

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

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

CrI.O.P. No.26139 of 2009 & M.P. No.1 of 2009

1 R. Ramesh

2 T.V. Padmanabhan

3 S. Kuppuswamy

4 T.B. Narayanaswamy Petitioners

vs.

The Assistant Registrar Companies
Shastri Bhavan
Chennai 600 006

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records of 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 said complaint with regard to the petitioners.

For petitioners

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.491 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 petitioners.

2 The Assistant Registrar of Companies initiated a prosecution in E.O.C.C. No.491 of 2009 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Section 301 (1) of the Companies Act, 1956, against Sporting Pastime India Ltd. and 11 of its Directors, challenging which Ramesh (A3), Padmanabhan (A4), Kuppuswamy (A5) and Narayanaswamy (A6) have preferred this Criminal Original Petition.

3 Today, when the matter was taken up for hearing, Mr.S.Raghunathan, learned counsel for the petitioners submitted that Kuppuswamy (A5) died on 16.03.2016 and produced a copy of the death certificate.

4 In view of the above, the prosecution as against Kuppuswamy (A5) abates.

5 The gravamen of the allegation in the complaint is as follows:

"3. That the Company was inspected under Section 237(b) of the Act by an officer authorised by the Central Government. During the course of the inspection of the records of the Company, the Inspecting Officer had noticed that the Company has not maintained Register of Contracts under Section 301(1) of the Act. Therefore, the provisions of Section 301(1) of the Act have been contravened."

6 The learned counsel for the petitioners submitted that the Registrar of Companies issued a show cause notice for which a reply dated 27.02.2008 was given by the petitioners, wherein, they have contended that all the required registers have been maintained on the advice of the qualified Company Secretary and that they have not violated the alleged rule.

7 In the considered opinion of this Court, in the teeth of the aforesaid allegation and counter allegation, the fact as to whether such registers were maintained or not, is a disputed question, which cannot be decided in a petition filed under Section 482, Cr.P.C.

8 Hence, this Criminal Original Petition is dismissed with liberty to the petitioners to raise all the points before the Trial Court. The petitioners are directed to appear before the Trial Court and furnish a bond for Rs.10,000/- each, without sureties, under Section 88, Cr.P.C. Thereafter, the presence of the petitioners before the Trial Court shall be dispensed with on condition that they shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. They shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (CrL.) 288]. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to

custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. Connected M.P. is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1 The Assistant Registrar of Companies
Shastri Bhavan
Chennai 600 006

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

3 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 cc to Mr.S.Raghunathan,advocate,sr.59131

mv(co)
krd 25/10

Cr1.O.P. No.26139 of 2009



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