

dmanabhan
 uswamy
 rayanaswamy Petitioners in CrI.O.P. No.13
 vs.
 t Registrar Companies
 ran
 006 Respondent in both the C
 10652 of 2011 and 13845 of 2010:
 l Original Petitions filed under Section 4
 call for the records of E.O.C.C. No.4
 the file of the Additional Chief M
 E.O.-II, Egmore, Chennai and quash
 th regard to the petitioners.
 r petitioners Mr. S. Raghunathan

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Mr. B.

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2 The Assistant Registrar of Companies initiated a prosecution in E.O.C.C. No.483 of 2009 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Sections 209(3)(b) and 211 of the Companies Act, 1956, against Sporting Pastime India Ltd. and 5 of its Directors, challenging which Ramesh (A3) has filed CrI.O.P. No.10652 of 2011 and Padmanabhan (A4), Kuppuswamy (A5) and Narayanaswamy (A6) have preferred CrI.O.P. No.13845 of 2010.

3 Today, when the matter was taken up for hearing, Mr.S.Raghunathan, learned counsel for the petitioners submitted that Kuppuswamy (A5) died on 16.03.2016 and produced a copy of the death certificate.

4 In view of the above, the prosecution as against Kuppuswamy (A5) abates.

5 The allegation in the complaint is that the petitioners were Directors in Sporting Pastime India Ltd. and that they had not made any provision for Gratuity payable to employees, in the Balance Sheet as on 31.03.2004.

6 The learned counsel for the petitioners submitted that the business of Sporting Pastime India Ltd. had not commenced at all and this fact was also brought to the notice of the Registrar of Companies in the reply to the show cause notice that was issued.

7 In the considered opinion of this Court, this is a fact which requires to be decided only during trial and cannot be adjudicated in a petition under Section 482, Cr.P.C.

8 In the result, these Criminal Original Petitions are dismissed with liberty to the petitioners to raise all the points before the Trial Court. The petitioners are directed to appear before the Trial Court and furnish a bond for Rs.10,000/- each without sureties, under Section 88, Cr.P.C. Thereafter, the presence of the petitioners before the Trial Court shall be dispensed with on condition that they shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. They shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (CrI.) 288]. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon

their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. Connected M.Ps. are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1 The Assistant Registrar Companies
Shastri Bhavan
Chennai 600 006

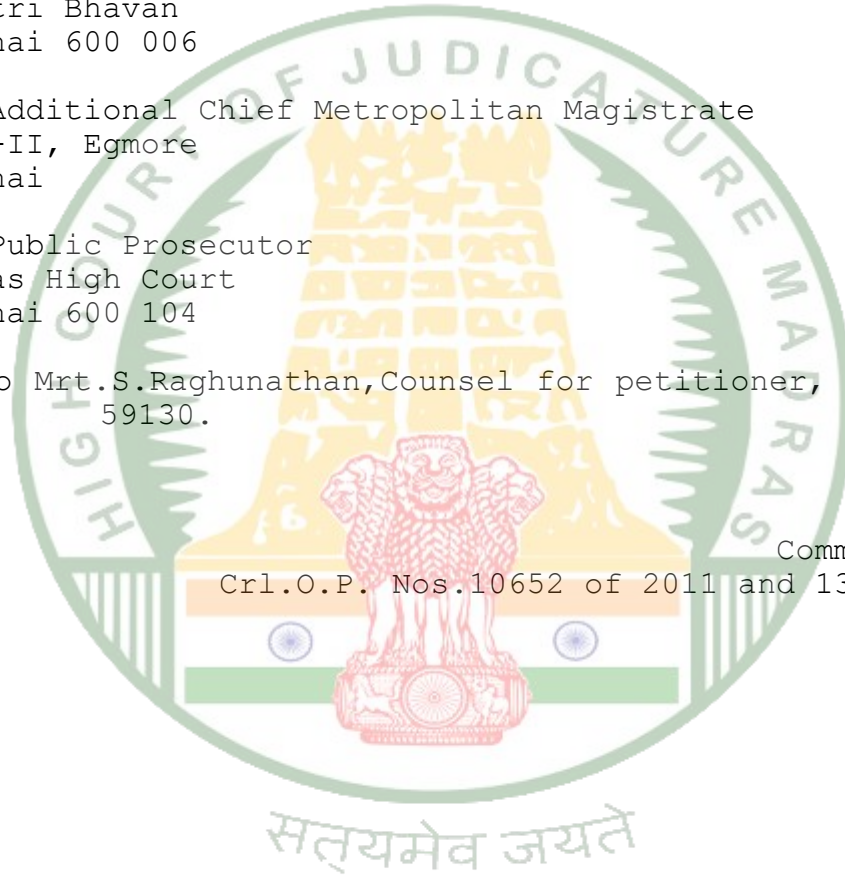
2 The Additional Chief Metropolitan Magistrate
E.O.-II, Egmore
Chennai

3 The Public Prosecutor
Madras High Court
Chennai 600 104

+2 cc's to Mrt.S.Raghunathan,Counsel for petitioner, sr.59124 &
59130.

mv(co)
krd 25/10

Common order in
Crl.O.P. Nos.10652 of 2011 and 13845 of 2010



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