

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:21.10.2016

PRONOUNCED ON:04.11.2016

CORAM:

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

Crl.O.P. No.21039 of 2016 & Crl.M.P. Nos.9747 and 9748 of 2016

Bernard Robert Hereford ... Petitioner

vs.

The Deputy Registrar of Companies
Tamil Nadu, Chennai
having office at II Floor
Shastri Bhavan
26, Haddows Road
Nungambakkam
Chennai 600 006

... Respondent

Criminal Original Petition filed under Section 482, Cr.P.C., seeking to call for the records in EOCC No.213 of 2013 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences-II) Egmore, Chennai and quash the same as far as this petitioner is concerned.

For petitioner Mr. Mohammed Rafi

For respondent Mr. B. Ramesh
Company Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in EOCC No.213 of 2013 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences-II) Egmore, Chennai and quash the same as far as this petitioner is concerned.

2 The Deputy Registrar of Companies initiated a prosecution in E.O.C.C.No.213 of 2013 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Section 211 read with Part II of Schedule VI of the Companies Act, 1956, against 7 accused, challenging which, Bernard Robert Hereford (A5) is before this Court. The company

under scanner is Church of South India Trust Association, which has been incorporated under the Companies Act, 1956.

3 Mr. M. Mohammed Rafi, learned counsel for the petitioner submitted that admittedly, the Church of South India Trust Association has not been arrayed as accused and therefore, this petitioner cannot be made vicariously liable.

4 The above argument of the learned counsel for the petitioner is stated only to be rejected, because, the allegation is not the offence "by" the company, but, the allegation is the offence "in" the company. Unlike an offence under Section 138 of the Negotiable Instruments Act, 1881, where, if the offence is committed by a company, the Director of the company can be vicariously held liable with the aid of Section 141, *ibid*, under the Companies Act, 1956, when the offence itself is committed in a company that has to be administered as per the mandates of the Companies Act, 1956 and the Rules made thereunder, it is not necessary to prosecute the company for the failure of the human beings to comply with the demands of the Company Law during the administration of the affairs of the company.

5 The learned counsel for the petitioner contended that the petitioner joined as a Director only on 26.04.2010 and therefore, he cannot be made liable for the mistake in the Balance Sheet relating to the earlier periods.

6 There is sufficient force in the submission of the learned counsel for the petitioner and from the allegation in the complaint, the petitioner can be held liable only in respect of the Balance Sheet relating to 31.03.2011 and not for the earlier periods.

7 The learned counsel for the petitioner placed strong reliance upon Section 5 of the Companies Act, 1956 and submitted that only "an officer who is in default" can be made liable and not the petitioner.

8 Section 5 of the Companies Act reads thus:

"5. 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:-"

(emphasis supplied)

9 A mere reading of the above provision makes it clear that Section 5 of the Companies Act will apply to a provision in the Companies Act, which speaks specifically of some duties, which an officer who is in default, is commanded to do. Axiomatically, Section 5 of the Companies Act will not apply to a provision which does not carry any command to an officer who is in default. Here, the petitioner is charged for an offence under Section 211 of the Companies Act, which does not speak of any command, the officer in default has to perform. Therefore, the above argument of the learned counsel for the petitioner falls to ground.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected CrI.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1 The Deputy Registrar of Companies
Tamil Nadu, Chennai
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Nungambakkam
Chennai 600 006

2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to Mr.Mohammed Rafi, Advocate Sr.63841

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CrI.O.P. No. 21039 of 2016

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