

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.12390 of 2016
and
Cr1.MP.Nos.6385 & 6386 of 2016

Mehool Rasik ParekhPetitioner/Accused No.4
Vs.

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

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in E.O.C.C.No.252 of 2015 on the file of the Hon'ble Additional Chief Metropolitan Magistrate E.O.- 1, Allikulam Moore Market, Chennai and quash the same.

For Petitioner : Mr.C.Sakthimanikandan

For Respondent : Mr.K.Ramanamoorthy

CGC

ORDER

This criminal original petition has been filed to call for the records in E.O.C.C.No.252 of 2015 on the file of the Additional Chief Metropolitan Magistrate Court, E.O.-1, Allikulam Moore Market, Chennai and quash the same.

2. The short points for consideration are as follows:

2.1 The Deputy Registrar of Companies, Tamil Nadu, has initiated a prosecution in E.O.C.C.No.252 of 2015 against five accused, challenging which, the petitioner, who has been arrayed as 4th accused, is before this Court on the point that he had resigned his Directorship of the Company.

2.2 It is the case of the prosecution that on 10.04.2015, a summons was issued to the Directors to produce certain evidence before the Regional Director, Ministry of Corporate Affairs, Southern Region, "A" Wing, 5th Floor, Shastri Bhavan, 26, Haddows Road, Chennai - 600 006 on 20.04.2015 at 11.00 am, which was not complied with by the accused, pursuant to which, a prosecution has been launched under Section 207(4) of the Companies Act, 2013.

3. The learned counsel appearing for the petitioner contended that the petitioner has submitted his resignation to the Company on 27.08.2014, but, unfortunately the Company had not intimated the same to the Registrar of Companies (ROC), for which fault, the petitioner has been made liable. He further brought to the notice of this Court, Sections 168 and 170 of the Companies Act, 2013, which read as follows:

"Resignation of director.

168.(1) A director may resign from his office by giving a notice in writing to the same and the company and the Board shall on receipt of such notice take note of such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the Company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a Company resign from their offices, or vacate their office under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Register of directors and key managerial personnel and their shareholding.

170.(1) Every company shall keep at its registered office a register contain - may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

(2) A return containing such particulars and documents as may be prescribed, of the

directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place."

4. The learned counsel for the petitioner submitted that when the petitioner came to know that the Company had not submitted the intimation to the ROC as required under Section 170 of the Companies Act, he informed the ROC on 13.04.2015 by filing the Form No.DIR - 11 and therefore, he cannot be mulcted with criminal liability.

5. I am unable to countenance the aforesaid submission, because, the provisions under Section 168 clearly state that a Director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed, which the petitioner has not done. But, the petitioner has sent his resignation to the ROC only on 13.04.2015, after getting the notice dated 10.04.2015, which was issued by the ROC. The proviso under Section 168 of the Companies Act clearly states that even if a person has resigned from the Directorship, he will be liable for the offences committed during his tenure.

6. In view of the aforesaid legal position, this Court is not able to accept the submission of the learned counsel for the petitioner.

Accordingly, this criminal original petition is dismissed. Connected Miscellaneous Petitions are closed.
sms/cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Deputy Registrar of Companies
Tamil Nadu Having office at Shastri Bhavan
26, Haddows Road, Chennai - 600 006
 2. The Additional Chief Metropolitan Magistrate E.O.- 1,
Allikulam, Moore Market, Chennai
 3. The Public Prosecutor, High Court, Chennai
- + 1 CC TO MR.K.RAMANAMOORTHY, ADVOCATE SR 39005
+ 1 CC TO MR.C.SAKTHIMANIKANDAN, ADVOCATE SR 39356

KR/2/8/16