



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2021

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.9302 OF 2016

BETWEEN:

THE STATE OF KARNATAKA
BY CID,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
BENGALURU – 560 001.

... PETITIONER

(BY SRI SHEELAVANTH V.M., S.P.P-I)

AND:

1. GREENBUDS AGRO FORM LIMITED COMPANY,
NO.73, 3RD FLOOR,
MADWESHA COMPLEX, NAZARBAD,
MYSURU – 570 010,
REPRESENTED BY B.L. RAVINDRANATH.
2. SRI B.L. RAVINDRANATH
S/O. LATE B.L. LAKSHMEGOWDA,
AGED ABOUT 43 YEARS,
MADWESHA COMPLEX, NAZARBAD,
MYSURU – 570 010.
ALSO AT NO.109, D. MAX SANVILLA APARTMENT,
KENGARI MAIN ROAD, MALLATTHAHALLI,
BALAJI LAYOUT,
BENGALURU.
3. SMT. GAYATHRI N.
GENERAL MANAGER,
D/O. NANJEGOWDA,
AGED ABOUT 36 YEARS,
GREENBUNDS AGRO FORM LTD. CO.,
NO.73, 3RD FLOOR, MADWESHA COMPLEX,
NAZARBAD,
MYSURU – 570 010.
ALSO AT NO.183/1, DATTA NAGAR,
OOTY ROAD, MYSURU.

4. U.L. DAKSHAYINI
W/O. B.L. RAVINDRANATH,
NO.66/F, S.V.P. NAGAR,
T.N. PURA ROAD,
MYSURU.
ALSO AT NO.109,
D. MAX SANVILLA APARTMENT,
KENGARI MAIN ROAD,
MALLATTHAHALLI, BALAJI LAYOUT,
BENGALURU – 560 060.

5. U.L. VASANTH KUMAR
S/O. LAXMAN GOWDA,
AGED ABOUT 27 YEARS,
NO.66/F, S.V.P. NAGAR,
T.N. PURA ROAD,
MYSURU.
PRESENTLY RESIDENT OF NO.109,
D. MAX SANVILLA APARTMENT,
KENGARI MAIN ROAD,
MALLATTHAHALLI, BALAJI LAYOUT,
BENGALURU – 560 060.

... RESPONDENTS

(BY SRI RAGHAVENDRA N., ADVOCATE)

* * *

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 8-8-2016 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MYSURU, IN CRIME NO.116 OF 2013 AND RESTORE THE CASE ON THE FILE OF THE DISTRICT AND SESSIONS JUDGE, MYSURU, IN CRIME NO.116 OF 2013 AND DIRECT THE TRIAL COURT TO TAKE COGNIZANCE OF THE OFFENCES AGAINST THE RESPONDENTS-ACCUSED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29-3-2021 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The State by C.I.D. filed this petition under Section 482 of the Code of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') being aggrieved by the order dated 8-8-2016 passed by the Principal District and Sessions Judge, Mysuru, (hereinafter referred to as 'Trial Court') in Crime No.116 of 2013 for having rejected the charge-sheet filed by the Police Inspector, Financial and Vigilance Unit, C.I.D., Bengaluru.

2. The petitioner-State is the complainant and the respondents are the accused before the Trial Court. The ranks of the parties before the Trial Court are retained for the sake of convenience.

3. The case of the prosecution is that, accused No.1 is the Greenbuds Agro Farms Limited Company and accused Nos.2 to 5 are the Managing Directors and Directors of the said Company. It is alleged that, they have collected investments from the general public and cheated the public up to Rs.12,95,13,433/-. The individual investors have filed

complaints before different Police Stations in Mysuru District. The State Government, by its order, appointed the jurisdictional Assistant Commissioner as Competent Authority for the purpose of taking action against the accused under Section 5 of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 (hereinafter referred to as 'Act'). Accordingly, investigation has been done and a common charge-sheet came to be filed by the Police Inspector, Financial and Vigilance Unit, C.I.D., before the Trial Court. The Trial Court, by its impugned order, rejected the charge-sheet filed under the Act on the ground that the Police Inspector is not the Competent Officer to file the report or for taking action and hence, the accused were discharged for the offence punishable under Section 9 of the Act. However, liberty was granted to the Investigating Officer to file charge-sheet before the jurisdictional Magistrate for the offences punishable under the Indian Penal Code, 1860 (for short, 'IPC'), which is under challenge before this Court.

4. Heard the arguments of the learned State Public Prosecutor-I for the petitioner-State and perused the records. Learned counsel for the respondents-accused remained absent in spite of granting sufficient opportunities by way of adjournments.

5. Previously, this Court dismissed the petition on 12-6-2020 and later, restored the same on 1-10-2020. At that time, the learned counsel for the respondents appeared and submitted no objection to recall the order. Accordingly, I.A. No.1 of 2020 was allowed and the petition was restored by recalling the order of dismissal.

6. The learned State Public Prosecutor-I has contended that as per Section 4 of the Cr.P.C., the Special Court established under the Act is having power to try the offences punishable under the IPC as well as the offences punishable under the Special Law, but the Trial Court misread Section 5 of the Act and committed error in discharging the accused, even though liberty was granted for filing charge-sheet before

the Magistrate by ignoring the special provisions of law. Even if the charge-sheet is returned, the question of discharging the accused is illegal. Hence, he prayed for setting aside the same.

7. Admittedly, the accused were involved in cheating of depositors, who invested in their Company and they were many complaints filed by the individual investors in different Police Stations of Mysuru District for the offences punishable both under Section IPC, especially Section 420 of the IPC, and Section 9 of the Act. In view of the order of the Government, the Assistant Commissioner was appointed as per Section 5 of the Act for making enquiry and to file report. However, the said report of the Assistant Commissioner, who is a Competent Authority, required to deal with the investments of the Company or other property believed to have been acquired from out of the deposits and to attach the said investments under Section 3 of the Act and to protect the interest of the investors in accordance with the procedure laid down in the Special Act. Section 9 of the Act prescribes punishment for

the offence committed by the Company which is liable for punishment of both imprisonment as well as fine. As per Section 18 of the Act, the Cr.P.C. is applicable and the Special Court shall follow the procedure specified in the Cr.P.C. for the trial of warrant cases by the Magistrate, which is nothing but a Judicial Magistrate, First Class or Metropolitan Magistrate. Once the complaint is lodged against the Company for cheating the investors as per Section 154 of the Cr.P.C. before the Police and once the case is registered, the Investigating Officer is required to file charge-sheet against the offenders as per Section 173 of the Cr.P.C. The Special Court has been established for trying the offences committed under Section 10 of the Act. Therefore, the Investigating Officer is required to file charge-sheet before the Special Court established under the Act.

8. As per Section 4(2) of the Cr.P.C., all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force

regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Such being the case, bifurcating the offences punishable under IPC and Special Law is not correct. Both the offences are required to be tried together by the Special Court established under the Act.

9. Though the Trial Court rightly refused to accept the charge-sheet, but committed error in discharging the accused and directing the Investigating Officer to file charge-sheet before the jurisdictional Magistrate. Once the Special Court is established, the question of discharging the accused for the reasons that the charge-sheet is filed by incompetent Investigating Officer does not arise. The Trial Court misread the provisions of Special Act and has not considered Section 4 of the Cr.P.C.

10. The Investigating Officer committed mistake in filing common charge-sheet for the various crime registered in different Police Stations which is impermissible. In this

regard, the Division Bench of the Delhi High Court in the case of **STATE v. KHIMJI BHAI JADEJA** (Cr1. Ref. No.1 of 2014 dated 8-7-2019) has considered the judgments of various High Courts as well as Supreme Court and held that filing an amalgamated charge-sheet is impermissible. At paragraph Nos.76 and 80, it has held as under:

“76. From Chapter XII of the Cr.P.C., it is evident that upon disclosure of information in relation to commission of a cognizable offence, the police is bound to register the FIR. The registration of FIR sets into motion the process of investigation. The same culminates into the filing of the final report by the police officer before the Magistrate. Thus, in respect of every FIR, there would be a separate final report and, there could be, further report(s) in terms of Section 173(8).

xxx xxx xxx

80. Thus, our answer to question (b) is that in respect of each FIR, a separate final report [and wherever necessary supplementary/ further charge sheet(s)] have to be filed, and there is no question of amalgamation of the final reports that may be filed

in respect of different FIRs. The amalgamation, strictly in terms of Section 219 Cr.P.C., would be considered by the Court/ Magistrate at the stage of framing of charge, since Section 219(1) mandates that where the requirements set out in the said Section are met, the accused "may be charged with, and tried at one trial for, any number of them not exceeding three".

11. I am in respectful agreement with the view taken by the Division Bench of the Delhi High Court. On perusal of the judgment stated supra, it is clear that, the offences which are similar in nature committed by the same accused within twelve months can be tried together by framing a common charge as per Section 219 of the Cr.P.C., but the question of filing common charge-sheet in multiple crimes or complaints is impermissible.

12. In a similar provisions of the Special Act, at Tamil Nadu, the Madras High Court in an unreported judgment in the case of **P.S. CHELLAMUTHU AND OTHERS v. THE STATE BY DEPUTY SUPERINTENDENT OF POLICE AND**

ANOTHER in **CrI.O.P. Nos.21711 and 35339 of 2007 dated 4-12-2008** has considered the similar Special Act namely, Tamil Nadu Protection of interests of Depositors (in Financial Establishments) Act, 1997, wherein it has held that in respect of trying the offences by the Special Court and taking cognizance, the Cr.P.C. would apply.

13. Similarly, in the Special Act, Section 18 of the Act empowers the Special Court for taking cognizance, trying the accused person by following the procedures specified in the Cr.P.C. The first conviction shall be punishable with imprisonment for a term which may extend to six years with fine and which may be extend to Rs.1.00 lakh and proviso to Section 9 of the Act prescribes that the imprisonment shall not be less than three years in the absence of special and adequate reasons. Part 2 of Schedule-I of the Cr.P.C. prescribes the classification of offences against other laws. If the offence punishable for three years and upwards, but not more than seven years, the offence is cognizable and bailable. The Special Act is silent about offence under the present Act

is whether cognizable or non-cognizable. Thereby, the Cr.P.C. is applicable. As per part 2 of Schedule I of the Cr.P.C., the offence under Section 9 is cognizable and non-bailable. That apart, as per Section 13(2) of the Act, the anticipatory bail is applicable, which shows that the offences are non-bailable. Such being the case, the Trial Court came to wrong conclusion that as per Section 5 of the Act, the Police Officer was incompetent to file the charge-sheet. Filing the report by the Competent Authority to the Government is different aspect in respect of returning the money to the investors and protecting the investment made by the accused Company out of the investors' amount. So far as punishment in criminal cases is concerned, the Police or Special Police have power to file final report before the Special Court. However, the question of filing common charge-sheet for various complaints filed by the individual investors in different Police Station limits is against the law and the question of filing amalgamated charge-sheet does not arise and it is impermissible under the Cr.P.C.

14. Therefore, the State-C.I.D. Police have no authority to file common charge-sheet in different complaints. However, the Investigating Officer has to file separate charge-sheet against each crime registered by the Police on individual complaint. Thereafter, the Special Court shall take cognizance of the offences both punishable under the IPC and the Special Act by following the Cr.P.C. and dispose of the matter in accordance with law. So far as on the report of the Competent Authority, it has to be submitted to the State Government and later, the Trial Court on the report of the Competent Officer to attach or seize the properties and investments under Section 3 of the Act for the purpose of protecting the interests and refunding the money to the investors as per Section 12 of the Act.

15. For the reasons stated above, the Trial Court committed error in rejecting the charge-sheet on the ground that the Investigating Officer is not the Competent Authority to file the charge-sheet and wrongly discharged the accused for the offence punishable under Section 9 of the Act and also

committed error in directing the Investigating Officer to file the charge-sheet before the jurisdictional Magistrate in respect of the offences punishable under the IPC. Therefore, the impugned order requires to be quashed.

16. Accordingly, the petition is **allowed**. The order dated 8-8-2016 passed by the Principal District and Sessions Judge, Mysuru, in Crime No.116 of 2013 is hereby quashed. Discharging the accused is hereby set aside.

17. Further, the Special Court is directed to return the charge-sheet to the Investigating Officer in order to file separate charge-sheet in respect of the each individual complaints and thereafter, the Trial Court shall proceed in accordance with law.

Registry to intimate the Trial Court forthwith.

**Sd/-
JUDGE**

Kvk