IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

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

Crl.O.P. No.18855 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.500 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.500 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.500 of 2009 before the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, under Section 292 A(1) 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.

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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's paid up share capital was raised from Rs.3 crores to Rs.27 crores with effect from 1.8.2004. As per the provisions of Section 292 A of the Act, if a company's paid up share capital is Rs.5 crores and above, it must have Audit Committee. As the Company/Board has not constituted an Audit Committee, the provisions of Sec.292(A)(1) of the Act, have been contravened for the years from 2.8.2004 to 31.03.05. Hence, the company/its officers have violated the provisions of Section 292 A (1) of the Act, which is punishable under Section 292 A(11) of the Act."

6 The learned counsel for the petitioners submitted that the petitioners had resigned from Sporting Pastime India Ltd. on 18.08.2004 itself and therefore, they cannot be mulcted with criminal liability.

7 The allegation in the complaint relates to the period from 02.08.2004 to 31.03.2005 and when the petitioners had resigned only on 18.08.2004, the argument of the learned counsel for the petitioners cannot be countenanced.

8 The learned counsel for the petitioners further contended that only the new Management which had taken over the first accused company on 08.08.2004 was responsible for raising the share capital.

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9 In the considered opinion of this Court, this is a disputed question of fact, which cannot be gone into in a petition filed under Section 482, Cr.P.C.

10 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

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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/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant 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

+1cc to Mr.S.Raghunathan, Advocate Sr.59127

Crl.O.P. No.18855 of 2010

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srg 25/10/2016

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