the 2nd petitioner and the *defacto* complainant have filed complaint and counter complaints against one another. Even

³ (1977) 4 SCC 551

⁴ (2006) 7 SCC 296

prior to lodging the present criminal complaint, 2nd petitioner/A2 has filed complaint to ROC. It is not disputed that the complaint is pending with the ROC and the amounts which were taken towards the consideration of the land sold by the company was credited to the Company's account.

14. The allegation of the *defacto* complainant is that board resolutions were fabricated. The only reason given by the complainant is that though his name was mentioned that he was present in the board meeting, however, he was not present. It is not the case that the signatures of complainant were forged in the meeting held on the said date. The alleged transactions have taken place in February, 2017. The revenue records were also mutated accordingly and pattadar pass books were issued in favour of A6.

However, complaint was filed in the year 2019, after A-2 filed complaint against Respondent / complainant.

15. In the event of the petitioners not following due procedure under the Companies Act while selling the property, it cannot be said that the petitioners have committed an offence of cheating. To attract an offence of cheating, there should be an act of deception pursuant to which a person must have parted with the property. Further, causing wrongful loss by acts of deception also would

amount to an offence of cheating. In the present case, board resolution was passed and thereafter, property was sold and the land mutated in favour of A6.

16. In the event of the *defacto* complainant having any grievance, the same can be agitated before the ROC or approach civil court seeking cancellation of the sale deed. Transactions may amount to both criminal acts and civil disputes. In the back ground of the 2nd petitioner/A2 lodging complaint against the *defacto* complainant with the ROC for fabrication of company documents and one year thereafter, present complaint being filed, appears to be deliberate and retaliatory. The disputes are amongst the directors/shareholders in the company. Since the complaint is already pending with the ROC, it is for the parties to approach the ROC and also filed complaints in the event of violation of the provisions of the Companies Act, 2013.

17. Section 447 of the Companies Act reads as follows:

“447. Punishment for fraud.— Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.”

Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years. Explanation.—For the purposes of this section— (i) “fraud” in

relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss; (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled; (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled

18. According to the *defacto* complainant fraud was played in relation to affairs of the company, in the event of there being any wrongful loss or wrongful gain, the allegations and counter allegations by the 2nd petitioner/A2 and the *defacto* complainant can be agitated under the Companies Act, 2013.

19. The Hon’ble Supreme Court in the case of **State of Haryana and others v. Ch.Bhajan Lal and others (1992 AIR 604)**, had enunciated the principles for use of the extraordinary power under Article 226 of the Constitution of India, wherein it is held as follows:

“(7) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal knowledge.”

19. In view of the above discussion, the proceedings in Crime No.18 of 2019 on the file of Central Crime Station, Hyderabad, are hereby quashed.

20. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications pending, if any, shall stand dismissed.

K.SURENDER, J

Date: 27.09.2023

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1771 OF 2019

Dt. 27.09.2023

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