
(1999) 12 MAD CK 0047

In the Madras High Court

Case No : Criminal O.P. No. 22471 of 1999

S. Shreenivasa Rao alias S.S. Rao

APPELLANT

Vs

Inspector of Police

RESPONDENT

Date of Decision : 24-12-1999

Acts Referred:

Citation : (2000) 1 LW(Cri) 429

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R. Habibullah Badsha, for R. Sudhakar, for the Appellant; N.R. Elango, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The petitioner prays to recall the non-bailable warrant issued against him in C. C. No. 1067 of 1999, on the file of the

learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8.

2. Admittedly, the petitioner is one of the directors of Anubhav Agrotech Ltd., a company incorporated under the provisions of the Companies

Act, 1956 and registered on May 24, 1994. The petitioner was appointed as a director of Anubhav Agrotech Ltd. with effect from February 7,

1996 and resigned on September 3, 1997, which was informed to the Registrar of Companies on July 5, 1999, in Form No. 32, on which date,

the nominal capital of the said company was Rs. 7,85,00,000. The first directors of the said company are Mr. T. V. Giri Rao, his wife and his

father. The said Mr. T.V. Giri Rao, was also, admittedly, one of the directors of Anubhav Plantation Ltd. and other group of companies,

incorporated under the provisions of the Companies Act, of which, one Mr.

Natesan was the chairman and managing director.

3. It appears that a criminal case was registered against the said Natesan and others, on October 13, 1998, for an alleged cheating of deposits

made by the public, to the tune of Rs. 268 crores, under various agro schemes, which is now pending in C. C. No. 1067 of 1999, in which the

petitioner is also implicated as one of the accused. Of course, the said Mr. Natesan is detained in judicial custody, in the said case, viz., C. C. No.

1067 of 1999.

4. In the meanwhile, this court, in Company Application Nos. 479 and 480 of 1999 in Company Petition No. 130 of 1999, preferred by Anubhav

Plantation Ltd., by order dated September 29, 1999, observed that unless effective steps were taken by the Government and by the police to

bring the culprits to book, the financial adventurers would continue to make money with the depositors' funds and syphon off the funds and they

would do so confident in the knowledge that the investigating arm of the State would be unable to investigate the crime sufficiently deeply to bring

home the crime to them in a court of law. This court, in the said order dated September 29, 1999, further directed the Registrar of the High Court

to mark the said order to the chief secretary, home secretary and also to the director-general of police, so that appropriate further action would be

initiated, without further loss of time, for ensuring prompt and effective investigation, with a view to bring the offenders to book and demonstrate to

the potential offenders that such methods of duping the public would not succeed in future.

5. Mr. Habibullah Badsha, learned senior counsel for the petitioner, brought to my notice the order dated December 16, 1998, made in Crl. O. P.

No. 21054 of 1998, wherein, this court, taking note of the fact that Anubhav Cements Ltd. in which, Mr. T.V. Giri Rao was said to be a partner,

has nothing to do with Anubhav Plantation Ltd. and other group of companies, enlarged Mr. T. V. Giri Rao on bail. In the said order dated

December 16, 1998, it was observed that Anubhav Agrotech Ltd. is also one among the Anubhav group of companies. However, the same was

subsequently modified by order dated January 11, 1999, substituting Anubhav Agrotech by Anubhav Agro Developers, implying that Anubhav

Agrotech is not one among the Anubhav group of companies.

6. Since the office premises of Anubhav Agrotech Ltd. at No. 2, Rutland Gate, V Street, Chennai-6 was sealed, Mr. T.V. Giri Rao, moved Crl.

M. P. No. 1828 of 1999 in Crl. O. P. No. 21054 of 1998, to remove the seal, wherein, this court, by order dated March 12, 1999, directed the

respondent-police to remove the seal of the office premises of Anubhav Agrotech Ltd. at No. 2, Rutland Gate, V Street, Chennai-6, taking note of

the modification dated January 11, 1999.

7. Thereafter, Mr. T.V. Giri Rao, moved Crl. M. P. No. 3550 of 1999 in Crl. O. P. No. 21054 of 1998, to remove the seal of the flat at new

door No. 2, Harrington Road, 15th Avenue, Chetput, Chennai, and house at door No. 66, Lloyds Road, Royapettah, Chennai-14, and also to

return the vehicles, viz., Tata Sierra car bearing registration No. KA-04N-124 and Honda City car bearing registration No. DL-IC-6711, which

are said to belong to Anubhav Agrotech Ltd., on the very same ground that Anubhav Agrotech Ltd. has nothing to do with either Anubhav

Plantation Ltd. or Anubhav Housing and Anubhav Developers or any other Anubhav group of companies, in which Mr. Natesan was the chairman

and managing director. Taking note of the earlier modification dated January 11, 1999, in Crl. O. P. No. 21054 of 1999 and the order dated

March 12, 1999, made in Crl. M. P. No. 1828 of 1999 directing to remove the seal of the office premises of Anubhav Agrotech at No. 1,

Rutland Gate, V Street, Chennai-6, this court, by order dated August 17, 1999 in Crl. M. P. No. 3550 of 1999, directed the respondent-police to

return the vehicles, viz., Tata Sierra car bearing registration No. KA-04n-124 and Honda City car bearing registration No. DI-IC-6711 and to

remove the seals in new door No. 2, Harrington Road, 15th Avenue, Chetput, Chennai and at No. 66 Lloyds Road, Royapettah, Chennai-14.

8. Mr. Natesan, chairman and managing director of Anubhav Plantation Ltd. and other group of companies, moved an application, viz., Crl. O. P.

No. 20501 of 1999 on January 8, 1999, before this court, represented by Mr. Ashokan, learned senior counsel, on the ground that even though

he had surrendered on October 23, 1998 and kept under judicial custody in C. C. No. 1067 of 1999, for the past 14 months without trial,

infringing his personal liberty, final charge-sheet is yet to be filed in the said case.

9. Supporting the case of Mr. Natesan, Mr. G. Masilamani, learned senior counsel

representing the creditors of Anubhav group of companies, complains that in spite of the orders of this court dated September 29, 1999 in Company Application Nos. 479 and 480 of 1999 in Company Petition No. 130 of 1999, the respondent-police have not taken any effort to investigate into the matter in detail, but are illegally detaining the petitioner and also brought to my notice that Mr. M. Ravindran, learned senior counsel was appointed as administrator of the Anubhav group of companies, to assist the official liquidator appointed in the above company applications. Therefore, this court, by order dated December 8, 1999, proposed to hear Mr. M. Ravindran, learned senior counsel, in the above CrI. O. P. No. 20501 of 1999.

10. Accordingly, after hearing Mr. Ashokan, learned senior counsel for Mr. Natesan, Mr. G. Masilamani, learned senior counsel for the creditors of Anubhav group of companies, Mr. M. Ravindran, learned senior counsel appointed as administrator and Mr. N.R. Elango, learned Government advocate for the respondents, this court, by order dated December 10, 1999, in CrI. O. P. No. 20501 of 1999, directed the Tamil Nadu Police to furnish the following details :

(a) the steps taken by the respondent for the past fourteen months to investigate into the above crime ;

(b) the steps taken by the respondent to arrest the other accused who have, either directly or indirectly, participated in the above crime ;

(c) the investigation made by the respondent/ particularly after the order of this court dated September 29, 1999, referred to above, till date ; and

(d) the steps taken by the respondent to identify the properties, both movable and immovable, said to have been owned and possessed by the

petitioner and the Anubhav group of companies and the documents in relation thereto.

11. It is under such context, it appears that the respondent herein has now taken steps to execute the non-bailable warrant pending against the

petitioner in C. C. No. 1067 of 1999, which necessitated the petitioner to file the above CrI. O P. praying to recall the non-bailable warrant.

12. Mr. Habibullah Badsha, learned senior counsel appearing for the petitioner, precisely contends that the petitioner was neither a promoter of the

Anubhav Agrotech Ltd., nor actively associated with the affairs of the Anubhav

Agrotech Ltd., nor was he a party to alleged criminal conspiracy, nor was he responsible for diverting the funds of Anubhav Plantation to Anubhav Agrotech Ltd., at any point of time, nor had he dealt with any financial affairs of Anubhav Plantation or any of the Anubhav group of companies much less Anubhav Agrotech Ltd.

13. Mr. Habibullah Badsha, learned senior counsel also contends that the petitioner was never served with any summons in C. C. No. 1067 of

1999, to appear before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, nor was he aware of the non-bailable warrant

in C. C. No. 1067 of 1999 pending against him and in any event, the petitioner is prepared to appear before the learned Additional Chief

Metropolitan Magistrate, Egmore, Chennai-8, in the above case, regularly, without fail, to show his bona fides and therefore, it is just and

necessary to recall the non-bailable warrant pending against him, considering the special facts and circumstances of the case, instead of moving the

learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8.

14. Mr. M. Ravindran, learned senior counsel, appointed as Administrator by this court in Company Petition No. 130 of 1999, states that, as per

the records. Anubhav Agrotech Ltd. is totally a different entity and has nothing to do with Anubhav Plantation or with Anubhav group of

companies and that the petitioner is not a director of Anubhav Plantation Ltd. or any of its group of companies.

15. Mr. N.R. Elango, learned Government advocate, appearing for the respondent, per contra, placing reliance on the decisions in Saleem P. A. v.

Inspector of Police [1994] 2 LW (CrI.) 402 and in Sundaram v. State of Tamil Nadu [1995] 2 LW (Cri.) 564, contends that the petitioner is not

entitled to invoke the inherent powers of this court conferred u/s 482, Criminal Procedure Code, 1973, to recall the non-bailable warrant issued

against the petitioner when the petitioner could approach the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, to recall the

warrant u/s 70(2) of the Criminal Procedure Code.

16. The learned Government advocate, placing reliance on the decisions in Juggi Lal Kamlat Vs. Commissioner of Income Tax, U.P., , Life

Insurance Corporation of India Vs. Escorts Ltd. and Others, , State of U.P. and Others Vs. Renusagar Power Co. and Others, and Delhi

Development Authority Vs. Skiper Construction Company (P) Ltd. and another, , also invited my attention to the observation of this court, in the order dated August 17, 1999, made in CrI. M. P. No. 3550 of 1999, that it is for the trial court to decide the question of lifting the corporate veil, at the appropriate stage of the case.

17. The learned Government advocate, forcibly contends that it is immaterial whether the petitioner is a director of Anubhav Plantation Ltd. or

Anubhav group of companies, for complaining about him for an alleged criminal conspiracy punishable u/s 120-B, which could be inferred by

circumstances, by his acquaintance with the Anubhav Plantation Ltd. or Anubhav group of companies or with the directors of Anubhav Plantation

Ltd. and its group of companies, either directly or indirectly, when there are materials to show that the funds of Anubhav Plantation Ltd. were

diverted to Anubhav Agrotech Ltd., which owns 16 acres of land in Bangarupalayam Mandal, Chittoor District on Bangalore-Madras Trunk

Road, worth about rupees six crores, by Mr. T.V. Giri Rao, who was once, admittedly, a director of Anubhav Plantation Ltd. and subsequently

resigned and also the first director and promoter of Anubhav Agrotech Ltd., in which the petitioner of herein was also, admittedly, a director from

February 7, 1996 to September 3, 1997. He also contends that the petitioner is not entitled to contend that he is in no way connected with the

alleged criminal conspiracy, as the lifting of corporate veil is not permissible at this stage.

18. I have bestowed my careful consideration to the submissions of both sides.

19. As held by the apex court in a catena of decisions, viz., Juggi Lal Kamalapat Vs. Commissioner of Income Tax, U.P., , Life Insurance

Corporation of India Vs. Escorts Ltd. and Others, , State of U.P. and Others Vs. Renusagar Power Co. and Others, and Delhi Development

Authority Vs. Skiper Construction Company (P) Ltd. and another, , in the offences relating to the diversion of funds of corporate bodies, the court

can, no doubt pierce through and look at the reality behind the corporate veil, to pass appropriate orders to do justice between the parties

concerned, as the concept of corporate entity was evolved to encourage and promote the trade and commerce, but not to commit illegality or to

defraud people. If that be so, where the petitioner is complained of as a party to

such criminal conspiracy and cheating, in my considered opinion, it is immaterial whether the petitioner was a director of the Anubhav Plantation Ltd. or its group of companies, inasmuch as such criminal conspiracy could be hatched even by any person who need not necessarily be a director of Anubhav Plantation Company or its group of companies, as there are materials available to show that the funds of Anubhav Plantation Ltd. and its group of companies got diverted to Anubhav Agrotech Ltd. of which the petitioner was admittedly a director during the period from February 7, 1996 to September 3, 1997. Similarly, it is immaterial whether the petitioner was a promoter of the Anubhav Agrotech Ltd., or actively associated with the affairs of the Anubhav Agrotech Ltd., for the purpose of investigating the complaint of such criminal conspiracy and cheating that are complained against the petitioner.

20. Even though the petitioner claims that he was not a party to the alleged criminal conspiracy, nor responsible for diverting the funds of Anubhav Plantation to Anubhav Agrotech Ltd., the same cannot be gone into, at this stage, inasmuch as the lifting of corporate veil is permissible, only after the filing of final charge sheet and during the trial, in the light of appropriate material evidences. If this court proposes to decide on such vital issue, it would either jeopardise the investigation or would affect the defence of the petitioner himself. Therefore, it may not be proper for this court to lift the corporate veil and to analyse such contentions of the petitioner, at this stage.

21. With regard to the contention that the petitioner was never served with any summons in C. C. No. 1067 of 1999 to appear before the learned

Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, nor was he aware of the pending of non-bailable warrant in C. C. No. 1067 of

1999 and that, even now the petitioner is prepared to appear before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, I

am of the opinion that such contentions could be properly dealt with only by the learned Additional Chief Metropolitan Magistrate, Egmore.

Chennai-8, in an application u/s 70(2), Criminal Procedure Code as rightly pointed by Mr. N.R. Elango, learned Government advocate, placing

reliance on the decisions Saleem P.A. v. Inspector of Police [1994] 2 LW (CrL.) 402 and in Sundaram v. State of Tamil Nadu [1995] 2 LW (CrL.)

564, wherein it is held that the accused are not entitled to approach this court u/

s 482, Criminal Procedure Code either for recalling the warrant or for anticipatory bail, without invoking Section 70(2), Criminal Procedure Code.

22. Even though Mr. Habibullah Badsha, learned senior counsel for the petitioner contends that under the special facts and circumstances of the

case, the petitioner was constrained to approach this court invoking Section 482, Criminal Procedure Code to recall the non-bailable warrant

pending against him in C. C. No. 1067 of 1999, I have no hesitation to hold that the very admitted special facts and circumstances of the case

require this court to direct the respondent to execute the non-bailable warrant pending against the petitioner in cold storage, lying for execution in

C. C. No. 1067 of 1999 for several months, without any further delay, in order to prevent the abuse of the process of the court and to secure the

ends of justice, but not to recall the same as prayed for.

23. For all these reasons, I do not find any merit in the above CrI. O. P. Hence, the same is dismissed of course, without prejudice to the right of

the petitioner to approach the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, for recalling the warrant invoking Section

70(2), Criminal Procedure Code, which shall be disposed of by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai-8, on the

merits, without being prejudiced by the dismissal of the above O. P.