

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.18853 of 2010 & M.P. No.1 of 2010

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.499 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.499 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.499 of 2009 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Section 292(1)(c) of the Companies Act, 1956, against Sporting Pastime India Ltd. and 11 of its Directors, challenging which Ramesh (A6), Padmanabhan (A7), Kuppuswamy (A8) and Narayanaswamy (A9) 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 (A8) died on 16.03.2016 and produced a copy of the death certificate.

4 In view of the above, the prosecution as against Kuppuswamy (A8) 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 obtained unsecured loans from:

- a. Kasthuri & Sons Ltd. amounting to Rs.5,98,41,567/-.
- b. SMS Textiles Ltd. amounting to Rs.69.18 lacs
- c. Cheran Constructions Ltd. amounting to Rs.16.58 lacs
- d. Corporate deposits of Rs.14.65 lakhs

during the year 1.4.04 to 31.3.2005. The Board of Directors have not passed any resolution under Section 292(1)(c). Therefore, the company/its officers have violated the provisions of Section 292(1)(c)."

6 The learned counsel for the petitioners submitted that the petitioners had resigned from Sporting Pastime India Ltd. on 18.08.2004 and all the aforesaid loans were availed subsequent to that date when the Management of the first accused company passed into the hands of the new Directors. In this regard, the Registrar of Companies issued a notice, for which, the accused had given a reply dated 27.02.2008, wherein, they have stated that the transaction pertains to the period subsequent to the change in Management and hence, they have no knowledge of the same nor are they responsible for the same.

7 Admittedly, the petitioners/accused had resigned on 18.08.2004 and had they, in their reply to the show cause notice, given the dates on which the aforesaid loans were taken by the first accused company, then, there would have been some scope for this Court to intervene for quashing the prosecution. In the absence of dates as to when the loans were availed, this Court cannot interfere in exercise of powers under Section 482, Cr.P.C., inasmuch as these are facts which should be established during trial.

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 (CrI.) 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 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.59129

mu(co)
krd 25/10

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