IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.23928 of 2015
and
M.P.Nos.1 and 2 of 2015

1. M/s.Arumbakkam Benefit Fund Ltd,
P-12/25, Kannadasan Street,
M.M.D.A.Colony,
Arumbakkam,
Chennai.

2. M.Sivagnanam ... Petitioners/Accused 1 & 2

Vs

The Deputy Registrar of Companies,
Tamil Nadu, Chennai
Shastri Bhavan, 26, Haddows Road,
Chennai - 600 006. ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the complaint in E.O.C.C.No.142 of 2015, pending on the file of the Additional Chief Metropolitan Magistrate Economic Offences, Egmore, Chennai - 8.

For Petitioners : Ms.Elizabath Rani
for Mr.S.Subbiah

For Respondent : Mr.C. Emalias,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the complaint in E.O.C.C.No.142 of 2015, pending on the file of the Additional Chief Metropolitan Magistrate Economic Offences, Egmore, Chennai - 8.

2. Heard, Ms.Elizabath Rani, learned counsel appearing for the petitioners on behalf of Mr.S.Subbiah and Mr.C.Emalias, learned Additional Public Prosecutor for the respondent.

3. The crux of the allegation against the petitioner has been stated succinctly in para 5 of the complaint in E.O.C.C.N0.142 of 2015, which reads as follows:-

"That whereas Investors Education and Protection Fund (uploading of information regarding unpaid and unclaimed amounts lying with the companies) Rules 2012 mandates every company (including Non-banking Financial Companies and Residuary Non-banking Companies) shall, within 90 days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of Section 166 of the Act and every year thereafter till completion of seven years period, identify the unclaimed amounts as referred to in sub-section (2) of section 205C of the Act, separately furnish and upload on its own website as also on the Ministry's website or any other website as may be specified by the Government, a statement or information through E form 5 INV, separately for each year containing following information, namely:-

(a) Name and last known address of the person entitled to receive the sum.

(b) The nature of amount.

(c) The amount to which each person is entitled

(d) The due date for transfer into I nvestor Educations and Protection Fund and

(e) Such other information as considered relevant for the purpose.

Provided that for the financial year ended March 31, 2011 the information shall be filed latest by July 31st 2012.

That the accused company has not filed 5 INV as required under the above said Rule and has violated the provisions of the said rules. Show cause notice was issued on 05.09.2014 by the complainant to the Accused No.1 and 2 who have acknowledged the receipt of the show cause notices. However no reply was received from the Company or its Directors.

4. The long and short of the prosecution case is that, the Company had failed to upload Form 5 INV, giving information about the persons who are entitled to receive the amounts due, that were deposited in the Company.

5. The learned counsel for the petitioners submitted that, under Section 205(C) of the Companies Act, only if the maturity amount is beyond seven years, the accused can be prosecuted. In this case, the accused is being prosecuted, for not uploading the details in the Ministry's Website and therefore, the aforesaid contention of the petitioner cannot be countenanced. In the result, this Criminal Original Petition is devoid of merits and accordingly dismissed. Consequently, connected miscellaneous petition in MP.No.1 of 2015 is closed.

6. At that juncture, the learned counsel for the petitioners submits that, the presence of the second petitioner before the trial Court may be dispensed with. Accepting the submission, the second petitioner shall ensure that an authorised representative of the first accused Company, appears before the trial Court as contemplated under Section 305 Cr.P.C., and on the second petitioner filing an petition under Section 317 Cr.P.C., the trial Court shall liberally consider the same. The second petitioner shall be present for receiving the copies of the complaint, questioning for the purpose of framing charges, questioning under Section 313 Cr.P.C., and on the date of judgment. If the second petitioner adopts any dilatory tactics, the trial Court is entitled to insist his presence for trial. The second petitioner shall also furnish a bond for Rs.10,000/- with two sureties under Section 88 Cr.P.C., to the satisfaction of the Additional Chief Metropolitan Magistrate Economic Offences, Egmore, Chennai - 600 008 in E.O.C.C.No.142 of 2015, within two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srn/ds

To:

1. The Deputy Registrar of Companies,
   Shastri Bhavan, 26, Haddows Road,
   Chennai - 600 006

2. The Additional Public Prosecutor,
   High Court, Madras.

3. The Additional Chief Metropolitan
   Magistrate Economic Offences,
   Egmore, Chennai - 8

+1cc to M/s.S.Subbiah, Advocate, S.R.No.55025

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RSI(CO)
CA(16/10/2015)