

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.22559 of 2016

and Crl.M.P.Nos.10513 and 10514 of 2016

Mani Naganatha Davey Petitioner
Vs

1.The Deputy Registrar of Companies
Sastri Bhavan
No.26, Haddows Road, Chennai 600 034.

2.The Registrar of Companies
Sasthri Bhavan
No.26, Haddows Road,
Chennai 600 034. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in EOCC No.48 of 2016 pending on the file of Additional Chief Metropolitan Magistrate, (EO-I), Egmore, Chennai and to quash the same.

For petitioner : Mr.A.Sasidharan
For Respondents : Mr.B.Ramesh, Spl.P.P.
for Registrar of Companies

सत्यमेव जयते
O R D E R

This petition has been filed to call for the records in EOCC No.48 of 2016 pending on the file of Additional Chief Metropolitan Magistrate, (EO-I), Egmore, Chennai and to quash the same.

2. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondents.

3. The short point that falls for consideration is whether the petitioner was a Director in more than 20 Companies as alleged by the prosecution.

4. Learned counsel for the petitioner submitted that the petitioner was a Director in 26 Companies earlier and that he had resigned from 3 Companies and 3 Companies got amalgamated, on account of which the petitioner was a Director for not more than 20 Companies as on the date when the show cause notice dated 15.02.2016 was issued by the complainant.

5. Per contra, Mr.B.Ramesh, learned Special Public Prosecutor submitted that the complainant has listed 26 Companies in paragraph 4 of the complaint and that the petitioner had resigned on the following dates from 4 Companies, which is as follows:

"Sl.No.1 23.12.2015
Sl.No.2 28.12.2015
Sl.No.15 05.11.2015
Sl.No.26 16.10.2015"

6. Learned Special Public Prosecutor submitted that the petitioner should have resigned from the Companies before 01.04.2015 which is the cut off date for the implementation of Section 165 of the Companies Act, 2013 and that the petitioner had resigned only on 01.04.2015.

7. Per contra, learned counsel for the petitioner brought to the notice of this Court, Section 165(4) of the Companies Act, 2013, which reads as follows:

"4. Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned."

8. Learned Special Public Prosecutor relied upon Section 168 of the Companies Act in support of his contention that the date of resignation should be reckoned from the date the Company had intimated to the Registrar of Companies.

9. In the considered opinion of this Court, Section 165 of the Companies Act is an in-built Code and it would suffice if the Director sends his resignation to the Company before 01.04.2015, irrespective of the fact whether the Company had forwarded the same to the Registrar of Companies thereafter.

10. Learned Special Public Prosecutor submitted that the trial in this case has commenced and witnesses have been examined-in-chief and at this juncture, the petitioner has come forward for quashing the prosecution.

11. The fact whether the resignation of the petitioner was sent to the Company before 01.04.2015 cannot be looked into by

this Court in a proceedings u/s 482 Cr.P.C. Therefore, this aspect is left open for the trial Court to decide, on the petitioner adducing necessary evidence to show the same even at the time of framing charge u/s 244 and 245 Cr.P.C., as that can be a ground for discharge of the petitioner from the prosecution. The presence of the petitioner before the trial Court can be dispensed with during charge framing procedure, on the petitioner giving an undertaking that his counsel on special vakalath will represent him and will cross examine the witnesses on the day they are examined-in-chief as directed by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288] and that they will not adopt dilatory tactics. If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand him to custody in terms of the law laid down by the Supreme Court in State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]. The trial Court can also insist upon the presence of the petitioner by intimating his counsel on record.

With the above observation, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Deputy Registrar of Companies
Sastri Bhavan
No.26, Haddows Road, Chennai 600 034.
- 2.The Registrar of Companies
Sasthri Bhavan
No.26, Haddows Road, Chennai 600 034.
3. The Additional Chief Metropolitan Magistrate
(E.O-1) Egmore, Chennai
- 4.The Public Prosecutor,
High Court, Chennai.

+1 CC to A. Sasidharan, Advocate, Sr.No.58521

Cr1.OP No.22559 of 2016

NR (CO)
MD : 2/11/2016