

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.Nos.1293 to 1296 of 2015 & 1318 to 1326 of 2015
and
M.P.No.1 of 2015 (In all petitions)

VIMAL SUKUMAR SUKUNDHAR BADDA

CEO & DIRECTOR OF AI COMPANY
M/S. CHURCH OF SOUTH INDIA TRUST ASSOCIATION
H.NO.10-3-66- 1 TEACHER COLONY
EAST MAERDPALLY
SECUNDERBAD-500 026. ... PETITIONER in CRL RC No.1294,
1295, 1296/15

DEVASAHAYAM TSOUDURY
DIRECTOR OF AL COMPANY
M/S.CHURCH OF SOUTH INDIA TRUST ASSOCIATION
2-5-211 NAKKALAGUTTA HANAMKONDA
WARANGAL ANDHRA PRADESH.
CR.MP.NO.1225/2014
... PETITIONER in CRL RC No.1318 of 2015

MOSES JAYAKUMAR
DIRECTOR OF AI COMPANY
M/S.CHURCH OF SOUTH INDIA TRUST ASSOCIATION
ALL SAINTS CHURCH
1 HOUSUR ROAD BANGALORE.
CRL.MP.NO. 1224/2014
... PETITIONER in CRL RC No.1319 of 2015

SATHIADAS SMUEL NADAR
DIRECTOR OF AL COMPANY
M/S.CHURCH OF SOUTH INDIA TRUST
ASSOCIATION MARTHANDAM POST
KANYAKUMARI TAMIL NADU-629 165.
CRL.M.P.NO. 1230 OF 2015
... PETITIONER in CRL RC
No.1320,1321,
1323 & 1325 of 2015

JOY MECDONALD RICHARD
DIRECTOR OF AI COMPANY
M/S. CHURCH OF SOUTH INDIA TRUST ASSOCIATION
139 C.H.BS. LAYOUT VIJAYA NAGAR
BANGALORE - 560 040 ... PETITIONER in CRL RC No.1293,
1322, 1324 & 1326 of 2015

VS

STATE
THE DEPUTY REGISTRAR OF COMPANIES
TAMILNADU
Having Officer at SHASTRI BHAVAN
26 HADDOWS ROAD CHENNAI-600006.

...Sole Respondent in all the Crl.RCs?

CRL RC No.1293 of 2015

Criminal Revision petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order passed in Crl.M.P.No.1223 of 2014 in E.O.C.C.No.320 of 2011 on 23.03.2015 on the file of the Honourable Additional Chief Metropolitan Magistrate (E.O.II)(I/c), Egmore, Chennai and call for the records and excuse the petitioner

CRL RC No.1294 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl. M.P. NO. 1231/2014 in E.O.C.C. No. 321/2011 on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records and excuse the petitioner.

CRL RC No.1295 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1237/2014 in E.O.C.C.No.322/2011 on 23/03/2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the Records and excuse the petitioner

CRL RC No.1296 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1243 of 2014 in E.O.C.C.No. 323 of 2011, on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records and excuse the petitioner.

CRL RC No.1318 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.NO.1225/2014 in E.O.C.C.No.320/2011 on 23/03/2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai.

CRL RC No.1319 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1224/2014 in E.O.C.C.No.320/2011 on 23/03/2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c) Egmore, Chennai and call for the Records and excuse the petitioner and

CRL RC No.1320 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1230 of 2014 in E.O.C.C.No.320 of 2011, on 23.03.2015 on the file of the Honourable Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records and excuse the petitioner

CRL RC No.1321 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P. No. 1232/2014 in E.O.C.C. No. 321/2011 on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records.

CRL RC No.1322 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl. M.P. No.1233/2014 in E.O.C.C. No. 321/2011, on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai.

CRL RC No.1323 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1238 of 2014 in E.O.C.C.No.322 of 2011 on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II) (I/c), Egmore, Chennai and call for the records and excuse the petitioner

CRL RC No.1324 of 2015

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1239 of 2014 in E.O.C.C.No.322 of 2011 on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II)

(I/c), Egmore, Chennai and call for the records and excuse the petitioner

CRL RC No.1325 of 2015 Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1244 of 2014 in E.O.C.C.No. 323 of 2011, on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records and excuse the petitioner.

CRL RC No.1326 of 2015 Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1245 of 2014 in E.O.C.C.No. 323 of 2011, on 23.03.2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), (I/c), Egmore, Chennai and call for the records and excuse the petitioner.

For Petitioner : Mr.N.R.Elango,
(In all revisions) Senior Counsel for
Mr.S.Bharathirajan

For Respondent : Mr.V.Venkatesan,
(In all revisions) SCGSC

COMMON ORDER

These revisions challenge the orders of learned Additional Chief Metropolitan Magistrate (E.O.II) (I/c), Egmore, Chennai, passed in Crl.M.P.Nos.1223, 1224, 1230 and 1225 of 2014 in E.O.C.C.No.320 of 2011, Crl.M.P.Nos.1231, 1232 and 1233 of 2014 in E.O.C.C.No.321 of 2011, Crl.M.P.Nos.1237, 1238 and 1239 of 2014 in E.O.C.C.No.322 of 2011 and Crl.M.P.Nos.1243, 1244 and 1245 of 2014 in E.O.C.C.No.323 of 2011, on 23.03.2015.

2. Respondent/complainant filed a complaint against these petitioners for offence under Section 162 of the Companies Act, 1956, for non-filing of Balance Sheet in keeping with Section 220 of Companies Act, 1956 for the financial year 2006-2009. Petitioners/accused filed petitions u/s.633 of the Companies Act r/w Section 463 of Companies Act, 2013, seeking discharge. Court below, under orders dated 23.03.2015, dismissed such petitions. Hence, these revisions.

3. Heard learned senior counsel for petitioners and learned Senior Central Government Standing Counsel for respondent. Perused the materials available on record as also the counter of the respondent.

4. Learned senior counsel for petitioners submitted that the offence complained stands compounded insofar as A1, Company and A9,

Director, are concerned. When the case against the company itself stands compounded, the prosecution against these petitioners, who are informed to be Directors thereof cannot stand. This Court is unable to accept such contention. The offence of non-filing of documents within a particular period stands committed. Thereupon, both the company as also the 'officers in default' i.e., the persons who could be held responsible for the offence may be proceeded against.

5. Each of the Officers in default is treated as a distinct and separate offender in the eye of law. The effect of compounding of the offence as regards the company would be the acquittal of the accused/company with whom the offence has been compounded. The same will not set at naught the prosecution against the other accused.

6. Section 162 of the Companies Act, 1956, reads thus:

"(i) If a company fails to comply with any of the provisions contained in Section 159, 160 or 161, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues,

(2) For the purpose of this section and sections 159, 160 and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act".

7. Section 5 of the Companies Act, 1956, reads thus:

"For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:

- (a) the managing director or managing directors,
- (b) the whole-time director or whole-time directors,
- (c) the manager,
- (d) the secretary,
- (e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act,
- (f) any person charged by the Board with the responsibility of complying with that provision, provided that the person so charged has given his consent in this behalf to the Board,
- (g) where any company does not have any of the officers specified in clauses (a) to (c) any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors,

provided that where the Board exercise any power under clauses(f) or clause(g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form".

8. This Court would allow these revisions for the following reasons:

To state the obvious, not all concerned with the affairs of a company would fall without the meaning of 'Officer in default'. To sustain a complaint against a person in relation to an offence committed by a company, it would be necessary to inform in the complaint how such person is liable as an 'officer in default'. Reading of the complaint in the present case informs "that the accused A-2 to A-12 are Directors of the Company when the offence was committed as per the particulars filed in the office of the complainant and they are officers who are in default within the meaning of Section 5 of the Act." Such statement in the complaint would not suffice to maintain the prosecution. The effect of accepting such a statement would be that those who really do not fall within the description of 'Officer in default' with the meaning of Section 5 of the Companies Act would be required to face the rigour of trial.

9. In *S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla* (2005 SCC (CRI) 1975), the Hon'ble Supreme Court informed that towards sustaining a prosecution against a Director of a company, which is being prosecuted for offence under Section 138 of the Negotiable Instruments Act, 1881, the averments that the person concerned was in charge of and responsible to the company in the conduct of the affairs is an absolute must. It has been so held keeping in mind Section 141 of the Negotiable Instruments Act, which reads thus:

141. Offences by companies:- (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section,-

(a) "company" means any body corporate and included a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

10. Following the rationale of the decision in S.M.S. Pharmaceuticals Ltd., v. Neeta Bhalla (2005 SCC (CRI) 1975), this Court holds that in arraying persons as accused in respect of offences committed by companies and as "officers in default" it would be necessary to inform in the body of the complaint how they fulfil such capacity. In the instant case, the complaints fail on such count.

11. For the aforesaid reason, these revisions shall stand allowed and the orders of learned Additional Chief Metropolitan Magistrate (E.O.II) (I/c), Egmore, Chennai, passed in CrI.M.P.Nos.1223, 1224, 1230 and 1225 of 2014 in E.O.C.C.No.320 of 2011, CrI.M.P.Nos.1231, 1232 and 1233 of 2014 in E.O.C.C.No.321 of 2011, CrI.M.P.Nos.1237, 1238 and 1239 of 2014 in E.O.C.C.No.322 of 2011 and CrI.M.P.Nos.1243, 1244 and 1245 of 2014 in E.O.C.C.No.323 of 2011, on 23.03.2015, are set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vsm

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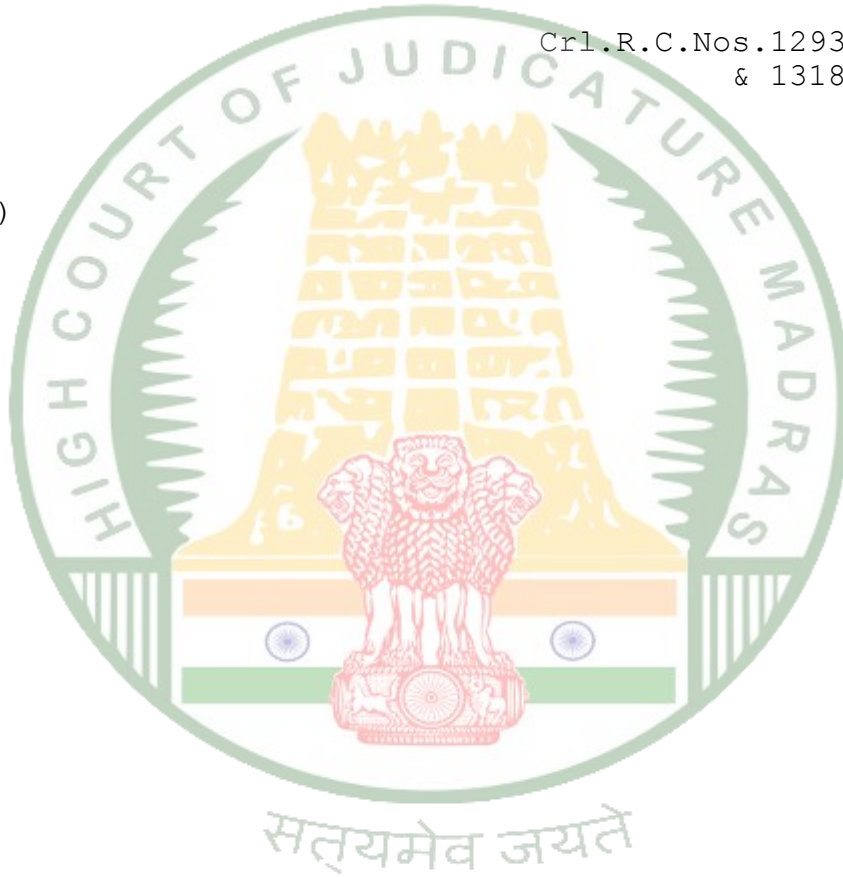
To

The Additional Chief Metropolitan Magistrate (E.O.II),
(I/c), Egmore, Chennai.
now at Allikulam Commercial Complex
Chennai-3

1 cc to Mr.V. Venkatesan, SCGSC, Sr. 4625
3 ccs to Mr.S. Bharathidasan, Advocate, Sr. 4740

Crl.R.C.Nos.1293 to 1296 of 2015
& 1318 to 1326 of 2015

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