IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.10654 of 2011 & M.P. No.1 of 2011

R. Ramesh Petitioner/A3

vs.

The Assistant Registrar of Companies
Shastri Bhavan
Chennai 600 006 Respondent /Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records of E.O.C.C. No.496 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.-II, Egmore, Chennai and quash the said complaint with regard to the petitioner.

For petitioner Mr. S. Raghunathan

For respondent Mr. K. Ramanamoorthy
Central Government Standing Counsel
assisted by
Mr. B. Ramesh

ORDER

This Criminal Original Petition has been filed seeking to call for the records of E.O.C.C. No.496 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.-II, Egmore, Chennai and quash the said complaint with regard to the petitioner.

2 The Assistant Registrar of Companies initiated a prosecution in E.O.C.C. No.496 of 2009 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Section 300(1) of the Companies Act, 1956, against 6 accused, challenging which, Ramesh (A3) has preferred this Criminal Original Petition.

3 It is the case of the prosecution that Ramesh (A3) was one of the Directors in Sporting Pastime India Ltd. and that during inspection by the authorities, they found certain irregularities in the maintenance of records, pursuant to which, a show cause notice dated 05.06.2007 was issued to Sporting

Pastime India Ltd. seeking their response. Since reply given by Sporting Pastime India Ltd. was not satisfactory, the prosecution has been launched.

4 The allegation in the complaint refers to Question Nos.27 to 32 cited in show cause notice dated 05.06.2007, for the violation of which, the complaint has been laid for offences under the Companies Act.

5 Mr. S. Raghunathan, learned counsel for the petitioner/accused submitted that the petitioner/accused had resigned from Sporting Pastime India Ltd. (A1) as early as 18.08.2004, in support of which, he has produced a certified copy of Form No.32, which is not refuted by the learned Central Government Standing Counsel appearing for the Department.

6 Mr. S. Raghunathan, learned counsel for the petitioner/accused contended that in view of the fact that the petitioner/accused had resigned as early as 18.08.2004, he cannot be mulcted with criminal liability for events that had taken place subsequent to his resignation.

7 The learned Central Government Standing Counsel refuted the allegations.

8 At this juncture, it may not be necessary to repeat Question Nos.27 to 32 in toto and it would suffice if Question No.27 alone is extracted and the same reads as under:

> “27. The company obtained loans on various dates from various banks such as Dhanalakshmi Bank Limited, ICICI Bank Ltd. to the tune of Rs.15 crores, Rs.5 crores, Rs.20 crores, during 2002-2003 and 2003-2004 against Fixed Assets of the company. Kasturi & Sons Limited has furnished Corporate Guarantee to the Banks for the loans given to the subject company. At the Board Meeting held on 06.04.2004 a resolution was passed to avail loan of Rs.10 crores from Development Credit Bank Limited in the nature of short term for 6 months in terms of Bank's letter dated 26.03.2004 and also against Corporate Guarantee from M/s. Kasturi & Sons Limited for the said amount Sri R.Ramesh, a Director of the company was present at the said Board Meeting. He was also a Director in Kasturi & Sons Ltd. But, he has not disclosed his interest in this Transaction. Therefore, Sri. R. Ramesh violated the provisions of Section 299(1) of the Act.”

9 From a reading of Question No.27 extracted above, the allegation of the Department is that the petitioner/accused was a Director in Kasturi & Sons Limited and also Sporting Pastime India Ltd. and that he did not disclose his interest in the transaction as required by law.

10 Mr. S. Raghunathan contended that the petitioner/accused had informed his interest to Sporting Pastime India Ltd., but, they had failed to intimate the same to the Registrar of Companies. In support of this contention, he has produced certain records in the typed set of papers.

11 In the considered opinion of this Court, disputed questions of fact cannot be examined in a proceedings under Section 482, Cr.P.C. Thus, the defences of the accused can be examined only during trial before the Trial Court.

12 The other allegation against the the petitioner/accused is that as on 06.04.2004, he presided over a Board Meeting of Sporting Pastime India Ltd. and was a party to the resolution to avail a loan of Rs.10 crores from Development Credit Bank Ltd. and also against corporate guarantee from Kasturi & Sons Limited and that he had not disclosed his pecuniary interest as stated in Question No.27 above. Thus, the resignation of the petitioner/accused on 18.08.2004, cannot, in any way, relieve him of his responsibility to disclose information as required by law when the Board resolution was passed on 06.04.2004, which is prior to his resignation. The other questions, viz., Question Nos.28 to 32 are also on the same lines.

In view of the above, this Criminal Original Petition is dismissed with liberty to the petitioner to raise all the points before the Trial Court. It is made clear that whatever observation is made in this order, shall not, in any way, influence the Trial Court. Connected M.P. is closed.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

cad
To
1 The Assistant Registrar of Companies
Shastri Bhavan
Chennai 600 006

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

2a -do- Thro The Chief Metropolitan Magistrate
      Egmore Chennai

3   The Public Prosecutor
      Madras High Court
      Chennai 600 104

+1 cc to M/s.S.Raghunathan Advocate sr 57419

Crl.O.P. No.10654 of 2011

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