

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.28717 of 2011

D.B.Negandhi

.. Petitioner

vs

The Deputy Registrar of Companies,
Shastri Bhavan,
No.26, Haddows Road,
Chennai-600 006.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in E.O.C.C.No.56 of 2011 on the file of the Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai and quash the complaint as against the petitioner.

For Petitioner : Mr.T.D.Selvan Babu
For Respondent : Mr.Madhana Gopal

ORDER

The petitioner herein is the 3rd accused in E.O.C.No.56 of 2011 on the file of learned Additional Chief Metropolitan Magistrate, Economic Offence, Egmore, Chennai in the complaint filed under Section 159 r/w 162 of the Companies Act, 1956 by the respondent, Deputy Registrar of Companies alleging an offence of not filing Annual Report on or before 30.09.2008 for the previous year.

2.According to complainant, the petitioner herein who is the director of the 1st respondent company has defaulted to submit the annual return of the company which has to be submitted before him within the stipulated time under the Companies Act. Thereupon the directors of the above company defaulted to file the annual return within the meaning of Companies Act, 1956.

3.Therefore the above complaint in E.O.C.No.56 of 2011 came to be lodged by the respondent as against the company by arraying the company as 1st accused and its directors arrayed as accused Nos.2 to 4 respectively.

4.I heard Mr.T.D.Selvan Babu, learned counsel for the petitioner and Mr.Madhana Gopal, learned counsel for the respondent and perused the entire materials available on record.

5.The learned Counsel for the petitioner submits that the complaint laid against petitioner is unsustainable for the concrete reason that during the alleged year of default the petitioner was not acting as the director and the fact remained that the petitioner resigned his directorship as early as in the year 1997. Now about 14 years later the present complaint is being lodged in the year 2011 as though the petitioner was in-charge of conduct of the company.

6.The learned Counsel for the petitioner would also submit that the petitioner is presently 87 year old and had undergone triple bypass and prostrate surgery for cancer. That apart the petitioner also suffers from multiple health problems including renal problem.

7.On careful perusal of the case records it is seen that the petitioner has resigned from the board of directors and has submitted resignation to the respondent in the year 1997. The same was informed as required vide form 32 of Companies Act before the respondent on 31.05.1997.

8.It is further found that apart from that vide communication dated 16.06.1997 the petitioner has also submitted the Demand Draft payable towards the Form 32 submitted in pursuance to his resignation.

9.It is further seen that the 1st accused company vide letter dated 26.10.2006 has submitted the Director's report for the year 2006 accompanied with audited statement of accounts of the company for financial year end by 31st May. It would be useful to state the name of the Board of Directors.

1. Additional Director : Sunil Pawaskar
2. Director : Mustafa Kesuri
3. Additional Director : Philip Amolik
4. Nominee : Asish Tiwari.

The above financial report and audited statement of accounts of the company of the year 2006 precisely demonstrate that the petitioner was not a part of the company in the year 2006.

10.Whereas the instant complaint is lodged by the respondent alleging non- submission of annual report for the financial year 2008, it is also noticed that when previously a show cause notice was caused upon the petitioner in the year 2008, the petitioner vide his reply dated 14.02.2008 has informed the respondent with above facts.

11.It is noteworthy that the company has submitted its report till 2006 without default and therefore there arise no situation to hold the petitioner for default in submission of annual report for the year 2007. Therefore for the foregoing reasons the complaint on hand, lodged against the petitioner stands unsustainable both legally and factually.

12.In the result, this Criminal Original Petition is allowed and the impugned complaint in E.O.C.C.No.56 of 2011 on the file of the Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, is quashed in as much as the petitioner alone is concerned.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Additional Chief Metropolitan Magistrate,
E.O.I., Egmore, Chennai.

2.The Deputy Registrar of Companies,
Shastri Bhavan,
No.26, Haddows Road,
Chennai-600 006.

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BR(CO)
GN(12/02/2019)

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