

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.8025 OF 2021

AND

CRIMINAL PETITION No.8024 OF 2021

COMMON ORDER:

Both these petitions are filed by the petitioners under Section 482 of the Code of Criminal Procedure to quash the proceedings in C.C. No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad. The petitioners are accused No. 1 and 2 in C.C. No. 31 of 2021 and they are none other than father and daughter respectively by relation. Since the subject matter in both the petitions is one and the same, I am inclined to dispose of both the petitions by this Common Order.

2. The case of the petitioners in brief was that, the petitioner in Criminal Petition No.8025 of 2021 was the estranged wife of respondent No.1 and daughter of respondent No.2. The respondent No.1, through his General Power of Attorney Holder, lodged a private complaint against her and the respondent No.2 before the VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad, for the offences under Sections 447, 448 and 451 of

the Companies Act 2013, and Sections 628 and 629A of the Companies Act 1956 and Sections 405, 415, 420, 425, 464, 468, 471 and 120(B) of the Indian Penal Code.

2.1 As per the complaint, the complainant i.e. respondent No.1 and his brother late Mr. Jakka Venkatram Reddy incorporated a Company under the name and style of M/s Peregrine Agro Private Ltd., on 17.01.1997 under the provisions of the Companies Act. At the time of incorporation, the Company had an authorized share capital of Rs.10,00,000/- divided into 1,00,000 shares of Rs.10/- each. The complainant and his brother late Mr. Jakka Venkatram Reddy were promoters/directors and each of them held 99% equity shares of the Company. On 13.03.1997, a huge tract of land was purchased in the name of the Company at Bonthavaripalli revenue village through three registered sale deeds. The complainant and his brother contributed an amount of Rs.6,30,000/- from their family savings towards purchase of the said land, which was reflected in the books of account as Share Capital Money of the Company for the financial year 1996-97. The complainant's brother late Mr. Jakka Venkatram Reddy was looking after the affairs of the Company. The name of the Company thereafter was changed to Peregrine Aids Remedies Private Ltd., Accused No.1 was having a marital discord with her husband Mr. Srinivas

Paruchuri right from the time they were living together in USA, which culminated in several legal proceedings between them in India, and eventually on 14.08.2007, she got divorce from Mr. Srinivas Parchuri.

2.2 In June 2002, accused No.1 came back from USA and stayed as a tenant in a portion of the building constructed in plot No.974, road No.49, Jubilee Hills, Hyderabad, which was owned by the family of the complainant. The complainant was divorced and living in the same building with his mother and minor daughter from his first marriage. Around 2010, the complainant's brother Mr. Jakka Venkatram Reddy was diagnosed with colon cancer and started undergoing treatment. Since the brother of the complainant was critically ill, and the complainant was busy, the affairs of the Company were getting neglected. Accused No.1 induced the complainant to induct her as a Director in the Company and promised to look after the Company. Believing her representation, the complainant agreed to induct her as an additional director in the Company. For the said purpose, accused No.1 asked the complainant to sign on various documents including blank sheets of papers on the ground that several documents might need his signature and she did not want complainant to be disturbed frequently. Believing her representation, the complainant and his brother signed on all the documents presented before them by accused

No.1 in good faith. On false representation accused No.1 also obtained digital signature of the complainant.

2.3 Since the brother of the complainant was totally bed ridden due to cancer, he resigned as a Director of the Company on 22.10.2010. In the meanwhile, the complainant and accused No.1 got married on 25.06.2011. Accused No.1 was appointed as Director of the Company on 30.09.2011. The complainant's brother expired on 13.11.2013 due to cancer. The marriage between the complainant and accused No.1 never worked out and totally broke down irreparably. Since 2014, the complainant and accused No.1 were living separately. The complainant on observing that original title deeds of his properties at Bangalore were missing, filed a police complaint before the Police Station Jubilee Hills, Hyderabad, on 03.01.2015 and got a public notice published in the Newspapers dated 05.01.2015. The accused No.1, the brother of accused No.1 Mr. Nekkanti Madhukar and three others made an illegal attempt to trespass into the property of the complainant at Bangalore on 01.04.2015. As such, the complainant filed a complaint vide Crime No.121 of 2015 for criminal trespass on 01.04.2015. The complainant filed a civil suit for injunction vide O.S. No.499 of 2015 before the III Additional Civil Judge, Bangalore Rural, against accused No.1, her brother and three others. Accused No.1 in

her written statement claimed that the original documents of title pertaining to the complainant's property were in her custody. The complainant came to know that accused No.1 had intentionally stolen the important documents from the custody of the complainant. For the purpose of building up sports career of his daughter Miss J. Vaishnavi Reddy (from his previous marriage) in Badminton, who was World No.2 in Junior Badminton representing India, on 17.02.2016 the complainant shifted to Thailand with his daughter and mother. He came to India to depose his evidence as PW.4 in O.S. No.499 of 2015 on 17.10.2019. The matter was adjourned to 18.11.2019 for his cross-examination. In anticipation that the complainant would come back for cross-examination, accused No.1 on 14.11.2019, filed a false criminal complaint against the complainant, his mother and his sister-in-law before the Police Station, Jubilee Hills, Hyderabad. The police registered the same as Crime No.742 of 2019 under Sections 406, 420 and 120-B IPC.

2.4 The relationship between the complainant and accused No.1 got worsened. The complainant was out of India most of the time. To his shock, he learned that accused No.1 illegally made major changes in the management and shareholding of the Company. On enquiry with the Registrar of the Companies, the complainant came to know that accused

No.1 in active conspiracy and in collusion with her father i.e. accused No.2 (petitioner in Criminal petition No.8024 of 2021) had forged, fabricated and manipulated documents, Forms, Annual Reports and various other financial documents of the Company. Accused Nos. 1 and 2 forged and fabricated the Board Resolutions and various other statutory documents and Forms and uploaded the same on the website of the ROC. The website was showing that accused No.1 was issued 63,000 shares of the Company way back in the year 2000, when she was not even in India, to render the complainant a minority shareholder and to illegally usurp the management of the Company. Accused No.1 illegally appointed her father as an Additional Director on 09.10.2014 and thereafter as a Director of the Company on 30.09.2015.

2.5 The complainant initiated divorce proceedings vide O.P. No.202 of 2020 against accused No.1 before the Family Court, Hyderabad. The complainant had not attended Annual General Body Meetings and alleged Board Meetings held on 22.06.2016, 06.09.2016, 22.11.2016, 15.01.2017, 24.03.2017, 25.06.2017, 05.09.2017, 12.12.2017 and 03.03.2018. He was not in India on all the said dates. However, in the Annual Returns, it was shown that he had attended the aforesaid Board Meetings, which were ex facie false. The said documents and returns were only signed by accused

No.1. The complainant was not even sent a notice with regard to the said meetings. Accused Nos. 1 and 2 falsified records and played fraud not only with the complainant but also with the Registrar of the Companies. They were involved in various irregularities and violated statutory provisions and committed the offences of cheating, forgery, criminal breach of trust, criminal misappropriation, fraud using forged documents as genuine etc. The entire exercise was undertaken by accused Nos. 1 and 2 to usurp the property.

2.6 The petitioner in Criminal Petition No.8025 of 2021 filed a complaint which was registered as Crime No.488 of 2020 in Police Station, Jubilee Hills, against the respondent No.1 for the offences under Sections 498-A and 506 IPC, SectionSs4 and 6 of Dowry Prohibition Act 1961, and Section 30 of Arms Act alleging that the respondent No.1 had threatened her with a gun. She further contended that the complaint against her would amount to an abuse of the process of the Court, which was evident from the multiple proceedings initiated by respondent No.1 before multiple forums for the same cause of action. She contended that the respondent No.1 filed O.S. No. 499 of 2015 before the III Additional Civil Judge, Bangalore Rural and he got registered Crime No.131 of 2015 dated 01.04.2015 making allegations of trespass into the property. He filed

Company Petition No.431/HDB/2020 before the National Company Law Tribunal, Hyderabad, under Sections 59, 241, 242 and 245 of Companies Act 2013, seeking declaration that allotment of 63,000 equity shares in favour of the petitioner as void, illegal and arbitrary; and to direct the Registrar of Companies to prosecute the petitioner and respondent No.2 for “fraud and cheating.”

3. The learned counsel for the petitioners contended that the Company (PARPL) was not arrayed as an accused though the allegations were made against the Company that the Company had forged, fabricated and manipulated the documents, forms, Annual Reports of PARPL and uploaded in the ROC website and was alleged that 63,000 shares of PARPL were issued illegally to render the respondent No.1 a minority shareholder and to usurp the management of PARPL.

3.1 He further contended that as respondent No.1 failed to array PARPL as a party to the proceedings, as such, the Economic Offences Court could not pass any orders in relation to allegations of forgery and fabricated documents being uploaded to the ROC website.

3.2 He further contended that Economic Offences Court was barred from taking cognizance of complaint under Section 447 of the Companies

Act 2013, in view of section 212(6) of the Companies Act, as the complaint was to be made in writing by the Director, Serious Fraud Investigation Office or any officer of the Central Government authorized by a general or special order in writing in that behalf by that Government, as per the above provision.

3.3 He further contended that respondent No.1 was merely a private party, and no complaint was made by the Serious Fraud Investigation Office or any officer of the Central Government. He further contended that the dispute in the present complaint was being dealt with by the National Company Law Tribunal in Company Petition No.431/HDB/2020, and the Economic Offences Court by taking cognizance and initiating parallel investigation on the same issue, gave rise to concurrent proceedings in different forums.

3.4 He further contended that the allegations made out in the complaint even if taken on their face value, would not prima facie constitute any offence or make out a case against the petitioners and prayed to quash the proceedings in C.C.No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

4. The respondent No.1 filed counter affidavit contending that the petitioner had concealed the fact that the cognizance of the complaint was taken as per the orders of this Court in Criminal Petition No.222 of 2021 though it was well within his knowledge as the copy of the order was served on the advocate on record on 22.10.2021, which was on record. The doctrine of comity or amity of Courts would demand that Courts would take a consistent and uniform approach towards administration of justice by taking adequate care to ensure elimination of conflicting orders. He contended that as per Section 439(2) of the Companies Act 2013, the complaint could be made by the Registrar, a shareholder (or a member) of the Company, or of a person authorized by the Central Government. The complaint was made by the respondent No.1 in the capacity of a shareholder as per the Companies (Amendment) Act 2017, which came into force vide Gazette Notification dated 03.01.2018. The petitioner in Criminal Petition No.8025 of 2021 was taking contradictory stands before different Courts/Forums for her self-serving purposes. On one occasion, in the police complaint lodged by the petitioner against the respondent No.1, and his mother, the petitioner levelled grave allegations and claimed that their relationship was very bad and that she was beaten up, threatened, ill-treated, and all the said atrocities were committed upon her for dowry,

which her father was forced to arrange. However, on the other hand, before the National Company Law Tribunal she claimed that their mutual relationship was so good and the respondent No.1 was so benevolent to make her father a Director of the Company. The stands taken by the petitioner were diagonally opposite to each other. On oath before a Court of Law, the petitioner deposed that she came to India in June 2002 and met respondent No.1 for the first time in August 2002, which would completely falsify her claim of having purchased 63,000 equity shares in the Company on 01.03.2000 by paying cash of Rs.6,30,000/-, which would show that her entire claim was bogus and fraudulent.

4.1 The respondent No.1 further contended that he was not acquainted with the petitioner or any of her family members before August 2002. The petitioner had not filed any document or any communication (e-mail or phone) or any receipt of cash payment for having purchased a Company by paying cash in the year 2000. She was estopped by principle of election from blowing hot and cold before different Courts. The petitioner and respondent No.2 (petitioner in Criminal Petition No. 8024 of 2021) colluded together to cause undue gain to themselves at the cost of respondent No.1 and the Company and resorted to criminal acts of forgery, fabrication, cheating, fraud etc. They mismanaged the affairs of the

Company and uploaded Board Resolutions on the website of Ministry of Corporate Affairs. She issued 63,000 shares of the Company to herself to render the respondent No.1 a minority shareholder and to illegally usurp the management and properties of the Company. She illegally appointed her father as an Additional Director on 09.10.2014 and thereafter as a Director on 30.09.2015. The entire conspiracy was engineered with the sole purpose of ousting the respondent No.1 from any involvement in the affairs of the Company.

4.2 The respondent No.1 further contended that the petitioner illegally and dishonestly misused the blank signed papers obtained by her from him and his late brother to show that she had bought 63,000 shares of the Company in the year 2000 in an alleged Board Meeting on 01.03.2000. The petitioner got created an agreement of sale dated 14.08.2004 as executed between M/s. Peregrine Aids Remedies Private Ltd., and M/s. Tanushree Enterprises Private Ltd., (the petitioner and her former husband Mr. Srinivas Paruchuri were Directors of the said Company) pertaining to purchase of property admeasuring Ac.186.46 cents of dry land owned by M/s Peregrine Agro Private Ltd., for a sum of Rs.3,74,00,000/-. Indeed if the petitioner had become 99% shareholder in M/s Peregrine Agro Private Ltd., on 01.03.2000, there was no reason or occasion to purchase the same

land in which she was Director, which would expose falsity of her claim. The said transaction was subject of Crime No.143 of 2006 dated 06.10.2006 at Police Station, Central Crime Station, Hyderabad, lodged by Mr. Srinivas Paruchuri (former husband of the petitioner) for the offences under Sections 409, 420, 506, 120-B IPC. The police after investigation filed a final report before the XII Additional Chief Metropolitan Magistrate, Hyderabad, on 29.09.2006 as civil in nature. The final report was accepted by the Court and closed the case.

4.3 The respondent No.1 further contended that he filed a complaint against the petitioner with the Registrar of Companies, upon which, a notice was issued to the petitioner and in her reply to the said complaint, the petitioner admitted that she had no knowledge of E-filing various forms pertaining to the statutory compliances of the Company and her Secretary and staff had filed the returns and committed error. Thus, the petitioner attributed all the shortcomings, falsifications etc., upon her Auditors, while the Chartered Accountant claimed otherwise. He finally prayed to dismiss the petition.

5. Heard learned Counsel for the petitioner Sri T. Jayant Jaisurya, and Sri Diljit Singh Ahluwalia representing Smt. Avula Krishnaveni, Counsel on record for respondent No.1.

6. The petitioner was alleged to have committed the offences under Sections 447, 448 and 451 of the Companies Act, 2013, Sections 628 and 629-A of the Companies Act, 1956 and Sections 405, 415, 420, 425, 464, 468, 471 and 120-B IPC. The Economic Offences Court had not taken cognizance of the offences under Sections 628 and 629A of the Companies Act, 1956. Hence, the said offences are not a matter of consideration in these petitions.

7. Section 447 of the Companies Act, 2013 deals with punishment for fraud. It 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 involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, 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.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.”

Section 448 of the Companies Act, 2013 is punishment for false statement. It reads as follows:

“448. Punishment for false statement:-

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement , prospectus , statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.”

Likewise Section 451 of the Companies Act, 2013 deals with punishment in case of repeated default. It reads as follows:

“Section 451. Punishment in case of repeated default:

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine

for such offence in addition to any imprisonment provided for that offence.”

8. A reading of the provisions of the Companies Act, 2013 would show that Chapter XXIX prescribes punishment for offences such as fraud, false statement, false evidence and withholding of property under Sections 447, 448, 449 and 452. The punishment for fraud involving an amount of atleast Rs.10,00,000/- or 1% of the turnover of the company, is imprisonment for a term which may extend to 10 years. The offence of fraud in relation to the affairs of a company is considered to be a grave offence.

9. Chapter XIV of the Companies Act, 2013 deals with inspection, enquiry and investigation. Under Section 210 of the Companies Act, 2013 investigation into the affairs of the company can be undertaken. Section 211 contemplates establishment of Serious Fraud Investigation Office (SFIO), which is to be headed by a Director and consists of experts with ability, integrity and experience in fields like Banking, corporate affairs, taxation, forensic audit, capital market, information technology, law or such other fields. Section 212 of the Companies Act, 2013 empowers the Central Government to assign the investigation into the affairs of a company to SFIO. Upon such assignment, the Director of SFIO may

designate such number of Inspectors under Sub-section (1) and shall cause the affairs of the company be investigated by an Investigating Officer under sub-Section (4). On completion of investigation, the SFIO is to submit the investigation report to the Central Government. The report under Sub-Section (12) may lead to further follow up actions. On receipt of the said Investigation Report, the Central Government may direct SFIO to initiate prosecution against the company.

10. The contention of the learned counsel for the petitioner was that there was a bar of taking cognizance of the offence under Section 212 (6) of the Companies Act, 2013 in the absence of complaint from the Central Government. Under Section 212 (6) of the Companies Act, 2013, the Economic Offences Court could take cognizance of the offences under Section 447 of the Companies Act, 2013 only by a complaint filed in writing by the Director, SFIO or to any of the Officer of the Central Government authorized in writing in that behalf by that Government. The Economic Offences Court took cognizance of the complaint even though it was not made by the categories of persons prescribed under Section 212 (6) of the Companies Act, 2013 hence, the same was not maintainable.

11. The contention of the learned counsel for the respondent No.1 was that Section 212 of the Companies Act, 2013 was applicable only to the investigation into the affairs of the company by SFIO and the assignment of the same by the Central Government. Under Section 439 of the Companies Act, 2013, the Court could take cognizance of any offence including Section 447 so long as the SFIO had not been assigned the investigation by the Central Government under Section 212 of the Companies Act, 2013.

12. In view of the rival contentions of the learned counsel for both the parties, it is considered necessary to extract the provisions under Section 212 and 439 of the Companies Act, 2013.

13. Section 212 of the Companies Act, 2013 reads as under:

“Section 212: Investigation into affairs of Company by Serious Fraud Investigation Office:- (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

(8) If any officer not below the rank of Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section], forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.”

14. Section 439 of the Companies Act, 2013 reads as under:

“Section 439. Offences to be non-cognizable:-

(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder, or a member of the company, or of a person authorised by the Central Government in that behalf:

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India:

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(4) The provisions of sub-section (2) 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 in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.—The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).”

15. Under Chapter XXVIII of the Companies Act, 2013 establishment of Special Courts and the offences triable by Special Courts are prescribed under Sections 435 and 436 of the Companies Act, 2013. The act gives a comprehensive procedure as to who has to conduct the investigation and how the investigation has to be conducted and deal with the procedure, powers as well as form. A specialized Investigating Agency is established which is empowered to investigate the offences. The offences under Companies Act, 2013 are deemed to be cognizable, except the offences covered under Section 447 (punishment for fraud). The complainants under the Companies Act are restricted to include only Registrar of

Companies, a shareholder/member of the company or any person authorized by the Central Government or any person authorized by the Securities and Exchange Board of India. The Special Court shall take cognizance only on the complaint of persons/authorities mentioned under Section 439 of the Companies Act, 2013.

16. As seen from Section 212 (6) of the Companies Act, 2013, it provides a safeguard against frivolous complaints and ensures that a prosecution for fraud can only be launched after due investigation. Learned counsel for the respondent No.1 contended that the respondent No.1 was entitled to file complaint as a shareholder of the company under Section 439 (2) of the Companies Act, 2013. But, an exception is carved out under Section 439 (1) itself that every offence under the Act except the offences referred to in sub-section (6) of Section 212 of the Act shall be deemed to be non-cognizable. As such, Section 439 of the Companies Act, 2013 is not applicable to offences covered under Section 447 of the said Act. The contention of the learned counsel for the respondent No.1 was that under Section 439 of the Companies Act, 2013, the Court can take cognizance of any offence including Section 447 of the Act so long as the SFIO had not been assigned investigation by the Central Government under Section 212 of the Act. But the heading of Section 439 of the Act

itself would read as “offences to be non-cognizable”. Hence, cognizance of the offence under Section 447 of the Act could not have been taken by the trial Court on a private complaint, as it is a cognizable offence.

17. Under Section 206 of the Companies Act, 2013, the Registrar of Companies based on the information received by him, seek for explanation, call for production of document and conduct enquiry. If the Registrar is satisfied on the basis of information available with him, or furnished to him or on a representation made to him by any person that the business of a company is being carried out not in compliance with the provisions of the Act, he can proceed with enquiry. If the enquiry conducted by the Registrar discloses material for further investigation, he, under Section 210 of the Companies Act, 2013 can report to the Central Government to conduct investigation into the affairs of the company. If the Central Government considers the allegations as true and considering the gravity of the offence that the matter was fit to be investigated by the SFIO, directs the matter to be investigated by the SFIO under Section 212 of the Companies Act, 2013. The Investigating Officers who were having better investigation skills in forensic auditing, corporate affairs and capital market would conduct investigation. If the complainant is aggrieved, he should have resorted to the procedure as contemplated under the Act. The

Registrar of Companies is a competent person to call for the records, conduct an enquiry and to arrive at an opinion. If there is any material, he would submit a report to the Government for investigation by SFIO. If SFIO is able to collect material sufficient to prosecute then it would file charge sheet after taking necessary sanctions from the Central Government. If the contention of the complainant that any shareholder can file a complaint for fraud is accepted, it would open flood gates for any person commencing criminal proceedings merely by filing a complaint. There were several companies with millions of shareholders. The condition prescribed under Section 212(6) of the Act is a safeguard against frivolous criminal complaints. As such, I do not find any merit in the contention of the learned counsel for the respondent No.1 that a private complaint for fraud is maintainable before the Special Court.

17. The learned counsel for the petitioner contended that in similar circumstances, where cognizance would require a prior procedure in the form of a complaint in writing from the Government or the Court, the Hon'ble Apex Court held that:

“Such a procedure was mandatory and if the Court takes cognizance without following the procedure, it would be without jurisdiction.”

18. He further contended that a similar procedure was prescribed under Section 195 Cr.P.C., which would require that certain offences under IPC could only be taken cognizance of “on the complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate.” The Hon’ble Apex Court in **Bheema Razu Prasad v. State, represented by DSP, CBI/SPE/ACU-II**¹ held that:

“It is well settled that Section 195(1)(b) creates a bar against taking cognizance of offences against the administration of justice for the purpose of guarding against baseless or vindictive prosecutions by private parties. The provisions of this Section imply that the Court is the only appropriate authority which is entitled to raise grievance in relation to perjury, forgery of documents produced before the Court, and other offences which interfere with the effective dispensation of justice by the Court. Hence, it for the Court to exercise its discretion and consider the suitability of making a complaint for such offences.”

19. He also relied upon the judgment of the Hon’ble Apex Court in **Gopala Krishna Menon v. D. Raja Reddy and another**² on the same aspect that in the absence of a complaint in writing by the Civil Court, where the forged receipt had been produced, taking cognizance of the offence would be bad in law and the prosecution not maintainable on the basis of a private complaint.

¹ 2021 SCC OnLine 210

² (1983) 4 SCC 240

20. Learned counsel for the respondent No.1 relied upon the judgment of this Court in Crl.P. Nos.24634 and 24655 of 2017 dated 03.04.2019 and contended that the Court did not find fault with the Special Court taking cognizance of the offence under Section 447 on a private complaint. But a perusal of the said judgment would disclose that the Court had not considered the provisions under Section 212 (6) of the Companies Act, 2013 while considering the cognizance orders for the offences punishable under Sections 447 and 448 of the Companies Act, 2013. Section 212(6) of the Companies Act, 2013 does not appear to have been brought to the notice of the Court.

21. Since the punishment for the offence under Section 448 of the Companies Act, 2013 was also under Section 447 of the Act, it was covered by the bar of taking cognizance under Section 212(6) of the Act.

22. Section 451 of the Companies Act, 2013 would reveal that it would apply for repeated defaults and subsequent convictions. Since the petitioner had not been convicted earlier, subsequent conviction under Section 451 of the Companies Act, 2013 would not apply.

23. Thus, the petitioner could not be prosecuted for the offences under Sections 447, 448 and 451 of the Companies Act, 2013 due to bar of

cognizance under Section 212(6) of the Companies Act, when a complaint was not given in writing by the Director, SFIO or any Officer of the Central Government authorized in that behalf by the said Government.

24. The learned counsel for the petitioner contended that the Economic Offences Court would not have jurisdiction to take cognizance of the complaint if the offences under the Companies Act were not made out and relied upon Section 436(2) of the Companies Act. Section 436(2) of the Companies Act, 2013 reads as follows:

“436: Offences triable by Special Courts:--

(1) xxxx

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.”

25. Section 436 (2) of the Act begins with the phrase “when trying an offence under this Act”. It would show that if no offence under the Act was made out, the Economic Offences Court would not have the jurisdiction to try the case with regard to other offences.

26. He further contended that the company PARPL not being arrayed as an accused, was a sufficient ground for quashing the petition. He contended that in the complaint, the complainant’s main allegation was

that PARPL made defective filings with the Registrar of Companies, however, the complainant did not array the company PARPL as an accused alongside the petitioners. Since the filings were made by the PARPL, the failure of the complainant to make the company as a party was fatal to the complaint. The prosecution for fraud under Section 447 of the Companies Act, 2013 must relate to the Companies in the first instance and relied upon the judgments of the High Court of Delhi in **Vikas Agarwal v. Senior Fraud Investigation Office**³, of the Hon'ble Apex Court in **Sharat Kumar Sanghi v. Sangita Rane**⁴ and of the High Court of A.P. in **N. Gopinath v. The State of Andhra Pradesh and others**⁵. The High Court of Delhi in **Vikas Agarwal**'s case (3 supra) held that:

“...the definition of fraud provided in the explanation to Section 447 of the Companies Act, 2013 makes it clear that the prosecution is to relate to the companies in the first instance and also to other persons who have in any manner connived in commission of the offence to gain undue advantage.”

27. **In Sharat Kumar Sanghi**'s case (4 supra), the Hon'ble Apex Court held that:

“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the

³ Crl.M.C. 647/2017 decided on 06.02.2019

⁴ 2015 (12) SCC 781

⁵ Crl.P. No.315 of 2021 decided on 22.03.2022

allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened on certain statutes.”

28. In **N. Gopinath**'s case (5 supra), the High Court of A.P. by extracting the ratio of the judgment in **Sharat Kumar Sanghi**'s case held that:

“As per the ratio decided by the Hon'ble Apex Court reported in *Sharad Kumar Sanghi vs Sangita Rane* [2015 (12) SCC 781] it is clear that once a transaction is made with the company, the company being a legal entity, unless and until the company is made as co-accused, the complaint is not maintainable.”

29. The contention of the learned counsel for the respondent No.1 was that the accused were arrayed in their individual capacity and not in their representative capacity. Only in cases wherein individuals were arrayed in the representative capacity, the company was made as an accused and during the course of enquiry or trial, if it appears from the evidence that the company had committed offences, the Special Court had power under Section 319 Cr.P.C. to proceed against it.

30. However, considering the allegations made by the complainant-respondent No.1 about the annual reports of the company being uploaded in the Registrar of Companies website by fabricating the documents and

the allegations that about 63,000 shares of PARPL were issued illegally to render the respondent No.1 a minority shareholder, to usurp the management of PARPL, it is considered that the Company is a necessary party to the proceedings and there is no merit in the contention of the learned counsel for the respondent No.1 in the said regard.

31. The learned Counsel for the petitioner also contended that the dispute in the present complaint was being dealt by the National Company Law Tribunal in Company petition No.431/HDB/2020 and filed a copy of the said petition. A reading of the said petition would disclose that the respondent No.1 had filed a petition before the National Company Law Tribunal on the same fact about allocating 63,000 equity shares to the petitioner by the Company and contended that no Board Meeting was held as alleged nor any consideration was passed towards alleged allotment of shares to the petitioner, thus, Economic Offences Court taking cognizance of the offence would amount to initiating parallel investigation on the same issue and would give a scope of giving rise to concurrent findings in different forums. The contention of the learned counsel for the respondent No.1 was that pendency of civil proceedings was not a bar to initiate criminal proceedings as long as the ingredients of the offence were made out, even during the pendency of the case before NCLT, the Registrar of

Companies itself advised respondent No.1 to approach the competent court for seeking appropriate relief regarding allegations of forgery and fabrication of documents, as such, the complainant filed to present the complaint.

32. The jurisdiction of the Special Courts and NCLT are specific. The cases in which imprisonment is provided for two years or more is to be tried by a Special Court and contravention of provisions related to laws guaranteed etc., for the purpose of subscriptions for any shares in the company or in its holding company, matters pertaining to failure to distribute dividends and matters related to fraud including repayment of any debt comes under the jurisdiction of the Special Courts, whereas the matters pertaining to mis-management and relating to compromise or arrangements with creditors and members, calls action by members or depositors, rectification of Register of Members, confirmation of reduction of share capital by the company and calling of Annual General Meeting or other meeting of the members in case of default in holding General Meeting comes under the purview of the National Company Law Tribunal. Pendency of civil proceedings is no bar to initiate criminal proceedings as long as the ingredients of the offences were made out and the conditions therein were also satisfied.

33. The learned counsel for the petitioner contended that the allegations in the present complaint would reveal that it was civil dispute being cloaked as a criminal offence only to abuse the process of Court and relied upon the judgments of the Hon'ble Apex Court in **R.K. Vijayasarathy v. Sudha Seetharam**⁶ and **Indian Oil Corporation v. NEPC India Ltd.**⁷.

34. In **R.K. Vijayasarathy**'s case (6 supra) it was held that:

“The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.”

35. In **Indian Oil Corporation**'s case (7 supra), the Hon'ble Apex Court held that:

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure

⁶ 2019 (16) SCC 739

⁷ 2006 (6) SCC 736

though criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri vs. State of UP* [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

36. The learned counsel for the respondent No.1, on the other hand, relied upon the judgment of the Hon'ble Apex Court in **Kamal Shivaji Pokarnekar v. The State of Maharashtra and others**⁸, wherein it was held that:

⁸ MANU/SC/0180/2019

“...The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted.”

37. Learned counsel for the petitioner also contended that there was no application of judicial mind by the Economic Offences Court while taking cognizance of the offences under Section 447 of the Companies Act, 2013 despite the bar under Section 212 (6) of the Act. The cognizance order did not provide any reasons for taking cognizance of the impugned complaint and relied upon the judgments of the Hon’ble Apex Court in **Mehmood Ul Rehman v. Khazir Mohammad Tunda**⁹, wherein it was held that:

“23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication of the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC there must be sufficient indication of the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court

⁹ 20015 (12) SCC 420

is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate.”

38. He further relied upon the judgment of the Hon’ble Apex Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate**¹⁰, wherein it was held that:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

39. He further relied upon the judgment of the Hon’ble Apex Court in **Inder Mohan Goswami v. State of Uttaranchal**¹¹, wherein it was held that:

“While exercising the said power court must ensure that criminal prosecution is not used as an instrument of

¹⁰ 1998 (5) SCC 749

¹¹ 2007 (12) SCC 1

harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.”

40. The Hon’ble Apex Court in **State of Haryana and Ors. v. Ch. Bhajan Lal and ors.**¹² had enunciated the principles for use of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. and gave a list of myriad kinds of cases wherein such power should be exercised:

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

¹² 1992 AIR 604

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(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 grudge.”

41. Considering point No.(6) in **Bhajan Lal**'s case, wherein it was stated that when there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, continuance of the proceedings would amount to an abuse of process of law and in the present case also, as per Section 212(6) of the Companies Act, 2013, there is a bar for taking cognizance of the case for the offence under Section 447 of the Companies Act 2013, it is considered fit to exercise the inherent powers under Section 482 Cr.P.C. to quash the complaint.

42. The record also would disclose that both the petitioner in Crl.P. No.8025 of 2021 and the respondent No.1 (complainant) initiated civil proceedings against each other. The record also would disclose that the Annual Returns were filed by the Company from 2002-2014 and the said returns were also signed by the complainant showing the shareholding of

the petitioner in PARPL company. The complainant did not choose to dispute the said Annual Returns and kept quiet for more than a decade. The filing of the complaint after twenty years alleging fabrication from the year 2002 onwards would only show that it was filed with a malafide intention to take revenge against the petitioner. As per point No.(7) in paragraph – 102 of the **Bhajan Lal**'s case also, it was stated that where a criminal proceeding was manifestly attended with malafides or where the proceedings were maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, it can be quashed, it is considered fit to allow the petitions on the said ground also.

43. Another contention of the learned Counsel for the respondent No.1 was that the Economic Offences Court had taken cognizance as per the direction of this Court in Criminal petition No. 222 of 2021 and the said fact was suppressed by the learned counsel for the petitioners. A perusal of the order of this Court in Criminal Petition No.222 of 2021 would disclose that it considered only the aspect that whether a private complaint could be maintained by a Power of Attorney holder, but did not consider the contents of the complaint whether they would make out the ingredients

of the offences which were alleged against the petitioner. As such, the said order is not a bar in considering the maintainability of this petition.

44. Hence, for the reasons stated above, it is considered fit to quash the proceedings against the petitioners in C.C. No.31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

45. In the result, the Criminal Petition Nos.8024 and 8025 of 2021 are allowed by quashing the proceedings against the petitioners in C.C. No. 31 of 2021 on the file of VIII Additional Metropolitan Sessions Judge-cum-Special Judge for Economic Offences, City Criminal Courts at Nampally, Hyderabad.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

June 06, 2022
BDR/KTL