

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.1041, 1107 & 1108 of 2006

The Assistant Registrar of Companies,  
Shastri Bhavan,  
26, Haddows Road,  
Chennai - 600 006

.. Appellant

Vs

1. C.Narayanan,  
Managing Director of  
M/s.Panggo Exports Limited.,  
3, Ramaswamy Cross Street,  
Radha Nagar, Chrompet,  
Chennai - 600 044.
2. D.Govindaraj,  
Director of M/s.Panggo Exports Limited.,  
6, Lakshmi Talkies road,  
Shenoy Nagar,  
Chennai - 600 030.
3. R.Pandian,  
Director of M/s.Panggo Exports Limited.,  
54, Lakshmi Talkies Road,  
Shenoy Nagar,  
Chennai - 600 030.

.. Respondents

Prayer in CrI.A.No.1041 of 2006:- Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed in E.O.C.C.No.302 of 2004 dated 14.10.2005 on the file of Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai.

Prayer in CrI.A.No.1107 of 2006:- Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed in E.O.C.C.No.303 of 2004 dated 14.10.2005 on the file of Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai.

Prayer in CrI.A.No.1108 of 2006:- Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed in

E.O.C.C.No.304 of 2004 dated 14.10.2005 on the file of Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai.

For Appellant in all Crl.As : Mr.T.V.Krishnamachari,  
Senior Panel Counsel for  
Central Government

For Respondents 1&3 in  
all Crl.As : Mr.M.Hari Rajan,  
Legal Aid Counsel

#### COMMON JUDGMENT

Challenging the order of acquittal, the appellant/defacto complainant filed 3 appeals. The defacto complainant is the Registrar of Companies, filed the complaints against the respondents under Section 63 of the Companies Act 1956 in E.O.C.C.302 to 304 of 2004 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai. The trial court acquitted the accused by an judgment dated 14.10.2005. Challenging the order of Acquittal, the present revisions were filed.

2. The case of the prosecution, in brief, is as follows:-

The first respondent/A1 is the Managing Director of one M/s. Panggo Exports Limited. A2 and A3 are directors of the company. During the relevant period, when the offence was committed, the accused company had issued a prospectus dated 26.07.1996, inviting public to subscribe the public issue of 20 lakhs equity shares of Rs.10/- each., for aggregating for a sum of Rs.200 lakhs. The company has made a statement in the prospectus to the effect that the company would carry on the manufacturing activities at the leased premises at Mosque colony, Madras and the additional machinery purchased would be installed in the new leased premises till the completion of the company's own building. But the company did not take any steps to implement the projects and thus failed to fulfill the promises made by it to the public. Hence, they have committed offence under Section 63 of the Companies Act.

3. In order to prove its case, on its side one witness was examined and two documents, i.e., the prospectus and show cause notice were exhibited. The respondents side also examined the second respondent as a witness and two documents were exhibited, namely, bank account and the balance sheet. The notice of the Annual General Body Meeting of the company were also filed to prove their case.

4. The defence taken by the company was that, in clause 27 of the prospectus, they have clearly mentioned that if minimum subscription is not received, the company will refund the entire amount to subscribers immediately. The company has received only Rupees 50 lakhs in the public issue, as the company did not receive the minimum subscription, hence, they have returned the entire amount received from the public.

5. In order to prove the same, they have also filed the bank statement, Ex.B1, to show that the company has returned the entire subscription amount to the public and they have also filed a balance sheet. The notice of the Annual General Body Meeting of the company also shows that the entire amount has been returned to the subscribers.

6. Considering the above material evidence, the trial court has held that there is a clause in the prospectus that if the minimum amount has not been received, the entire amount received by the company has to be refunded and they have also refunded the entire amount. Hence, they have not committed any offence as contemplated under Section 63 of the Companies Act and acquitted the accused.

7. Challenging the above order of acquittal, the present revision petition has been filed.

8. I have heard Mr. P.Krishnamachari, learned counsel appearing for the appellants in all the appeals and Mr. Harirajan, learned Legal Aid Counsel appearing for the respondents 1 and 3 in both the appeals.

9. On a careful perusal of the records, it could be seen that there is a specific clause in the prospectus issued by the company. The clause 27 says that if the minimum amount is not received by the company, the company will refund the amount and from Ex.B1 and Ex.B2, it was established that since the company did not receive the minimum amount, they have refunded the entire amount to the public.

10. In the above circumstances, the offence under Section 63 of the Companies Act will not attract to the present case and the trial court rightly considered the material and acquitted the accused. I do not find any illegality or perversity and there is no reason to interfere with the orders of acquittal passed by the trial court. There is no merit in the appeals and the appeals are liable to be dismissed.

11. In the result, the criminal appeals are dismissed and the acquittal order passed by the trial Court are confirmed.

12. While parting with the judgment, I appreciate the services rendered by Mr.Hari Rajan, learned counsel who appeared on behalf of the respondents 1 & 3, as legal aid counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

mrp

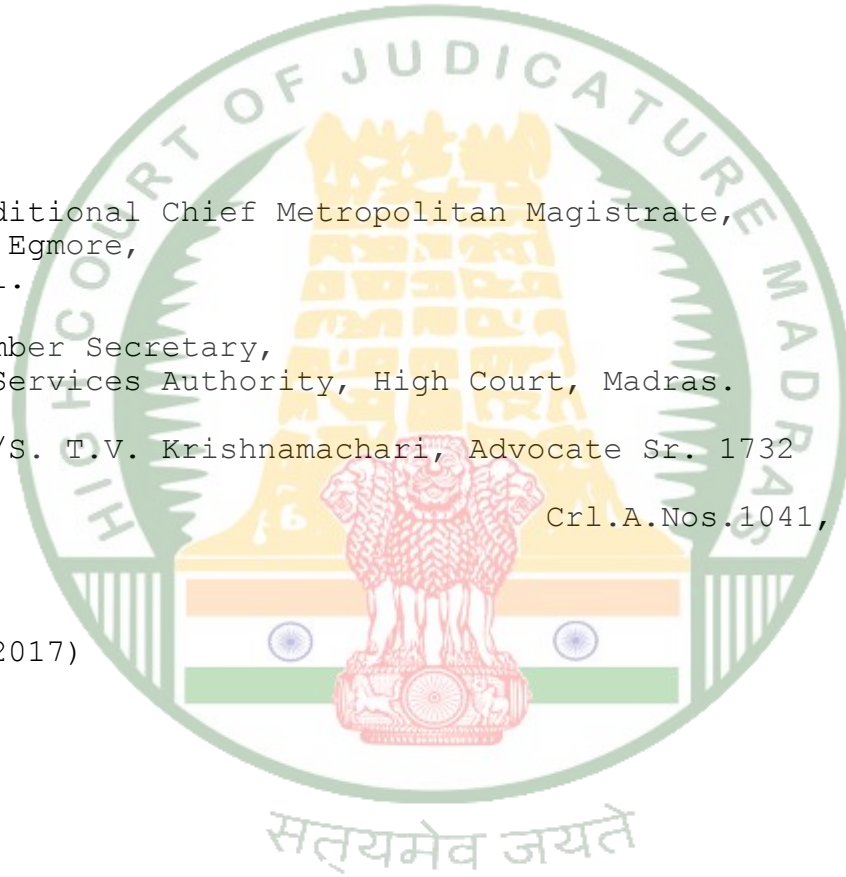
To

1. The Additional Chief Metropolitan Magistrate,  
E.O.I, Egmore,  
Chennai.
2. The Member Secretary,  
Legal Services Authority, High Court, Madras.

+1cc to M/S. T.V. Krishnamachari, Advocate Sr. 1732

Cr1.A.Nos.1041, 1107 & 1108  
of 2006

PA (CO)  
CVR (21/4/2017)



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