

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.OP.Nos.8938 & 10136 of 2010

and

MP.No.1 of 2010

in

Crl.OP.No.8938 of 2010

and

M.P.Nos.1 & 2 of 2010

in

Crl.OP.No.10136 of 2010

1.Ramaswamy Athappan .. Petitioner in Crl.OP.No.8938/2010
2.Chandran Ratnaswami .. Petitioner in Crl.OP.No.10136/2010

Vs

The Assistant Registrar of Companies
Shastri Bhavan,
Chennai - 600 006. .. Respondent in both Crl.OPs

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., praying to call for the records in E.O.C.C.No.491 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate E.O.-II, Egmore, Chennai and quash the complaint as far as the petitioner is concerned.

For Petitioner : Mr.J.Sivanandaraj &
[in Crl.OP.No.8938/2010] Mr.Adeesh Anto

For Petitioner : Mr.Adeesh Anto
[in Crl.OP.No.10136/2010]

For Respondent : Mr.Venkatasamy Babu
[in both Crl.OPs.] Spl.Pleader for Central Govt
Mr.B.Ramesh
Special Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed praying to quash the proceedings in E.O.C.C.No.491 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate E.O.-II, Egmore, Chennai, against the petitioners herein.

2. The Assistant Registrar of Companies has lodged a complaint in E.O.C.C.No.491 of 2009 against M/s.Sporting Passtime India Ltd. (A1) and 11 others for violation of

Section 301(1) of the Companies Act, 1956, challenging which, the petitioners who are A11 and A12 are before this Court.

3. The learned counsel for the petitioner submitted that the same petitioners were prosecuted by the Assistant Registrar of Companies Act in E.O.C.C.Nos.477, 478 and 503 batch, in which also the allegations against the petitioners was that they were Directors in M/s.Sporting Passtime India Ltd. and in that capacity they were prosecuted for offences under the Companies Act. Challenging those prosecutions, the petitioners filed Crl.OP.Nos.5997, 5998, 6218 to 6231, 6890 to 6897 of 2011, in which this Court went deep into the aspect and by order dated 30.04.2014 quashed the prosecution on the short ground that these petitioners were not Directors in M/s.Sporting Passtime India Ltd. The relevant portion of the order dated 30.04.2014 is extracted hereunder :

" 5.The petitioners have in support of such contention, relied on the order made in CP.No.50/2005 by the Company Law Board, wherein, it is clearly held that the petitioners were not the directors of the company. The order made in CP.No.50 of 2005 by the Company Law Board is enclosed in the typed set filed along with the petitions. The company petition was filed by M/s.Kasturi & Sons Ltd against M/s.Sporting Passtime India Limited and 9 others and the petitioners herein by names Ramaswamy Athappan and Chandran Ratnaswami were arrayed as the respondents 3 and 4 therein. The company petition was filed under Sections 397, 398, 402 and 403 of the Companies Act, 1956 (I of 1956) alleging that the second respondent therein by name K.C.Palaniswamy in connivance with the respondents 3 to 6/individuals were indulged in serious acts of oppression and mismanagement in the affairs of M/s.Sporting Passtime India Limited in a manner, prejudicial to the interests of the Company and oppressive to the company constituting one tenth of the total number of its members. The company petition was filed for various reliefs and was after due contest disposed of by the Company Law Board. The petitioners herein as respondents 3 and 4 therein contested the company petition on the same ground as reiterated herein by denying any connection whatsoever with the company. The Company Law Board after duly appreciating the contention, accepted the plea and arrived at the conclusion that the petitioners have never consented to become Directors of the company and they had no connection whatsoever with the company. The Company Law Board at page 21 of its order discussed the plea of denial raised by

the petitioners herein. For better appreciation, the finding rendered by the Company Law Board is extracted hereunder :

" It is claimed by the respondents 3 & 4 that (a) they never consented to act as directors of the company; (b) their signatures in Form No.29 are obvious forgery; and (c) they never acted as directors of the company. The income tax assessment order shows that the signatures of the respondents 3 & 4 as appearing in Form No.29 are entirely different from their admitted signatures in the joint venture agreement dated 31.01.2004. Similarly, the handwriting expert's opinion dated 18.07.2006 produced by third respondent confirms that the alleged signature of the third respondent in Form No.29 is forged. Though, Dr.Ravichandran reiterated that the respondents 3 & 4 were directors of the company till they resigned from the office of director, there is no material such as the register of directors, or the minutes of the board meeting or any other material document evidencing participation of the respondents 3 & 4 in the affairs of the company as directors, which must therefore be seriously viewed by the Bench. Mere production of the disputed Form No.29 and Form No.32 without being supported by any primary records, the plea of the company that the respondents 3 & 4 functioned as directors of the company does not merit any consideration."

6. The very conclusion reached by the Company Law Board would greatly support the contention raised herein regarding the petitioner's non association with the company. The learned counsel for the petitioners has in the course of argument stated that the complainant Assistant Registrar of Companies was appointed to investigate the affairs of the company only in furtherance of the order dated 9.10.2006 passed in CP.No.50 of 2005. Whereas the complaint was subsequently filed overlooking the very conclusion of the Company Law Board and the same would render the complaint as reckless and abuse of process of law. The learned counsel for the petitioner has also brought to

the notice of this Court the pendency of the complaints in CC.Nos.16320/2008 and 3813/2010 filed against K.C.Palanisamy at the instance of the petitioners herein. The petitioners herein having come to know about the act of forgery committed by K.C.Palanisamy in filing Form 29 with the forged signature of the petitioners, have lodged the complaints, which were registered as FIRs in Cr.Nos.54/2008 and 776/2007 before the Central Crime Branch for forgery and the same after due investigation and after obtaining expert opinion regarding the forged nature of the signature, culminated as CC.Nos.16320/2008 and 3813/2010 and are pending trial.

7. Thus, the combined appreciation of the findings rendered by the Company Law Board as extracted above and the conduct of the petitioners in promptly lodging the complaints against K.C.Palanisamy who is also arrayed as one of the accused herein and who is associated with M/s.Sporting Pastime India Limited would go to show that the complaints are misconceived and untenable. In the event of the proceedings initiated against the petitioners herein being allowed to continue, the same is not likely to support the case of the prosecution and it will amount to abuse of process of law and cause serious prejudice to the petitioners. Hence this court is of the view that the complaints in EOCCs registered against the petitioners herein are liable to be quashed and stand quashed."

8. In view of the above, these petitions are allowed and the proceedings against the petitioners in E.O.C.C.No.491 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.-II, Egmore, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To:

1. The Addl.Chief Metropolitan Magistrate,
Eo-II, Egmore, Chennai.

2. -do- thro The Chief Metropolitan Magistrate, Chennai.

3.The Assistant Registrar of Companies
Shastri Bhavan, Chennai - 600 006.

4.The Public Prosecutor,
High Court, Madras.

+ 2 ccs to Mr.Venkataswamy Babu, Advocate Sr 55302

+ 1 cc to Mr.J.Sivanandaraj, Advocate Sr 55721

+ 1 cc to Mr.Aparna Mukerjee A2B & Partners, Advocate Sr 55722

KR/22/10/16

Crl.OP.Nos.8398 & 10136 of 2010



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