

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.2.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE D.MURUGESAN

W.A. No. 971 of 2004

1. Pentafour Products Limited
rep. by its Director V.Ramakrishnan, No.332/2
Chitra Towers, Arcot Road, Kodambakkam
Chennai-24.
 2. Pentafour Solec Technology Limited,
rep. by its Director V.Ramakrishnan, No.332/2
Chitra Towers, Arcot Road, Kodambakkam
Chennai-24.
- Appellants

Vs.

1. The Union of India rep. by
its Secretary to Government,
Ministry of Law, Justice & Company Affairs
rep. all Departments including
Ministry of Finance and Revenue,
New Delhi 110 001.
2. The Union of India rep. by
its Secretary to Government,
Ministry of Food and Consumer Affairs,
New Delhi 110 001.
3. The Reserve Bank of India,
No.16, Fort Glacis,
Rajaji Salai, Chennai-1.
4. The Regional Director,
Department of Company Affairs,
Shastri Bhavan, Nungambakkam,
Chennai-34.

5. The Director General of Police,
State of Tamil Nadu,
Office of the Director General of Police,
Kamarajar Road, Chennai-4.
6. The Additional Director General of Police,
(Economic Officers Wing)
Admiralty House, Government Estate,
Chennai-2.
7. Industrial Development Bank of India
World Trade Centre Bombay
rep. by its General Manager,
Industrial Development Bank of India,
115, Anna Salai, Chennai-15.
8. Industrial Finance Corporation of India
rep. by its General Manager,
Continental Chambers,
142, M.G. Road, Chennai-34.
9. Industrial Credit Investment
Corporation of India Bank,
rep. by its General Manager,
Cenotaph Road, Chennai-18.
10. PNB Mutual Fund rep.
by its Sr. Vice President,
Jeevan Barath Building
Tower II, New Delhi 110 001
through PNB Asset Management Co. Ltd.
11. LIC Mutual Fund Limited,
No.17, Thakur Chambers
Nariman Point, Bombay-400 021.
12. Dena Bank
rep. by its Manager,
Anna Salai, Chennai-2 on behalf
of Dena Bank Investments & Funds
Dept., Bombay.
13. India Securities Ltd.,
rep. By Mr. K.Rangaraj,
Eswar House, 14, Haddows Road,
Chennai-34.

14. Integrated Finance Co. Ltd.,
No.112, Thyagaraya Road,
Chennai-17.
15. IIT Capital Services Limited,
rep. By Mr. Senthil,
No.61, Mumbai Samachar Marg,
Mumbai-400 001.
16. Manasi Mercantiles Co.
rep. by Suresh Bafna
22, Mulla Sahit Street,
Chennai-79.
17. Airforce Insurance Society
rep. by its Secretary,
Subarto Park, New Delhi.
18. Employees State Insurance Corporation
rep. by its Regional Director,
143, Sterling Road, Chennai-34.
19. Chief Commissioner of Income Tax,
Mahatma Gandhi Road,
Nungambakkam, Chennai-34.
20. Commissioner of Customs & Excise
& Addl. Director General (Central Excise)
Rajaji Bhavan, Chennai-90.
21. Chief Commissioner of Sales Tax,
Vavoo Complex, N.S.C. Bose Road,
Chennai-104.

Respondents

Appeal under clause 15 of the Letters Patent against the order of this Court passed in WPMP No.40135 of 2003 and WVMP No.60 of 2004 in W.P. No.33166 of 2003 dated 1.3.2004.

For Appellants :: No appearance.
For RR 1,2 & 4 :: Mr.S.Manikumar, SCGSC for
For R-7 :: M/s.Ranganathan & Prabhakaran
For R-9 :: Mr.P.L.Narayanan

JUDGMENT
(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

This writ appeal has been filed against the interim order of the learned single Judge dated 1.3.2004.

2. None appears for the appellants although the name of M/s.Kovi Ganesan and T.K.S.Gandhi has been shown in the cause list. We have heard Mr.P.L.Narayanan, learned counsel appearing for respondent No.9 - Industrial Credit Investment Corporation of India Bank.

3. The appellants filed the writ petition with the following prayer:

"For the reasons stated in the accompanying writ the petitioner prays that this Hon'ble Court may be pleased to issue a writ of declaration or any other appropriate writ, order or direction of like nature and declare that entertaining of any complaints and processing the same by the first to sixth respondents and by all persons working under them and their respective departments in relation to the claims in respect of loans, fixed deposits and other dues initiated by various courts and Fora payable by the petitioners companies and its directors and officers as illegal, ultra vires and void pending disposal of BIFR proceedings."

4. From the facts of the case it appears that ICICI Bank initiated criminal proceedings under section 138 of the Negotiable Instruments Act against the writ petitioners and its directors in C.C.No.1098/2001 by filing a criminal complaint under section 200 Cr.P.C. before the XVIII Metropolitan Magistrate, Saidapet, Chennai. On that criminal complaint process was issued under section 204 Cr.P.C., the trial was conducted, witnesses were examined and only orders were to be pronounced when at that stage the petitioners/appellants filed W.P. No.33166 of 2003 and out of the interlocutory order in the said writ petition the present appeal arises.

5. The submission before the learned single Judge was that since the petitioners/appellants had applied under the Sick Industrial Companies (Special Provisions) Act, 1985, the proceedings before the learned Magistrate are barred by section 22 of the aforesaid Act. We do not agree.

6. In our opinion the writ petition was wholly misconceived and ought not to have been entertained at all. Section 22(1) of the said Act has nothing to do with a criminal prosecution. Section 22(1) states:-

"Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority."

7. A perusal of the above provisions shows that it has only prohibited the proceedings for winding up of an industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver and suits for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of loans or advance granted to the industrial company except with the consent of the Board or the appellate authority.

8. Thus, a mere perusal of section 22(1) shows that it has nothing to do with criminal prosecution. Similarly section 22A has also nothing to do with a criminal prosecution.

9. It appears that subsequently the learned single Judge vacated the interim order. In view of the decision of the Supreme Court in M/s.BSI Ltd. & Anr. etc. v. Gift Holdings Pvt. Ltd. & Anr. etc. [2000(1) Crimes 261(SC)] this writ appeal has no merit and it is dismissed. We further direct the learned Magistrate concerned to complete the proceedings before him expeditiously. No costs. Consequently WAMP No.1758/2004 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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Union of India,
Ministry of Law, Justice & Company Affairs
rep. all Departments including
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13. The Chief Commissioner of Sales Tax,
Vavoo Complex, N.S.C. Bose Road,
Chennai-104.
14. The XVIII Metropolitan Magistrate
Saidapet, Chennai
15. Do Through The Chief Metropolitan magistrate
Chennai

+ 1 cc to Mr.S.Manikumar, Advocate SR 9213
+ 1 cc to Mr.Goviganesan, Advocate SR 9265
+ 1 cc to Mr.P.L.Narayanan, Advocate SR 9630

GG(CO)
SR/4.3.2005

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