

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

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

Crl.O.P. No.12392 of 2016 and Crl.M.P. Nos.6389 & 6390 of 2016

Soumobroto Ganguly

Petitioner

vs.

The Deputy Registrar of Companies
Tamil Nadu
26 Haddows Road
Chennai 600 006

Respondent

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 Additional Chief Metropolitan Magistrate, E.O. - I, Allikulam Moore Market, Chennai and quash the same insofar as the petitioner.

For petitioner Mr. C. Sakthimanikandan

For respondent Mr. K. Ramamoorthy

ORDER

This Criminal Original Petition is 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. - I, Allikulam Moore Market, Chennai and quash the same insofar as the petitioner.

2 Heard both sides.

3 The Deputy Registrar of Companies has initiated prosecution in E.O.C.C. No.252 of 2015 before the Additional Chief Metropolitan Magistrate Court, E.O.-I, Egmore, Chennai - 8 under Section 207(3)(b) of the Companies Act, 2013 (for brevity "the New Act") against five accused, challenging which Soumobroto Ganguly (A3) is before this Court.

4 It is the case of the complainant that the petitioner was a Director in Eduxel Infotainment Ltd. and that a summons dated 10.04.2015 under Section 207(3) of the New Act was issued to Eduxel Infotainment Ltd. for production of certain records on 20.04.2015, despite which, the said

company did not produce records, on account of which, it is alleged that they will be liable for offence under Section 207 (3) (b) of the Companies Act.

5 The prosecution is challenged by Soumobroto Ganguly (A3) on the short ground that he had submitted his resignation letter dated 05.09.2013 to Eduexcel Infotainment Ltd. and that for the fault of the company in not submitting Form 32 to the Registrar of Companies, he cannot be held liable.

6 The learned counsel relied upon a judgment of a Division Bench of this Court in Saumil Dilip Mehta vs. State of Maharashtra and others, [2002 (2) Mh.L.J. 36] for the proposition that when a Director has tendered his resignation and the Board has accepted a copy of it, such Director cannot be held responsible for the liability incurred by the said company after the date of acceptance of his resignation.

7 Per contra, the Registrar of Companies has filed a counter affidavit stating that under Section 303(2) of the Companies Act, 1956 (for brevity "the Old Act"), resignation of a Director has to be informed by the Company to the Registrar of Companies and only then, such resignation takes its effect.

8 The learned counsel for the petitioner submitted that since the company did not forward the petitioner's resignation letter to the Registrar of Companies, the petitioner addressed a communication to the Registrar of Companies, Chennai on 29.03.2014, for which, the Registrar of Companies has sent a communication dated 30.04.2014 to the company, which reads as follows:

"With reference to the above subject, this office is in receipt of the letter referred above wherein it has been stated that Shri. Soumobroto Ganguly appointed as Managing Director of the company M/s. Eduexcel Infotainment Limited on 05.05.2011, has withdrawn his Directorship from the Board on 05.09.2013. As per this office record no. Form 32 has been filed for the resignation of Shri. Soumobroto Ganguly as Managing Director. Hence, you are hereby directed to offer your commends in this matter within 10 days from the receipt of this letter."

On the strength of this communication, the learned counsel for the petitioner submitted that the petitioner cannot be prosecuted for the acts done by the company subsequent to his resignation. The learned counsel also submitted that unlike in the New Act, where, Section 168 permits a Director to send his resignation letter directly to the Registrar of Companies,

there was no such provision in the Old Act. Hence, it is his contention that the petitioner cannot be mulcted with criminal liability.

9 I am unable to persuade myself to agree with this submission for the reason that the company is a juristic person and the Board of Directors of the Company steer the company in its ventures. It may happen that a Director would defalcate the company's money and may attempt to wriggle out of his liability by sending a resignation letter in order to avoid fiscal liability.

10 As far as a third party is concerned, he gets notified about the resignation of a Director from the Board of Directors of the company only when the company intimates the same to the Registrar of Companies as contemplated under the Old Act. Even in the New Act, though a person can submit his resignation directly to the Registrar of Companies along with detailed reasons for resignation, yet, the second proviso to Section 168 clearly states that a Director who has resigned, shall be liable even after his resignation, for the offences which were committed during his tenure.

11 In this case, on the date when the Registrar of Companies issued the notice dated 10.04.2015 to produce the books of accounts on 20.04.2015, the petitioner's resignation was not entered in the office of the Registrar of Companies. Therefore, for all practical purposes, the petitioner was a Director of the company and he cannot plead otherwise.

In the result, this Criminal Original Petition is dismissed as being devoid of merits.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

WEB COPY
Sub Assistant Registrar

cad

To

1 The Deputy Registrar of Companies
Tamil Nadu
26 Haddows Road
Chennai 600 006

2 The Additional Chief Metropolitan Magistrate, E.O.-I
Allikulam Moore Market, Chennai

3. The Public Prosecutor
High Court, Madras

1 cc to Mr.K.Ramanamoorthy, Advocate, sr.43958

1 cc to Mr.C.Sakthimanikandan, Advocate, sr.44027

Cr1.OP.No.12392 of 2016

ad co
kra 23.08.2016



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