

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

Crl.MC.No. 3387 of 2015

**ST 533/2013 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (E&O),
ERNAKULAM.**
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PETITIONERS/ACCUSED:

- 1. M/S.TIK INNOVATOR'S & MARKETING LIMITED,
GROUND FLOOR, 19/332, 16, 5, 7, HIBA COMPLEX,
KALVARI ROAD, POOTHOLE, THRISSUR,
(A1 REPRESENTED BY A2 MANAGING DIRECTOR)**
- 2. ALEX PALAKKAN, S/O.PALAKKAN DEVASSY FRANCIS,
AGED ABOUT 29 YEARS, PALAKKAN HOUSE,
P.O.ARIMPUR, THRISSUR-680620.**

**BY ADVS.SMT.R.LEELA
SMT.SHYNI PELEXY**

RESPONDENT/STATE & DEFACTO COMPLAINANT:

- 1. THE DEPUTY REGISTRAR OF COMPANIES,
KERALA COMPANY LAW BHAVAN, BMC ROAD,
THRIKAKARA.P.O, ERNAKULAM-682021.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**

**R1 BY ADV. SRI.K.R.RAJKUMAR, ADDL.CGSC
R BY SRI.N.NAGARESH,A.S.G OF INDIA
R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-08-2015 ALONG WITH CRMC. 3388/2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE-A1 :** THE TRUE COPY OF THE JUDGMENT IN C.C.7/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT,THRISSUR DATED 28.8.2014.
- ANNEXURE-A2 :** THE TRUE COPY OF THE JUDGMENT IN CC.9/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT,THRISSUR DATED 5/1/2015.
- ANNEXURE-A3 :** THE TRUE COPY OF THE JUDGMENT IN C.C.10/2014 IN SPECIAL CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR DATED 1/9/2014.
- ANNEXURE-A4 :** THE TRUE COPY OF THE COMPLAINT S.T.NO.533/2013 DATED 25/1/2013 ACJM(EO)ERNAKULAM.
- ANNEXURE-A5 :** THE TRUE COPY OF THE FORM 23ACA PURSUANT SECTION 220 OF THE COMPANIES ACT DATED 1.4.2009 TO 31.3.2010.
- ANNEXURE A6 :** THE TRUE COPY OF THE FORM 23AC PURSUANT SECTION 220 OF THE COMPANIES ACT DATED 1.4.2009 TO 31.3.2010.
- ANNEXURE A7 :** THE TRUE COPY OF THE E-FILING RECEIPT DATED 21.10.2010.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ALEXANDER THOMAS, J.

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Dated this the 6th day of August, 2015.

ORDER

Both these Crl.M.Cs are filed by the same petitioners (the company in question and its Managing Director) seeking the prayer of this Court under Sec.482 of the Cr.P.C for quashment of the impugned Anx-A4 complaint produced in these Crl.M.Cs. Anx-A4 complaint in Crl.M.C.No.3387/2015 has given rise to S.T.No.533/2013 on the file of the Additional Chief Magistrate Court (EO), Ernakulam and Anx-A4 complaint produced in Crl.M.C.No.3388/2015 has given rise to S.T.No.532/2013 on the file of the same court. The impugned complaint in Crl.M.C.No.3387/2015 is in relation to offence under Sec.220(1) and 220(2) of the Companies Act whereas the offence alleged in the latter case is one for the offence those under Sec.159 of the Companies Act.

2. In Crl.M.C.No.3387/2015 it is alleged by the complainant therein (Deputy Registrar of companies) that the

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accused Company was liable under Sec.220(1) and (2) of the Companies Act to file with the complainant the Balance Sheet and the Profit and Loss Account for the period ended 31.3.2011 in the prescribed form, duly audited and placed at the Annual General meeting to be held before the stipulated date. In that case the alleged default as per the mandate of the statute commenced on 31.10.2011 which is admitted by both sides. In Crl.M.C.No.3388/2015, it is alleged in Anx-A4 complaint that the accused Company was liable under Sec.159 of the Companies Act to file with the complainant Annual Return as on the day of Annual General Meeting for the year 2011 or if the Annual General Meeting was not held as on the latest day on or before which that meeting should have been held in that year in accordance with the provisions of the Act within 60 days of the said meeting or of the said latest day as the case may be. That the accused Company has not filed any Annual Report relating to the said year. In the latter case the alleged default commenced as per the requirement on 31.10.2011 which fact is also admitted by both sides.

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3. Heard Smt.R.Leela, learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State of Kerala.

4. The main plea taken by the learned counsel for the petitioners is that the entire establishment and premise of the petitioners company was sealed by the Kerala Police on 18.6.2011 in connection with various crimes registered against the company and the officials for offence under the Money Lenders Act. The petitioner has given the details of all such cases which has been registered by the State Police against the Company and it is not in dispute that it is ended in acquittal in some of the cases and some of the cases are pending. As directed by this Court, the learned Public Prosecutor has filed a statement on behalf of the Investigating Officer in respect of those criminal cases initiated against the petitioner (which led to its sealing by the police) stating almost admitting those facts and also stating very clearly that most of the documents of the petitioner - Company have been seized. This statement has been filed in both cases. The most crucial and

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relevant aspects of the statement to the extent it pertains this Court's consideration is that it is clearly admitted therein by the State Police authorities that the entire premise and establishment of the Company was seized and closed on 18.6.2011 in view of the pendency of those crimes. It is also submitted on instructions by the learned Public Prosecutor that even as on today, the sealing and closure of the Company has not been lifted as many other cases are still pending for trial and its conclusion. These aspects are not disputed by the respondent-Deputy Registrar of Companies. But, the crucial facts of the matter is that the alleged default in both cases as far as the Companies Act concerned is from 31.10.2011 whereas the Company has been sealed and thus closed due to such police intervention as early as on 18.6.2011 and continues that stage even as on today. Therefore, the contention made by the learned counsel for the petitioner that the petitioner's establishment and its Directors and officers have been totally disabled from having any access to the Company premises to make even access for the vital documents to be submitted before the expiry of the

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default period that have commenced on 31.10.2011, is tenable. Hence any further continuation of the criminal proceedings would be causing extreme hardships and is unjust and it would amount to abuse of the process of the court. In this view of the matter, this Court of the considered opinion that interdiction with the impugned criminal proceedings by taking recourse of extraordinary jurisdiction conferred on this Court under Sec.482 of the Cr.P.C is warranted in the facts and circumstances of the case. In this view of the matter, it is ordered in the interest of justice that the impugned Anx-A4 complaint in both these Crl.M.Cs shall stand quashed and accordingly, all further proceedings arising therefrom pending against the petitioner Company and its Directors and Officers concerned will also stand quashed and terminated. However, it is made clear that immediately on lifting of the sealing and closure of the Company premises by the State Police authorities, the Investigating Officer concerned will give written intimation of such lifting to the Deputy Registrar of Companies and the petitioner, by registered speed post, upon which the Deputy

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Registrar of Companies will be at liberty to call upon the petitioner-Company (if it has not availed the exit option), to Submit the necessary papers and documents in relation to the aforestated quashed proceedings, within a reasonable time and the petitioner-Company shall comply with such requirements within such reasonable time. On failure of such stipulation by the petitioner, the respondent concerned will be at liberty to initiate necessary proceedings in that regard in accordance with law.

With these observations and directions, these CrI.M.Cs stand finally disposed of.

ALEXANDER THOMAS,
Judge.

Bkn/-

The case number "S.T.532/2013" occurring in the 8th line of 1st paragraph at page 1 of the common final order dated 6.8.2015 in CrI.M.C.Nos.3387 & 3388 of 2015 is corrected and substituted as "S.T.No.531/2013", vide order dated 04.11.2016 in CrI.M.A.No.11401/2016 in CrI.M.C.No.3388/2015.

sd/-
Registrar (Judicial)